



**Submission in connection with Case Study 50: Final
hearing into Catholic Church authorities in Australia**

The Catholic Church: Then and Now

Royal Commission into Institutional Responses to Child Sexual Abuse

22 December 2016



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Our Commitment

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

- 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
Archdiocese of Brisbane
Archdiocese of Canberra-Goulburn
Archdiocese of Hobart
Archdiocese of Melbourne
Archdiocese of Perth
Archdiocese of Sydney
Diocese of Armidale
Diocese of Ballarat
Diocese of Bathurst
Diocese of Broken Bay

Diocese of Broome
Diocese of Bunbury
Diocese of Cairns
Diocese of Darwin
Diocese of Geraldton
Diocese of Lismore
Diocese of Maitland-Newcastle
Diocese of Parramatta
Diocese of Port Pirie
Diocese of Rockhampton
Diocese of Sale

Diocese of Sandhurst
Diocese of Toowoomba
Diocese of Townsville
Diocese of Wagga Wagga
Diocese of Wilcannia-Forbes
Diocese of Wollongong
Eparchy of Ss Peter & Paul Melbourne
Maronite Catholic Diocese of St Maroun
Military Ordinariate of Australia
Personal Ordinariate of Our Lady of the Southern Cross

Religious Institutes

Adorers of the Blood of Christ
Augustinian Recollect Sisters
Augustinian Sisters, Servants of Jesus & Mary
Australian Ursulines
Benedictine Community of New Norcia
Blessed Sacrament Fathers
Brigidine Sisters
Canons Regular of Premontre (Norbertines)
Canossian Daughters of Charity
Capuchin Friars
Christian Brothers
Cistercian Monks
Columban Fathers
Congregation of the Mission – Vincentians
Congregation of the Most Holy Redeemer – Redemptorists
Congregation of the Passion – Passionists
Congregation of the Sisters of Our Lady Help of Christians
Daughters of Charity
Daughters of Mary Help of Christians
Daughters of Our Lady of the Sacred Heart
Daughters of St Paul
De La Salle Brothers
Disalced Carmelite Friars
Dominican Friars
Dominican Sisters of Eastern Australia & The Solomons
Dominican Sisters of North Adelaide
Dominican Sisters of Western Australia
Faithful Companions of Jesus
Family Care Sisters
Franciscan Friars
Franciscan Missionaries of Mary
Franciscan Missionaries of the Divine Motherhood
Franciscans of the Immaculate
Holy Cross – Congregation of Dominican Sisters
Holy Spirit Missionary Sisters
Hospitalier Order of St John of God

Institute of Sisters of Mercy Australia & Papua New Guinea
Loreto Sisters
Marist Brothers
Marist Fathers Australian Province
Marist Sisters – Congregation of Mary Ministers of the Infirm (Camillians)
Missionaries of God's Love
Missionaries of the Sacred Heart
Missionary Franciscan Sisters of the Immaculate Conception
Missionary Sisters of Mary, Queen of the World
Missionary Sisters of St Peter Claver
Missionary Sisters of Service
Missionary Sisters of the Sacred Heart
Missionary Sisters of the Society of Mary
Missionary Society of St Paul
Oblates of Mary Immaculate
Order of Brothers of the Most Blessed Virgin Mary of Mount Carmel (Carmelites)
Order of Friars Minor Conventual
Order of Saint Augustine
Order of the Friar Servants of Mary (Servite Friars)
Our Lady of the Missions
Patrician Brothers
Pious Society of St Charles – Scalabrinians
Poor Clare Colettines
Prelature of the Holy Cross and Opus Dei
Presentation Sisters – Lismore
Presentation Sisters – Queensland Congregation
Presentation Sisters – Tasmania
Presentation Sisters – Victoria
Presentation Sisters – Wagga Wagga Congregation
Presentation Sisters – WA
Religious of the Cenacle
Salesians of Don Bosco
Salvatorian Fathers – Society of the Divine Saviour
Secular Institute of the Schoenstatt Sisters of Mary
Servants of the Blessed Sacrament

Sisters of Charity of Australia
Sisters of Jesus Good Shepherd "Pastorelle"
Sisters of Mercy Brisbane
Sisters of Mercy North Sydney
Sisters of Mercy Parramatta
Sisters of Nazareth
Sisters of Our Lady of Sion
Sisters of St Joseph
Sisters of St Joseph of the Apparition
Sisters of St Joseph of the Sacred Heart
Sisters of St Joseph, Perthville
Sisters of St Paul de Chartres
Sisters of the Good Samaritan
Sisters of the Good Shepherd
Sisters of the Holy Family of Nazareth
Sisters of the Little Company of Mary
Sisters of the Resurrection
Society of African Missions
Society of the Catholic Apostolate (Pallottines)
Society of Jesus
Society of St Paul
Society of the Divine Word Australian Province
Society of the Sacred Heart
Sylvestrine-Benedictine Monks
Ursuline Missionaries of the Sacred Heart
Verbum Dei Missionary Fraternity

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 11 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. Two 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 members of the Supervisory Group are listed on the Council 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.

The other members of the Council are:

- Ms Elizabeth Proust AO, Deputy Chair, former Secretary to the Victorian Department of Premier and Cabinet, Chairman of the Bank of Melbourne and Nestlé Australia and member of other boards
- Archbishop Mark Coleridge, Archbishop of Brisbane
- Professor Maria Harries AM, Adjunct Professor at Curtin University, Research Fellow in Social Work and Social Policy at the University of Western Australia, Chair of Catholic Social Services Australia
- 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, Chair of National Catholic Education Commission
- 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
- Bishop Bill Wright, Bishop of the Diocese of Maitland-Newcastle
- Professor Greg Craven, Vice-Chancellor and President of the Australian Catholic University

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>



- Mr Stephen Elder OAM, 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
- co ordinating 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, and
- seeking to promote lasting healing for the victims and survivors of abuse.

Dioceses and religious institutes (commonly referred to as congregations and orders) have given authorisations 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 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 ordinarily speaks 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

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



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.



Introduction

This submission is provided to the Royal Commission by the Truth Justice and Healing Council (**the Council**) in connection with Case Study 50, the Commission's final hearing into Catholic Church authorities in Australia. The Commission has described the scope and purpose of that hearing as being to inquire into:

- the current policies and procedures of Catholic Church authorities in Australia in relation to child protection and child-safe standards, including responding to allegations of child sexual abuse,
- factors that may have contributed to the occurrence of child sexual abuse at Catholic Church institutions in Australia,
- factors that may have affected the institutional response of Catholic Church authorities in Australia to child sexual abuse,
- the response of Catholic Church authorities in Australia to relevant case study reports and other Royal Commission reports,
- data relating to the extent of claims of child sexual abuse in the Catholic Church in Australia, and
- any related matters.

The submission is of necessity general in nature. It should be read in conjunction with the evidentiary material to be found in the Royal Commission's tender bundles, once they became available.



1 Structure of the Catholic Church

Although the Catholic Church is understood as being a universal church it does not have a typical global corporate structure. This section outlines how authority, responsibility, decision making and accountabilities are organised in the Catholic Church in Australia and in relation to the Holy See. For a more complete understanding, this section is best read in conjunction with the expert canon law advice provided through the Council by Dr Rodger Austin.⁴

1.1 Introduction

Due to its historical development and theological underpinnings, the Catholic Church is organised in a hierarchical structure.

The structure and governance of the Catholic Church arise from its religious mission and purpose. It is *sui generis* and so has first to be understood and judged in its own terms. Analogies with other bodies are of limited help. In part, this is because the Church's structures and norms have acted as a model for the establishment and operation of other organisations down the centuries, and the Church has, in turn, adopted and adapted from these other bodies. So while the Church shares significant similarities with other institutions, there are also important differences. Catholic structures and norms are founded in a religious view of the world and society. Organisational charts do not capture the full rationale for a structure Catholics believe to have normative moral force — that is, believe to be based ultimately on the Word of God and its articulation in living Church tradition. Understanding a little of this structure can help re-frame some questions which otherwise would make little sense as a way of understanding this *sui generis* body.

The reality is that the Catholic Church is a collection of Particular Churches. It is not akin to a large international company with many divisions, which is a misleading analogy. Each Particular Church is governed by a bishop. A bishop is not a local representative of the Pope. He governs his diocese in his own right. The sum total of all of these Particular Churches is known as the Universal Church, or informally as just 'the Catholic Church'.

1.2 Rome

The Bishop of Rome, also known as the Pope, is the Head of the Universal Church. He is the Chief Pastor of the Catholic Church and is viewed by Catholics as Christ's Vicar on earth, the successor of St Peter to whom Christ entrusted the care of his followers. This means the role of Pope is, above all else, a spiritual and pastoral appointment. It is not like that of a Chief Executive Officer. There is no good analogy here with a corporate or administrative model. While socially and globally highly active and influential, the Pope is not a political leader, although he plays a crucial part in the governance of the Church.

The Pope has full, immediate, universal, and supreme power over the Church throughout the world: that is, his pastoral office is exercised in every matter, is direct and independent, exercised over the entire Church, and final. The Church of Rome is referred to as the Holy See or the Apostolic See. This is distinct from the Vatican, which is a City State, governed by its Head of

⁴ Report of Dr Rodger Austin (CTJH.304.90001.0027).



State, who is also the Bishop of Rome. This is a legacy of the historical connection between the Holy See and the former Papal States, and gives the Pope temporal authority over a small population within the boundaries of the Vatican. The Vatican City State is recognised by international law.

In the day-to-day governance of the Church, the Pope carries out his responsibilities through the Roman Curia: various congregations, councils, tribunals, and commissions (all referred to as Dicastries), which perform their various functions in the name of the Pope and with his authority.

1.3 Particular Churches and Bishops

Canon law defines a Particular Church as a portion of the people of God entrusted to a bishop to be shepherded by him with the cooperation of his priests. The Church hierarchy is quite unlike that of any civil entity. Each bishop in his diocese is subject only to the Pope. Aside from this there is not a hierarchy of bishops whereby some are subordinate or superior to others, although seniority of appointment is usually acknowledged as a matter of custom and courtesy. The bishops, though independent of each other in terms of authority, commonly refer to each other as 'brother'. Their unity under the Pope is that of a family or a college, not of a hierarchy as this concept is commonly understood. Each bishop belongs to the College of Bishops – all of the bishops scattered throughout the world, together with the Pope. It is the duty of each bishop to maintain communion with the College of Bishops. Should a bishop stray from the teachings of the Church, he would break his bond with the College of Bishops and thus lose his power to govern. So it is imperative that each bishop, although independent in his own diocese, remain united with the other bishops throughout the world, including the Pope.

The Church is made up of 24 Rites or Churches *sui iuris*. Twenty-three of these Churches or Rites are called Eastern Churches; the Western Church is made up of one Church – the Latin or Roman Rite. This East-West distinction is a result of the historical division of the Roman Empire. Particular Churches of the Latin Rite are called dioceses. Some dioceses due to their historical situation, size or importance are called archdioceses. Archdioceses are governed by archbishops. A diocese is not subject to an archdiocese, nor is a bishop subject to an archbishop. In Australia the capital cities (with the exception of Darwin) are archdioceses. No one of the archbishops in Australia is superior to the other archbishops in Australia. As such, there is no bishop 'in charge of Australia'.

1.4 Provinces and Conferences

Particular Churches may be grouped together into provinces by the Pope. In Australia, there are five provinces: Sydney (all of NSW and the ACT); Brisbane (all of Queensland); Melbourne (all of Victoria and Tasmania); Adelaide (all of SA and NT); and Perth (all of WA). Each province is overseen by a metropolitan diocese, located in the capital city of each of the five provinces – Sydney, Brisbane, Melbourne, Adelaide and Perth. The other Particular Churches in each province are called suffragan dioceses.

The metropolitan archbishop has limited authority over the suffragan bishops within the same province, which can be exercised only in extraordinary circumstances. The metropolitan archbishop is obliged to inform the Pope of any significant failures to observe faith and ecclesiastical discipline in suffragan dioceses within the province; to conduct a canonical visitation



of a Particular Church in the province if the suffragan bishop has not done so, with approval of the Holy See; and to appoint a diocesan administrator when a suffragan diocese becomes vacant within the province if that diocese's College of Consultors has not done so.

The role of a metropolitan archbishop is one of oversight. He makes sure that bishops of suffragan dioceses adhere to their obligations, without interfering with the running of those dioceses. He would not know all of the affairs of the suffragan bishops.

All of the bishops of the various Particular Churches in Australia are grouped together as the ACBC, erected by the Pope. The bishops of the ACBC elect a chairman from amongst themselves. The chairman holds his position for five years. The chairman is not in charge of the ACBC and has no authority over the other bishops. His role is to foster communication and common action amongst the various particular churches. The ACBC has a secretariat.

1.5 Cardinals

A bishop may be appointed a cardinal by the Pope. Today, cardinals are selected exclusively from among bishops and priests, although *cardinal* is not a title within holy orders (such as deacon or priest or bishop). The role of a cardinal is to advise the Pope and to elect a new Pope when the See of Rome is vacant. A cardinal is not of a superior rank to bishops in the bishops' conference to which he belongs. Strictly understood, he is merely a bishop with extra responsibilities, belonging to the College of Cardinals and having a special bond with the Pope, although in custom and practice he will usually be accorded seniority in matters of precedence and other courtesies out of respect for this special bond.

1.6 Eastern Rites

As well as the Particular Churches, which are defined by geographical location, there are a further five Particular Churches belonging to Eastern Rites (called Eparchies) that have been erected within Australia, so as to govern the faithful in Australia who belong to these rites: the Maronites, the Melkites, the Ukrainians, the Chaldeans, and the Syro-Malabars. Members of Eastern Rites other than these five are governed by their local Latin Rite bishop.

1.7 Apostolic Nuncio

The Apostolic Nuncio or 'messenger' represents the Pope in Australia, and is also the Holy See's ambassador to Australia in civil law. The Nuncio's main functions are to represent the Pope at important civil occasions and Church events in Australia, to act as a sign of the communion of the Particular Churches in a country with the Holy See, to facilitate communication between the Church in Australia and the various offices of the Vatican, and to act as a liaison and channel between the Holy See and the Australian government of the day.

1.8 Diocesan Structures

The bishop of each diocese possesses ordinary, proper and immediate power in his Particular Church. This means he has the pastoral power proper to the 'ordinary' or bishop, by his own right and in virtue of his ordination, and exercises these powers independently. At the same time, the



Pope possesses this same power in every Particular Church. Each bishop is therefore subject to the Pope. Bishops can only be nominated by special mandate of the Pope.

Each diocese has its own structure of governance to assist the bishop in the governance of the diocese entrusted to his care. Metropolitan bishops in Australia are often assisted by auxiliary bishops. Bishops approaching retirement or in failing health may petition the Pope to appoint a coadjutor bishop to assist them. Most bishops also appoint vicars general and episcopal vicars to help them in their work in their diocese. All bishops must appoint a College of Consultors, a Council of Priests, and a Finance Council to advise him in his governance of the diocese.

- Auxiliary bishops are bishops who are appointed to assist the bishop in the governance of his diocese. They are immediately subject to the authority of their bishop. Auxiliary bishops are usually appointed in larger or more complex dioceses, literally so as to offer 'help' to their ordinary (the diocesan bishop) in exercising his pastoral care over his diocese. They do not have independent authority over any region of the diocese which may be entrusted to them by the bishop. In fact, they are assigned a 'titular' or historical but now non-existent diocese by the Pope to make clear they do not control a portion of the diocese to which they are assigned. Their pastoral activity and degree of involvement in the affairs of the diocese is determined by the bishop.
- Coadjutor bishops are bishops appointed to succeed the bishop of a see when it becomes vacant. Like all bishops, they are appointed by the Pope. They can be appointed at the request of a bishop, or the Pope may appoint a coadjutor bishop on his own initiative if the pastoral needs of a diocese require it.
- Vicars general are chosen from among his priests by the diocesan bishop. Auxiliary bishops are often appointed as vicars general also, although in practice this office is most commonly associated with the senior priest appointed by the bishop to this role to assist him in the day-to-day administration of the diocese. The vicar general, by virtue of his office, has the same power of governance within the diocese as the diocesan bishop, except for those matters which canon law specifically limits to the bishop himself. Usually the vicar general will exercise this power in close consultation with the bishop. In the name of the bishop the vicar general will fulfill administrative functions across the whole diocese. Generally in Australia these will include, in addition to other functions, the care and organisation of parish priests and their relationships with their parishes and parishioners.
- The College of Consultors is a permanent college of priests, chosen from the Council of Priests, which assists the bishop in the governance of his diocese in accordance with requirements of canon law. A bishop is required to seek the consent of his College of consultors in some matters, particularly regarding the acquisition, administration, and alienation of temporal goods. Another time a bishop is required to seek the consent from his consultors is when enacting significant changes within the diocese, such as the erection or suppression of a parish. The bishop is the chairman of this college.
- The Council of Priests is a group of priests which represents the priests of a diocese. It is akin to a senate. About half of the council is elected by the priests of the diocese; the rest are either *ex officio* or appointed by the bishop. Canon law specifies that the bishop is to consult with the Council of Priests regarding plans and activities of greater importance within the diocese, such as pastoral activities, apostolate, charities, catechesis, and the like. On occasion the bishop must seek the consent of this council, in accordance with canon law,



often surrounding the management of temporal goods. A priest is elected as the chairman of the council.

- The Finance Council is a group of lay people expert in financial affairs and civil law. The Finance Council assists the bishop in the administration of the diocese's financial matters. A bishop is to seek the consent of his Finance Council for the acquisition, administration, and alienation of temporal goods within the diocese. The Finance Council also receives the reports of the senior financial administrator of the diocese (in Australia this role is commonly referred to by the title 'Business Manager'), who in accordance with canon law is appointed by the bishop with the consent of the other members of the Finance Council.

None of these bodies can operate independently from the diocesan bishop. While in particular matters the bishop must consult them or seek their consent as required by canon law, he has full power of governance in his diocese and can seek advice or engage in consultation with these bodies or with other advisers as he thinks appropriate. In the majority of instances, however, the bishop is free to make decisions on his own.

1.9 Principle of Subsidiarity

The Second Vatican Council underscored the Principle of Subsidiarity as one of the principles governing the way that the Church is to operate. This principle means that each level within the Church exercises authority according to its level of competency, leaving the running of subordinate levels to themselves, unless assistance from a higher level is required for the subordinate level to carry out its responsibilities. In this way parishes and works such as schools, hospitals, colleges, and agencies operate with considerable autonomy within a diocese, just as dioceses and religious congregations operate with considerable autonomy from higher governing authorities in the Vatican. Intervention by a higher level of authority in a subordinate level is usually exceptional, brought about, for example, by a serious failure at the subordinate level in carrying out its responsibilities.

1.10 Parishes

A Particular Church or diocese is divided into parishes. Each parish is entrusted to a priest. Most parishes are territorial or geographical divisions of the diocese, although non-territorial parishes (and dioceses) can be erected on the basis of particular needs. For example, in Australia there is a Military Ordinariate or diocese to care for Catholics in the armed services. Only a priest may be appointed to the office of parish priest. The parish priest represents the bishop at a local parish level. A parish priest is appointed either for an indefinite or a specified period of time. Where a parish priest has not been appointed, an administrator, also a priest, may be provided for the governance of a parish until such time as a parish priest may be appointed.

Parishes are grouped together into deaneries (or vicariates forane), led by a dean (or vicar forane). A dean is simply one of the parish priests of the deanery who helps to coordinate common action and pastoral initiatives among adjoining parishes and assists with communication between these local groups of priests.



1.11 The Clerical State and the Lay State

Members of the Church are either ordained or lay. Laity are those who have not received the Sacrament of Holy Orders. Holy orders consists of three grades: bishop, priest, and deacon. Those who are ordained are said to belong to the 'clerical state'; all others belong to the 'lay state' including members of religious orders (unless they are priests or deacons). Increasingly, and particularly since the Second Vatican Council in the 1960s, lay Catholics play more and more diverse roles within the Church. Although only the ordained can exercise particular governance functions within a parish or a diocese, Catholic men and women today cooperate fully with bishops, priests and deacons in the exercise of this authority, including in the administration of dioceses and religious orders. The mission of the Church cannot be understood without an emphasis on the essential role of the laity in spreading the Gospel and bringing the news of salvation to others. Lay Catholics lead, serve and work in Catholic agencies and organisations that serve the Church and broader society in Christ's name. Lay people receive a particular 'vocation' or calling from God, a special work and dignity and the gifts necessary to accomplish this role.

1.12 Religious Life

The terms 'consecrated' or 'religious' refer to those members of the Church who belong to religious institutes (sometimes called 'orders') or societies of apostolic life. Such groups may be exclusively lay, exclusively ordained, or a mixture of both lay and ordained. These groupings have their own internal structures of governance, and while they operate within Particular Churches led by bishops, they have their own autonomy and are led by their own superiors, independent from the local bishop, but never exercising their ministry at a local level without the local bishop's knowledge or consent. Similar to his power within dioceses, the Pope has full, supreme, universal, and immediate power within each Religious Institute and Society of Apostolic Life.

Religious institutes and societies of apostolic life may establish a local presence within a particular Church to conduct ministries in keeping with their charism and their statutes. They may run a school or a hospital, or they might be invited to run a parish, with permission of the diocesan bishop. They may also establish a religious house – a place of residence for their members.

Some religious houses are of diocesan right; others are of pontifical right. Those of diocesan right are erected by the local diocesan bishop, who ensures that all is in accordance with the statutes of the Institute. Those of pontifical right are erected by the Holy See, which ensures that all is in accordance with the statutes of the Institute.

A diocesan bishop does not have the power to interfere or intervene with the internal workings and ordering of a religious house, except in matters where there is a significant failure to observe the requirements of faith and ecclesiastical discipline. The discipline within a religious house lies with the superior of the house, and his or her superiors on a provincial, national or international level. However, many of the works undertaken by religious affect the general public, through preaching or other ministry. The diocesan bishop can involve himself with such works when those works affect the greater public, intervening if this is required to protect the members of the Church for whom he is shepherd.



1.13 Public juridic persons

With the declining presence of religious personnel serious consideration has been given to the future governance of the works or ministries of religious institutes, for example, hospitals and schools. The usual course has been that where a religious institute was no longer able to govern and conduct their specific works, these services were either passed on to the local bishop or taken up by another religious institute.

Now with the reduced numbers of people entering religious life and the aged profile of existing religious institutes, new canonical structures have been established to continue the ownership and governance of these religious works. These canonical structures are termed public juridic persons (PJP). They have personality in canon law and, just like religious institutes, are established by either the local bishop (diocesan rite) or through a Vatican dicastery (pontifical rite). Once established the PJP is bound by the relevant ordinances and statutes of its constitution.

Typically the PJPs are administered by trustees who increasingly are lay people and their works are usually incorporated in civil law. This is leading to a less clerical approach to the administration of some Church works.

1.14 Conclusion

The Church is *sui generis*; difficult to grasp because of its size, the different communities it comprises at local, state, national and international levels, the range of its activities and works, and the unprecedented history and geography of its extent.

As a collection of Particular Churches, the Church is not analogous to a large corporation with many departments. More accurately it is a community of different levels of authority and overlapping authorities. The reality of the Particular Churches all forming one Church can be seen in an example such as in Sydney:

- a member of the Latin/Roman Rite who resides in Sydney is subject to the Latin/Roman Archbishop of Sydney,
- a member of the Maronite Rite who resides in Sydney is subject to the Maronite bishop of Australia,
- a consecrated member of a religious order (eg the Dominicans) is subject to his or her superior,
- a member of the military is subject to the Military Ordinary, and
- a clerical member of a personal prelature (another instance of a non-territorial diocese) – Opus Dei, for example – is subject to the prelate, or the bishop appointed by the Pope to govern this community within the Church.

When the Church describes itself in terms of family relationships this is not simply warm rhetoric. Like a family, the Church is a vastly extended network of relationships exhibiting greater and lesser degrees of familiarity, overlap and co-activity between its members. A description of hierarchical structures does not capture the reality of an organisation that has grown organically – absorbing different traditions and priorities – across hundreds of cultures and very many



centuries. Attempting to understand the structure of the Church by analogy to the more familiar structures of complex organisations in modern society runs the risk of failing to capture the actual responsibility relationships and true centres of agency within the Church.

Through baptism Catholics share a common calling to follow Christ. However the membership of the Church can be divided between those formally ordained to priesthood and religious ministry and those who participate as lay members. Historically, whenever possible, official positions, be they administratively or canonically based, were occupied by clerics and religious. This has resulted in a highly 'clericalised' culture.

Like any other major organisation specific powers, authority and knowledge are ascribed to levels within the structure. Put simply, although ultimate authority rests with God, organisational authority resides with the Pope. Bishops take an oath of allegiance to the Pope and clerics are obliged to obey the dictates of their bishops. At the local level, parish priests have authority within their parish and canon law then prescribes the processes and procedures to follow in administration at both diocesan and parish levels.

As a sociological reality, the clerical class has a different status, power and influence than the lay class within the operational and daily life of the Church. This is similar to the institutional status afforded members of the medical and legal professions due to their special knowledge and roles within society.

Over time in Australia there has been a declining trend in the vocations to the priesthood and religious life. Consequently, more lay people have been engaged in administrative and ministry levels of the life of the Church and have assumed responsibilities, and asserted influence, in ways not experienced in past decades. However, this has not altered the structures and effective lines of authority of the Church. It still remains innately hierarchical.

2 Factors that may have contributed to the child sexual abuse crisis

This chapter presents a discussion on the cultural aspects that may have contributed to the incidence of child sexual abuse in the Catholic Church. It explores studies in Australia and internationally and discusses particular features that have been commonly identified as possible contributing elements.

2.1 Introduction

Child sexual abuse is a tragic phenomenon which every society must address.

In their 1993 paper about the cycles of awareness of sexual abuse, Olafson, Corwin and Summit document the historical backlashes by 'health professionals, the courts and the media' to give perspective on our current situation.⁵ Although acknowledged in different ways at different times in history, public and professional awareness of sexual abuse has emerged and been suppressed repeatedly.

The authors observe that whilst significant literature emerged over the previous century, written by adult survivors, feminists and clinicians, it had never been integrated into professional understanding. Indeed, child sexual abuse was often dismissed in what they describe as an example of generic 'cultural denial'. Importantly, they describe this 'cultural denial' as a defence by all adults and society in general to the 'pain and terror' of the knowledge of such abuse and liken it to the dissociation that victims have to adopt in order to cope with their abuse trauma.⁶ In their edited book, *Challenging Silence*, social work academics and scholars, Breckenridge and Lang, similarly argue for strong measures to confront the challenges of the broad ranging professional and societal 'attempts to silence victims and survivors and to discredit those who believe their stories and advocate on their behalf'.⁷

These scholars alert us to the knowledge that whilst rigorous studies about the effects of sexual abuse on children started to emerge in the mid-1980s, it was only just starting to be incorporated in the lexicon of professional assessments in the 1990s and, they warned then, it was imminently at risk of being suppressed again.⁸ Quadrio refers to these times as 'the dark ages of psychiatry'⁹ and unarguably they were similarly so for most if not all human service professionals as well as the broader community. Psychology and social work fared no better, although various practitioners alert to the tragedy and traumas attempted to advocate and particularly to change legislation from the 1980s onwards.

David Finkelhor, one of the most seminal researchers in child sexual abuse wrote:

'I want to say that the problem of sexual abuse is a new and challenging one and it has been a sobering message for those of us who work with children....but it is certainly humbling to discover here in the late 20th century that for most of the time we have been studying childhood we have

⁵ Olafson, E., Corwin, D. and Summit, R., (1993) *Modern history of child sexual abuse awareness: Cycles of discovery and suppression*. Child Abuse & Neglect 17:1 pp.7-24.

⁶ Ibid, p. 9

⁷ Breckenridge, J. & Laing, L. (1999) *Challenging Silence: Innovative responses to sexual and domestic violence*, Allen I Unwin, p. 1.

⁸ Olafson, et al. p. 7.

⁹ Quadrio T8448:21-30 CS28 (Day 81). See also the evidence of Dr Peter Evans at T16189:2 CS28 (Day 153).



ignored such a fundamental reality as this, that most of our scientists, physicians and educators failed to see how much sexual abuse was occurring and how profound its consequences were'.¹⁰

The literature includes some of the following as additional reasons for the denial or suppression of the reality let alone the traumatic consequences of child sexual abuse:

- (a) The influence of psychoanalytical theory and its conjectures about children's sexual fantasies slowed the recent recognition by psychiatry and psychology to the reality of child sexual abuse. Subsequent professional insensitivity to clinical presentations of child sexual abuse followed.
- (b) As physical and emotional child abuse started to be recognised, the initial focus on child sexual abuse was intra-familial: Rape and incest were the sexual assault issues highlighted by feminist researchers from the 1980s. Clinicians became sensitive to the sexual abuse of girls in families.
- (c) Sexual abuse of girls or boys in foster care or institutional care received little if any attention. The 1985 edition of Rutter's Child and Adolescent Psychiatry¹¹ focussed on intra-familial sexual abuse and psychological and social work referred mainly to abuse in disturbed and dysfunctional families. There was no literature about the incidence of abuse by authority figures such as teachers or clergy.
- (d) There was little, if any appreciation or information, let alone research, on the immediate and long-term impact of childhood sexual abuse. Psychiatry and psychology missed the link between childhood sexual abuse and mood and anxiety disorders, deliberate self-harm substance abuse, and eating disorders. Longitudinal studies such as ACE were not available till the mid 1990's.
- (e) Previously there was an extremely naïve understanding of how to assess and treat perpetrators, in contrast to the present-day understanding which includes appreciation of the role of peers in the utilisation of group therapy.
- (f) Trauma and its effects on children's neuro-psychological development have only recently been appreciated by mental health clinicians.
- (g) The social work profession focused mainly on neglect and risk of danger to children in a physical sense before recent times.
- (h) Prior to the mid- to late-1980's there was minimal focus on child sexual abuse in the research literature, undergraduate professional education or in continuing professional development in health practitioner disciplines.

Within the Church, the understanding of paedophilia was faulty and this ignorance was compounded by the gaps in scientific knowledge. There was a belief that the behaviour resulted from spiritual weakness, and that removing the cleric or religious from the 'occasion of sin' would solve the problem. Psychologists and psychiatrists were prone to giving overly optimistic prognoses. At this time psychiatrists and psychologists lacked a deep understanding of the nature and devastating impact of sexual abuse. There was little in the literature from psychiatry and psychology prior to the mid-80s and no discussion about clergy abuse.

¹⁰ Finkelhor, D., (1997) in Ullman, E., and Hilweg, V., (eds) *Childhood and Trauma, Separation, Abuse War Sos* Kinderdorf Ashgate Aldershot Brookfield, USA. p. 114

¹¹ Rutter, M., et al, (eds) *Rutter's Child and Adolescent Psychiatry* (2nd Edition) (1985) Blackwell Publishing Limited, USA.



However, the Council is only too well aware that in any consideration of why the tragedy of child sexual abuse took so long to emerge, serious questions remain.

Why did it take so long, until the late-1980s, for the Church to begin to come to grips with the nature and scale of the problem within its ranks?

Why was emphasis seemingly placed for so long, by too many, on protecting the reputation and position of the Church and of the accused, instead of on reaching out compassionately to the victims?

Why were accused persons moved from one parish or location to another?

Why was the sexual abuse of children not treated as a crime?

These are difficult and unpalatable questions to confront. There are many factors which might form part of the answers. They include:

- a reaction of disbelief among many in the Church, including Church leaders, that child sexual abuse could possibly be or have been engaged in by priests and religious,
- a misguided sense of loyalty to the Church, and a correlative emphasis on avoiding scandal,
- a view that the information was so shameful, personal or private that it could not and should not be shared with anyone,
- a focus on the concept of sin, and forgiveness of sin, with the result that there was a tendency to look towards ways of allowing the offender to continue or resume his ministry,
- a lack of knowledge or understanding, or a source of information, as to what a church leader should do to deal with offenders,
- a belief that the conduct was indicative of a disorder, which could be treated and cured, or that once discovered, it would never be repeated,
- a tendency to accept too readily legal, medical and other professional advice without bringing independent judgment to bear, and
- specific instances of known or claimed abuse tended to be dealt with individually and locally, with information about each such case closely held by a bishop or church leader, and not shared across church leaders generally.¹²

In the 1970s and 1980s new agencies, statutory responses and community programs began to emerge to address and combat the issue of child sexual abuse. In 1984, the *Community Welfare Act* in the Northern Territory was the first piece of Australian legislation to prescribe comprehensive mandatory reporting of suspected child abuse and neglect. Several states also established committees and statutory bodies to advise on child sexual assault.¹³

¹² In part this reflected the structure of the Church, the autonomy of each diocese and religious institute, and the absence of any overarching body with authority across the Church.

¹³ Mathews, B. (2014) *Mandatory reporting laws for child sexual abuse in Australia: a legislative history*. Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, p 8



In 1974 in the United States, Congress passed the *Child Abuse Prevention and Treatment Act*, and the National Centre on Child Abuse and Neglect was established.¹⁴

In 1980, Canada established one of the first significant inquiries into child sexual assault by appointing the Committee on Sexual Offences Against Children and Youths, which reported in 1984 (the Badgley Report).¹⁵ The Canadian Government followed the Badgley Report with legislative action between 1988 and 2001, introducing several significant reforms in relation to child abuse offences, reporting, and improved court procedures for dealing with child abuse offences.¹⁶

In 1988, the first English inquiry into child sexual abuse, known as the Cleveland Inquiry, was conducted by Lord Chief Justice Elizabeth Butler-Sloss.¹⁷ The Cleveland Inquiry was the first of a series of inquiries into child sexual abuse in the United Kingdom.¹⁸

Alongside the growing awareness of child abuse in society generally, Church communities began to recognise that child sexual abuse was not only a problem, but a widespread problem, within the Church.

By the 1980s, accounts of sexual abuse of children by clergy were appearing in the press. In 1985, the *National Catholic Reporter* in the United States published a number of articles about child sexual abuse and named ten diocesan priests and one religious priest.¹⁹

In 1989–90, in Canada, four diocesan priests in St John's, Newfoundland, Canada, pleaded guilty to sexual offences against adolescents. In 1990, allegations of sexual abuse by religious brothers at the Mount Cashel Orphanage, Newfoundland, Canada, were made public, despite having been reported to the Department of Social Services and to the Royal Newfoundland Constabulary in the 1970s.²⁰

From around 1987, the Catholic Church around the world, including in Australia, began to work on the development of policies and procedures to help dioceses and religious institutes understand what they should do in responding to allegations of child sexual abuse.²¹

Since that time, there has been an ever-increasing awareness and recognition of the extent of the incidence of child abuse in institutions.

In Australia, significant reports at the national level included the Senate Community Affairs Reference Committee 'Lost Innocents' Report in 2001,²² and their 2004 Report 'The Forgotten

¹⁴ For further details, see section 5.4 of *Facing the Truth*, 'Emerging Awareness of Sexual Abuse Issues: United States'

¹⁵ Committee on Sexual Offences Against Children and Youths, *Sexual Offences Against Children: Report of the Committee on Sexual Offences Against Children and Youths*, Vol I, Ottawa, Department of Supply and Services, 1984

¹⁶ Elizabeth M. Delaney sgs, 'Canonical Implications of the Response of the Catholic Church in Australia to Child Sexual Abuse', a doctoral dissertation submitted to the Faculty of Canon Law, Saint Paul University, Ottawa, Canada at p. 20. For further details, see section 5.5 of *Facing the Truth*, 'Emerging Awareness of Sexual Abuse Issues: Canada'

¹⁷ Elizabeth Butler-Sloss, *The Report of the Inquiry into Child Abuse in Cleveland 1987*, London, HMSO, Cmnd 412, 1988

¹⁸ Other reports from inquiries include: A Levy and B Kahan, *The Pindown Experience and the Protection of Children: The Report of the Staffordshire Child Care Inquiry 1990*, Staffordshire County Council, 1991; Sir William Utting, *Children in the Public Care: A Review of Residential Child Care*, London, HMSO, 1991; N Warner, *Choosing with Care: The Report of the Committee of Inquiry into the Selection, Development and Management of Staff in Children's Homes*, London, HMSO, 1992; Sir Ronald Waterhouse, *Lost in Care: The Report of the Tribunal of Inquiry into the Abuse of Children in Care in the Former County Council Areas of Gwynedd and Clwyd since 1974*, London, The Stationery Office, 1999; *The Report of the Inquiry into the Removal of Children from Orkney in February 1991*, London, HMSO, 1992, Social Services Inspectorate, *Children Matter: A Review of Residential Child Care Services in Northern Ireland*, Belfast, Social Services Inspectorate, 1998. For further details, see section 5.8 of *Facing the Truth*, 'Emerging Awareness of Sexual Abuse: United Kingdom'.

¹⁹ Delaney, op cit., p 16

²⁰ Ibid, p. 18.

²¹ Ibid, p. 38.



*Australians*²², which examined the long-term social and economic consequences of child abuse and neglect.²³

2.2 John Jay study in the United States

The most comprehensive study that has ever been conducted in relation to sexual abuse by Catholic clergy was undertaken by the John Jay College of Criminal Justice, City University of New York. The study was in two parts. The first part (2004) studied the nature and scope of sexual abuse of minors by priests and deacons in the US. The second part (2011) examined the causes and context of the abuse.

The findings of the study were:

- the crisis of sexual abuse of minors by Catholic priests was an historical problem: incidents of abuse increased steadily from the mid-1960s through to the late 1970s, then declined in the 1980s and continued to remain low into the 2000s,
- the majority of victims (81%) were male,²⁴
- there was no single cause of sexual abuse of minors by priests,
- social and cultural changes in the 1960s and 1970s manifested in increased levels of deviant behaviour in the general community and also among priests,
- seminary training did not appear to be an issue: the priests who engaged in abuse of minors were not found, on the basis of their developmental histories or their psychological characteristics, to be statistically distinguishable from other priests who had had no allegations of abuse made against them,
- features and characteristics of the Catholic Church, such as an exclusively male priesthood and the commitment to celibate chastity were invariant during the increase, peak and decrease in abuse incidents and thus were not causes of the crisis,
- priests who engaged in abusive behaviour were statistically less likely to have participated in human formation training in the seminary,
- less than 5 per cent of priests with allegations of abuse exhibited behaviour consistent with a diagnosis of paedophilia,
- priests who were themselves sexually abused as minors were more likely to abuse minors than those without a history of abuse,
- priests who lacked close social bonds, and those whose families did not speak about sex were more likely to abuse minors than those who had a history of close social bonds and positive discussions about sexual behaviour,

²² Australian Senate Community Affairs References Committee, *Lost Innocents Righting the Record : Report on child migration*, August 2001.

²³ Australian Senate Community Affairs References Committee, *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children*, (August 2004), p 1

²⁴ The Victoria Police in their evidence to the Parliamentary Inquiry in Victoria gave a similar figure. Of 370 victims of abuse in the Catholic Church for which criminal convictions had been recorded in Victoria since 1956, 87% were male (Parliamentary Inquiry on the Handling of Child Abuse by Religious and Other Non-Government Organisations, Victoria Police, Evidence of Deputy Commissioner Ashton, Transcript, 19 October 2012).



- the silence of minors who were abused that was typical of the period of the 1950s through to the 1990s is one reason why abusive behaviour persisted, and
- continued outreach to priests after ordination is important in reinforcing the knowledge and understanding about human formation.²⁵

2.3 Ireland

The Dublin Archdiocese Commission of Investigation was established to report on the handling by Church and State authorities of a representative sample of allegations and suspicions of child sexual abuse against clerics operating under the aegis of the Archdiocese of Dublin over the period 1975 to 2004. The Commission reported in July 2009 (*Murphy Report*).²⁶ It found that the preoccupations of the Dublin Archdiocese in dealing with cases of child sexual abuse, at least until the mid-1990s, were the maintenance of secrecy, the avoidance of scandal, the protection of the reputation of the Church and the preservation of its assets. All other considerations, including the welfare of children and justice for victims, were subordinated to these priorities. The Archdiocese did not implement its own canon law rules and did its best to avoid any application of the law of the State.²⁷

Dr Marie Keenan in her book, *Child Sexual Abuse and the Catholic Church*,²⁸ presented a study into Catholic clergy in Ireland. She identified a number of factors within the Church that had an influence on how priests and religious came to be abusers.

- She found no direct causal link between celibacy and sex offending but identified that a relevant factor was a Catholic sexual ethic and concept of priesthood that problematized the body and erotic sexual desire and emphasised chastity and purity over a relational ethic for living.
- A concept of priesthood which accepted that ordination involved ontological change in the man ordained and which could lead to priesthood being construed as a personal gift and a permanent sacred calling, rather than as a gift of service to the community. Dr Keenan considered that such thinking could lead to 'a dominant culture of autocratic clericalism that gives rise to a paradigm of Church... that is far removed from the participative Church of the People of God.'²⁹
- An unbalanced understanding of the clerical role and how it was to be lived. It was dangerous for a priest to be always a priest whether he was visiting his mother, having dinner at home or celebrating the Eucharist. Rather, it was important that there was a boundary between the priest's clerical identity and his identity as a male human being.
- Problems in making good judgments, particularly in relation to sexuality and children. A moral education that was overly intellectualised and technical did not equip its students to make good moral judgments.

²⁵ John Jay College of Criminal Justice, (2011) *The Causes and Context of Sexual Abuse of Minors by Catholic Priests in the United States, 1950-2010*. Washington DC: United States Conference of Catholic Bishops.

²⁶ The Commission of Investigation (July 2009), *Report into the Catholic Archdiocese of Dublin*. There were also two other diocesan investigations conducted in Ireland, into the dioceses of Cloyne and Ferns (Murphy Report). In addition, the Commission to Inquire into Child Abuse (Ryan Commission) examined all forms of abuse experienced by children in residential schools in Ireland.

²⁷ Murphy Report, p 4.

²⁸ Marie Keenan (2012) *Child Sexual Abuse and the Catholic Church: Gender, Power and Organizational Culture*, Oxford University Press, UK.

²⁹ Ibid, p 237.



- Emotional loneliness and isolation.

Informed by the findings of several reports in Ireland and elsewhere relating to child sexual abuse in the Church, Dr Keenan identified several factors as impinging upon the way the problem of abuse was handled by the Church once it came to light. In short these were:

- A culture of secrecy. Many bishops treated the priest offender with the same level of confidentiality as they would any other priest who had a personal problem.³⁰
- Some bishops saw their first obligation as the preservation of the institution.
- Bishops had a personal resonance with priesthood and all that it meant: they identified with fellow priests and could not easily dislodge abusive priests from their priesthoods, regardless of what powers they had or did not have in canon law:

‘In taking this action, some Church leaders took a restorative rather than a punitive approach to the offender. They were willing to trust the word of the perpetrator, who hadn’t disclosed the extent of his offending and who promised not to re-offend. In doing so, the bishops did not take account of the harm that was being done to children, not only by the abuses that had already occurred, but the possible abuses that could occur in the future.’³¹

- Preventing scandal was also important. Church leaders believed that they must protect the people from being scandalised by the fact of the abuse of children by clergy.
- Lawyers also played a significant role in how the Church hierarchy handled abuse complaints and in the actions that victims took. A culture of litigation developed rather than a culture of understanding or healing.

2.4 Canada

In Canada, a Special Archdiocesan Commission of Inquiry was established by the Archbishop of St John’s Newfoundland to enquire into (among other things) the factors which might have contributed to the sexual abuse of children by some members of the clergy (*the Winter Report*).³² The Winter Report concluded that:

‘...no single cause can account for the sexual abuse... rather it is the Commission’s view that a combination of factors coincided to allow the abuse to occur. Some were direct such as the regressed sexuality of the offenders, their access to children, and the powerful status accorded to priests within the patriarchal Church community. Others were indirect and worked in less obvious ways, some to protect the offenders and inhibit public acknowledgement of the offences.’³³

Dr Nuala Kenny, who participated on the Special Inquiry, has commented that the history of the child sexual abuse issue within the Church has been characterised by denial, minimisation of harm to the institutional Church, protection of the priest offender, and preservation of secrecy in order to avoid scandal. ‘We have been a Church of secrecy and denial in a world of increasing

³⁰ Keenan, op.cit., p. 204

³¹ Ibid, p. 205

³² *The Report of the Archdiocesan Commission of Enquiry into the Sexual Abuse of Children by Members of the Clergy* (The Winter Report), Archdiocese of St John’s Newfoundland, 1990.

³³ The Winter Report p. 91.



openness and transparency. In a tragic paradox, the need to 'avoid scandal' has resulted in the greatest scandal in the modern Church.³⁴

2.5 Australia

In 1996 the ACBC commissioned a study of factors specific to the Catholic Church which might lead to sexual abuse by priests, religious or church workers. The Australian Catholic Social Welfare Commission and Centacare Catholic Community Services Sydney were retained to undertake the study. In 1999, they presented the results of the study in a paper entitled *Towards Understanding: A Study of factors specific to the Catholic Church which might lead to sexual abuse by priests and religious (Towards Understanding)*.³⁵

The paper said that the psychopathology of child sexual offenders differed from that of non-offenders on one or more of the following factors:

- Offenders had a higher rate of personal sexual abuse in childhood
- Offenders had experienced wider elements of human deprivation in their childhood in the form of emotional and physical abuse
- Offenders displayed intimacy deficits and were 'lonely' individuals
- Offenders displayed poor and manipulating relationships with adults and peers
- Offenders exhibited significant difficulties in establishing and maintaining personal relationships
- Offenders displayed a level of psychosexual and social development equivalent to the stage of psychosexual and social development of their victims
- Offenders took no responsibility for their own offending behaviour
- Offenders displayed behaviour patterns typical of addictive personalities such as egocentrism, a primary concern with fulfilling their own needs, etc.³⁶

The paper also said that the general view in the literature at that time was that those priests and religious who committed sexual offences against children were no different from the general population of sexual offenders in terms of their psychopathology.³⁷

The studies referred to above, studies by other commentators and researchers and the issues identified by the Royal Commission in various of its publications raise the questions if, and if so to what extent, the factors set out below might have impacted on the child sexual abuse crisis in the Church:

- celibacy,
- clericalism,

³⁴ Kenny, N., (2012) *Healing the Church: Diagnosing and treating the clergy sexual abuse crisis*. Novalis. Ontario.

³⁵ *Towards Understanding: A study of factors specific to the Catholic Church which might lead to sexual abuse by priests and religious*, July 1999. A copy of this document has been produced to the Commission (CTJH.301.11031.0066).

³⁶ CTJH.301.11031.0066 at 0076-77.

³⁷ CTJH.301.11031.0066 at 0082.



- inadequate training and formation in human development and identity, and
- denial and secrecy.

It is necessary to consider each of those issues in greater detail.

2.6 Celibacy

Living a celibate life is a central feature of the priesthood and vowed religious profession. It is a mandatory requirement for priests and vowed religious within the Church.³⁸

The Council submits that no direct causal relationship has been established between the obligation to live a celibate life and the inclination to sexually abuse a child. On the contrary, empirical evidence demonstrates that individuals, celibate or not, sexually abuse children due to a range of causal factors.

A more sophisticated understanding than the linear idea that celibacy causes sexual abuse is necessary in order to appreciate why clerics abuse children. Identifying and understanding the dynamic interaction of factors that lead an adult to sexually abuse a child is the challenge. This is so in other areas of complex human realities, such as relationship breakdowns, some psychopathologies and family violence. It is too simplistic to attribute the sexual abuse of children to any single cause, be it celibacy, homosexuality, lax moral standards or liberal social ethics.

Expert evidence given to the Royal Commission also suggests that celibacy *per se* is not a driver of child sexual abuse but that it can be a problem for an individual whose psychosexual development has been inadequate. Associate Professor Carolyn Quadrio of the University of New South Wales, a consultant child and family forensic psychiatrist, gave evidence that celibacy did not drive child sexual abuse 'but that young men who are perhaps troubled in their sexual development and are not developing along the usual lines will obviously be attracted to an environment where they don't have to prove themselves as sexually adjusted in the conventional sense'.³⁹

Psychiatrist and former priest Dr Peter Evans pointed out that sexual deviancy existed independently of celibacy but suggested to the Royal Commission that the rule for celibacy in the Church could serve to attract sexually deviant youths into the ranks of the priesthood.⁴⁰

In the absence of any recognised psychological test capable of identifying a potential paedophile prior to their abusing a child, mental health professionals list a series of indicators that could be considered as possible contributing factors which may result in someone, such as a celibate male acting out sexually with a child. Stephen Rossetti has identified six warning signs: confusion about sexual orientation; childish interests or behaviour; lack of peer relationships; extremes in developmental sexual experiences; personal history of childhood sexual abuse and/or deviant sexual experiences; an excessive passive, dependent, conforming personality.⁴¹ Crucially, Rossetti emphasises that these 'warning signs' in themselves do not constitute a definitive indication that the person will abuse children, but a combination of some of these factors could well mean that the person is at risk of sexually abusing children.

³⁸ Canon 277 §1.

³⁹ CS28, Quadrio T8453:31-40 CS28 (Day 81).

⁴⁰ CS28, Statement of Dr Peter Evans (STAT.0872.001.0001) at [104-108].

⁴¹ Rossetti, S., (1994) *Human Development*, 15:4.



When considering clerics specifically, additional relevant factors appear to be: a confused sense of priestly identity; a general motivation that is characterised by (immature) compliance rather than by (mature) internalisation; uncertainty about the nature of one's sexual orientation beyond the age of 25 (earliest time of ordination); any personality disorder of moderate or greater severity, but especially antisocial personality disorder; borderline personality disorder; narcissistic personality disorder; or any concealed sexual disorder.

When a person who is mandatorily required to live as a celibate with one or more of these factors, the potential for them to sexually abuse a child appears to be greater.

The Council submits that an individual's ability to live a balanced and mature celibate life, and to be supported in that endeavour, is critical. If the particular personality of the celibate person is dysfunctional in some way, then that is where the problems arise. As stated above, whilst celibacy is not causative of sexual abuse, it can be lived in social conditions which heighten risks for that individual. If a priest chooses to be a loner, or overworks, or abuses alcohol or drugs, and does not establish good adult relationships and friendships, he is especially vulnerable.

2.7 Clericalism

Although no causal link has been established between celibacy and sexual offending against children, the culture that can evolve amongst celibate male clergy, if they come to regard themselves as on a 'special' even 'superior' spiritual journey, can become self-serving and in the extreme oppressive.

To a large degree the structure of the Catholic Church lends itself to stratifying classes of membership between the ordained and the non-ordained. Even religious women and brothers are regarded differently to ordained men. The priesthood is commonly understood to be set apart from the ordinary life of the lay community and is afforded a specific sacramental role within the life of the Church.

Throughout the history of the Church, power associated with sex has had considerable symbolic meaning. Power was accrued to those who overcame sex. Sex was banished to the person's unconscious; it became not so much controlled as denied. The man who attained this total mastery was acknowledged as a spiritual master. But the very radical nature of such a belief meant that it could be managed only by especially estimable people who were all the more admirable because they were exceptional.⁴² The link was established between celibacy and purity, ensuring the priest's position of superiority. With a strict system of behavioural control reinforcing an attitude to sex in this way, the church reinforced its own power. In a system of this kind, the setting apart of the priest based on the rule of celibacy was the sign of power exercised over a laity treated as less significant. When this model dominates thinking and behaviour, the priest's identity becomes equated with his role. As a consequence, his person is hooked by power itself.

For some, the fear of losing this status and the authority that goes with it undermines their personal selfhood because they do not have an identity apart from this status. The disparity between the actual (structural) power that the minister has and the powerlessness he feels can lead to conditions conducive to sexually abusive behaviour. In the frustration that an immature

⁴² Fuchs, E., (1988) *Sex and Power in the Church* in Provost, James & Walf, Knut (Eds), *Concilium*, Edinburgh: Stitching & T & T Clark. p. 24.



priest feels he may begin to act out in irresponsible ways, unaware of the damage he does with the real structural power he possesses. Abusive priests rarely see themselves as personally powerful people. The power of the ministry becomes a compensation for what they lack personally.⁴³

The priest inherits all of the social advantages of being male. He has additional power through his seminary education, his status as a public figure, his position endorsed and guaranteed by the Church as the representative of Christ, his privilege of access to people's inner life through the rights of pastoral relationship and being the 'meaning-interpreter' of the faith community, and the largely unquestioned perception within the Church that church leaders always tell the truth.

All of this can and often does lead to an attitude of superiority. This attitude can start to develop from the earliest years of seminary training if the training delivers the sense that seminarians are 'special' and superior to lay people.

This attitude within the clerical ranks can broadly be labelled as clericalism which has been described as:

'The conscious or unconscious concern to promote the particular interests of the clergy and to protect the privileges and power that have traditionally been conceded to those in the clerical state. There are attitudinal, behavioural and institutional dimensions to the phenomenon of clericalism. Clericalism arises from both personal and social dynamics, is expressed in various cultural forms, and often is reinforced by institutional structures. Among its chief manifestations are an authoritarian style of ministerial leadership, a rigidly hierarchical worldview, and a virtual identification of the holiness and grace of the church with the clerical state and, thereby, with the cleric himself. As such clericalism is particularly evident in the ordained clergy, though it does not pertain exclusively to it. Persons other than clerics can exhibit the traits of clericalism. Lay people, religious men and women are all liable to the pitfalls of clericalism in certain situations. Generally speaking, exclusive, elitist or dominating behaviour can be engaged in by any person or group within the church. Such behaviour is properly termed clericalism when it rests on a claim to special religious expertise or ecclesial authority, based on role or status in the church'.⁴⁴

A ministry geared to power can lead to the power being abused through the abuse of vulnerable people. That is why one commentator has said that child sexual abuse is as much a crime of power as it is a crime of sexuality.⁴⁵

The abuse of power is the result of a 'soft narcissism' that is characteristic of the developmental immaturity in the 'clericalist' priest. The narcissism evolves from priests being and seeking to be too much at the centre of attention and wanting to be constantly affirmed by parishioners for the sacrifices they have made in becoming priests. It can breed a dangerous sense of entitlement where the seminarian or priest rationalises that he is not obliged to keep the moral laws that bind others.

The National Review Board of the United States Conference of Catholic Bishops has highlighted another aspect of the link between clericalism and sexual abuse. It noted a 'causal relationship between clericalism and sexual abuse on many levels, especially in the tendency of the hierarchy

⁴³ Ormerod, N. & Ormerod, T. (1995) *When Ministers Sin: Sexual Abuse in the Churches*, Millenium Books.

⁴⁴ *Solidarity and Service: Reflections on the Problem of Clericalism in the Church* (1983) Conference of Major Superiors of Men, Washington, D.C., p. 2.

⁴⁵ Rossetti, S.J., (1995) 'Child Sexual Abuse and Power' (1995) 12 *The Furrow* 684 at 685.



to protect priest-offenders, the tendency to secrecy, and massive denial of the magnitude of the problem.⁴⁶ This aspect of clericalism generates a 'culture of secrecy' in which misbehaviour and immoral activities are ignored, tolerated or tacitly accepted to the point where any priest who would consider becoming a critic or an informer risks alienation from the clerical culture.

In this environment the actions of priests in particular were allowed to go unchecked. In some cases, offenders 'felt there would be no repercussions: that children and parents would keep quiet, or be persuaded not to go to the police; that their superiors would not believe the word of a child against their word; that they would close ranks to protect one of their own; or that even if action were taken by the Church leadership, the worst that might happen was to be moved to another parish or, in the case of a religious order, to be posted overseas.'⁴⁷ And indeed, '[s]ome paedophile priests took the fullest advantage of their power and status – an authority which went unquestioned.'⁴⁸

The Canadian Report of the Archdiocesan Commission of Enquiry into the Sexual Abuse of Children by Members of the Catholic Clergy, in stating the factors which contributed to the sexual abuse of children, examined the problem systemically, listing the elements of power abuse. The same could be said about Australia:

Many have argued that patriarchal thinking is one of the contributing factors to the sexual abuse of children within the Archdiocese because of the power and position it confers upon the members of the patriarchal establishment, in particular the ordained clergy. In our culture this has been linked to the power over women and children which males have traditionally exercised. Such arbitrary assignment of authority, whether to men generally in a male-dominated society, or to priests specifically in a patriarchal church, can preclude freedom of insight and liberty of action.⁴⁹

The relationship between clericalism and secrecy or lack of openness has led one priest-commentator to write:

'What we need is not a rigid, defensive, secretive church but an open, transparent, inclusive one; one where power and decision-making are not the preserve of elderly celibate males but where all the baptised – men and women, single and married, in ministry and outside it – are included and have a voice'.⁵⁰

Towards Understanding also highlighted the 'almost complete lack of supervision of priests and religious' as a factor that contributed to the sexual abuse crisis. 'Both victims and therapists expressed their concern that structures of supervision, and support for priests have, for the most part, only been established by church authorities after offences have occurred.'⁵¹ *Towards Understanding* noted that 'therapists who work in the area of child sexual abuse by priests and religious consider the committing of offences is directly related to the lack of supervision or accountability mechanisms.'⁵²

Coupled with this elevated status, and a 'separation' from the rest of the Church, many clergy and religious experienced extraordinary loneliness and isolation.⁵³ Archbishop Mark Coleridge has

⁴⁶ John Jay College of Criminal Justice, op cit.

⁴⁷ Parkinson, P. (2013) 'Child sexual abuse and the churches: A story of moral failure?' 2013 Smith Lecture, 24 October 2013.

⁴⁸ Ibid.

⁴⁹ The Winter Report, op cit., p.94.

⁵⁰ Moloney, G., quoted in *The Dublin/Murphy Report: A Watershed for Irish Catholicism?* (2010) Columba Press p. 15.

⁵¹ CTJH.301.11031.0066 at 0109.

⁵² CTJH.301.11031.0066 at 0112. p.43

⁵³ Keenan, M., op cit., pp. 242-243.



commented that clericalism can lead to clergy being isolated in ways that become destructive: 'The authority proper to the ordained could become authoritarian, and the hunger for intimacy proper to human beings could become predatory'.⁵⁴

Keenan's discussions with clergy abusers led her to understand that the lack of adequate formation and isolation had other detrimental consequences as well. The priests never learnt or understood how to have an identity or sense of self that was separate from their ordained identity. 'In particular, the men over-identified with the public dimensions of their role and lived their lives as though the role represented their whole identity'.⁵⁵

This culture led to an inward focused approach to the issue of child sexual abuse, by both laity and the leadership. Because priests could never be spoken against in a bad way, those with complaints would not take them outside the organisation (for example to the police or child protection agencies). There was a strong cultural aversion (by both clergy and laity) to causing scandal.

The effect that this cultural reality (combining poor human development formation with an elevated or almost all-powerful status that priests enjoyed within the Church community) had on the individual psyche of the men involved has been analysed this way by Keenan:

'The clerical perpetrators lived out of an unreflective script of private powerlessness whilst ministering in a site of unsupervised and unchallenged public dominance. This paradox is at the core of their sexual offending. A feeling of private powerlessness that eclipsed an awareness of the power context from which and in which they operated, as adult males and as ministers of the Catholic Church, became a deadly combination of circumstances that resulted in the sexual abuse of minors. This is at the heart of the abuse issue for Roman Catholic clergy'.⁵⁶

There can still be this attitude towards priests and religious in the contemporary Church in relation to their capacity as human beings: 'There is a most dangerous insistence that priests and religious must be perfect or, since they can't achieve that, at least appear to be perfect. An extraordinary number of people believe the naïve idea that 'Priests and religious are celibate, so they can't really have sexual desires and feelings the way the rest of us do'.⁵⁷

One very important observation needs to be made in relation to the above discussion. The culture of the Catholic Church of Australia in the 1950s through to the late 1980s is vastly different to that of the last 30 years.

This is particularly the case in regard to the reduced status of the clergy, the significant involvement of lay leaders, managers and ministers and the declining participation rate of Catholics in regular church attendance.

Consequently the relatively strong clericalist culture that characterised the Church throughout the period up until about the 1980s has been notably reduced, both in its dominance and in its acceptability.

⁵⁴ *Seeing the faces, hearing the voices*, A Pentecost Letter on Sexual abuse of the Young in the Catholic Church (2010).

⁵⁵ Keenan, M., op cit., p. 239.

⁵⁶ Ibid p. 238.

⁵⁷ Robinson, G., (7 February 2013) 'For Christ's sake: confronting the culture of abuse within the Catholic Church', ABC Religion and Ethics.



2.8 Inadequate training and formation in human development and identity

The Council submits that there have been issues about the proper screening, selection, training and support for priests and religious in living a celibate life. There seems to be consensus in the literature about the inadequate preparation that many priests and religious received in the past. The Royal Commission too has received plenty of evidence from experienced priests and religious bewailing the adequacy of their own preparation in that regard.⁵⁸

The John Jay study identified that men who entered the seminary in the US before 1960 'represented 44% of those later accused of abuse' and that men ordained after 1975 had a lower level of subsequent abuse. 'Participation in human formation during seminary distinguishes priests with later abusive behaviour from those who did not abuse. The priests with abusive behaviour were statistically less likely to have participated in human formation training than those who did not have allegations of abuse.'⁵⁹

Human development programs were included in training programs for seminarians from the mid-1990s on the direction of Pope John Paul II.⁶⁰ Quoting the Synod, Pope John Paul II noted that 'the whole work of priestly formation would be deprived of its necessary foundation if it lacked a suitable human formation'.⁶¹

'The spiritual formation of one who is called to live celibacy should pay particular attention to preparing the future priest so that he may know, appreciate, love and live celibacy according to its true nature and according to its real purposes, that is, for evangelical, spiritual and pastoral motives. The virtue of chastity is a premise for this preparation and is its content. It colours all human relations and leads, 'to experiencing and showing...a sincere, human, fraternal and personal love, one that is capable of sacrifice, following Christ's example, a love for all and for each person'.⁶²

'In the seminary, that is, in the program of formation, celibacy should be presented clearly, without any ambiguities and in a positive fashion. The seminarian should have a sufficient degree of psychological and sexual maturity as well as an assiduous and authentic life of prayer, and he should put himself under the direction of a spiritual father. The spiritual director should help the seminarian so that he himself reaches a mature and free decision, which is built on esteem for priestly friendship and self-discipline, as well as on the acceptance of solitude and on a physically and psychologically sound personal state'.⁶³

'Inasmuch as it is an educating community, the seminary and its entire life – in all its different expressions – is committed to formation, the human, spiritual, intellectual and pastoral formation of future priests'.⁶⁴

⁵⁸ For example, Brother Julian McDonald, member, Christian Brothers Congregation Leadership Team, Rome, gave evidence in CS11 that, when he was in the novitiate, the novices were told that a visiting priest would give them a seminar in psychosexual development, but the seminar turned out to be largely a session on reproduction in lilies. (7 May 2014, Transcript WA 2250)

⁵⁹ John Jay College of Criminal Justice, (2011), op cit., p.3.

⁶⁰ Pope John Paul II (25 March, 1992) Post-Synodal Apostolic Exhortation *Pastores dabo vobis* (I shall give you shepherds) http://w2.vatican.va/content/john-paul-ii/en/apost_exhortations/documents/hf_jp-ii_exh_25031992_pastores-dabo-vobis.html, accessed 14 December 2016.

⁶¹ *Pastores dabo vobis*, [43].

⁶² *Pastores dabo vobis*, [50].

⁶³ *Pastores dabo vobis*, [50].

⁶⁴ *Pastores dabo vobis*, [61].



As a result of the Pope's direction, from the mid-1990s, human and pastoral development programs were added to philosophical and theological study.⁶⁵ However, some commentators have noted that the reality did not always follow the rhetoric. Ranson has stated that these programs were added to an already overcrowded academic schedule, and were thus implicitly seen as an 'extra', rather than integral part of the training that priests received:

'There is no substitute for a sustained and systematic public pedagogy in celibate sexuality in **the form of an ongoing and cohesive programme that deals with the biological, psychological,** sociological and theological dimensions of celibate sexuality appropriate to the various stages of formation. The ad hoc weekend programme in the course of an academic year is insufficient to address this.'⁶⁶

On this issue, Keenan has said:

While the messages of the [Second Vatican] Council led priests and religious to an understanding that their lives must not be devoid of intimacy, little guidance was offered as to how such intimacy was to be achieved within the boundaries that the pastoral and spiritual dimensions of priesthood or religious life would require. Within such a context, boundary violations, including sexual violations, were inevitable.'⁶⁷

Keenan went on to critique the content of the training that the men she interviewed had received in the seminary. She noted that:

'Absent from the men's education was an approach to morality, conscience, and ethics in which moral judgment could be based on reasoned debate, personal reflection, emotional expression, empathic concern, and a relational principle that would encourage the capacity to put oneself in the shoes of the other, in whose place one could feel. The narratives of the men suggest instead that they had learned a morality that relied solely on moral absolutes and theoretical understanding of morality.

...the men lacked the requisite emotional and relational intelligence to enable them to make good judgments when knowledge of moral absolutes did not provide answers to the human complexities of life that they encountered. That is not to say that there is not room for some moral absolutes. However, knowledge of moral absolutes is insufficient in itself to enable good moral judgment.'⁶⁸

'For the participants in my research, the lack of personal awareness, the absence of real and honest dialogue with others, the lack of a reflective space in which to face their lives honestly and openly, and a legalistic-orthodox approach to morality dominated their clerical education. Obedience to the law of the Church was seen as the way in which to win favour with God and Church, whereas breaches of the law constituted sin. This legalistic understanding of moral obligation was devoid of a relational ethic.'⁶⁹

Bishop Geoffrey Robinson has argued that the overly negative education received in the seminaries and formation houses did little to assist seminarians and novices to learn how to build

⁶⁵ Keenan, op cit., p. 48.

⁶⁶ Ranson, D., (2002) *The Climate of Sexual Abuse* The Furrow 53:7-8 p. 395.

⁶⁷ Keenan, M., op cit., pp. 236-237.

⁶⁸ Keenan, M., op cit., p. 241.

⁶⁹ Ibid p. 240.



healthy relationships, especially with women. 'The only answer given to the problems this creates was that God would provide all the love and friendship one might need.'⁷⁰

'A one-sided insistence on doing the right thing, to the detriment of actually thinking for oneself and taking responsibility for one's own actions, produces immature human beings. It too, is based on fear rather than love.

Moral immaturity does not prepare people to cope with the many and varied temptations that will come to them over the course of a lifetime, and must be added to the list of factors contributing to the unhealthy climate in which abuse can arise. And the same immaturity has not helped authorities to respond to abuse.'⁷¹

Within the context of formation of priests, Keenan highlights the paradoxical situation in which priest offenders found themselves.

'Essentially, while formation and the structure of clerical life kept men sexually and relationally immature, ordination and sacred consecration set them apart as elite, superior to other men.'⁷²

These perpetrators thus lived lives where they felt powerless within the system but were left unsupervised and effectively unchallenged in their public lives within the Catholic community. The effective constraints on their use of time, choice of activities and even exercise of authority were minimal at best.

2.9 Denial and Secrecy

The Church's leadership acknowledged in the Council's submission to the Royal Commission in response to Issues Paper 2⁷³ that the severity of child sexual abuse was not properly understood within the Church, especially by those who did not appreciate the longer term impact of sexual assault on a child was also acknowledged some leaders failed to listen to victims, preferred to protect the Church's reputation and failed to report abuse cases to the police. This was coupled with a distorted understanding by some of the gravity of the very act of abuse. Some failed to see that abuse was a criminal act and not merely a moral failure on the part of the perpetrator. This erroneous perspective exacerbated the institutional tendency within the Church towards self-protection.

The propensity for secrecy and denial can be detected within any organisation. The degree to which this propensity is made manifest is determined by who holds the levers of power and who enjoys the benefits of privilege within the organisation.

'The silencing of issues and the lack of debate are two of the features of the hierarchical system of power and control that are at the heart of governance of the Roman Catholic Church.'⁷⁴

⁷⁰ Robinson, G., op cit.

⁷¹ Robinson, G., op cit.

⁷² Keenan, M., op cit., p. 235.

⁷³ Truth Justice and Healing Council op. cit.

⁷⁴ Keenan, M., op cit., p. 37.



Keenan amplifies this point by emphasising that:

Within organisational cultures in which there are structural barriers to talk and in which there are organisational norms, rules, and procedures governing who can speak and on what topic, it is likely that the well of secrets and secret-keeping will flourish.⁷⁵

Moreover, Berry and others state that rigidly held models of hierarchical accountability by their nature engender mechanisms of denial and secrecy.⁷⁶ This can become dysfunctional within the clerical culture. The institution can develop an 'instinct' whereby the prime responsibility of members is the advancement of the institution and its authority. Such an environment makes honest engagement and open communication problematic and can lead to some clerics themselves becoming 'keepers of secrets' within an overall culture that seeks to protect and preserve the image of the institution.

Cozzens claims that hierarchical models of accountability naturally foster mechanisms of denial.⁷⁷ They can result in the contextualising of historical behaviours, parochial procedures and even justification for personal practices in a way that nurtures and promotes denial mechanisms.

Some commentators have said that in the period when the sexual abuse of children was most prevalent, that being the 1960's, 70's and 80's, some clerics practiced 'mental reservation' in order to conceal information about the scandals.⁷⁸ Mental reservation was discussed in the moral theology manuals of the times. In brief it involves a morally sanctioned withholding of truthful information through the use of 'veiled language' that, although not being untrue, conceals more than it discloses.⁷⁹ In common parlance, mental reservation can be understood to be not telling the whole truth or steering the conversation away from its inquiry by introducing a 'red herring'.

It is debatable whether mental reservation was commonly adopted by church officials or not in the context of child sexual abuse or generally. However, it cannot be denied that some officials were less than transparent about the occasions of sexual abuse of children.

2.10 Summary

In summary the Council submits that:

- (i) In the past there was concealment of facts, movement of perpetrators and a failure to report cases to the police. Some past church leaders sought to protect the reputation of the Church over the safety and welfare of children.
- (ii) Inadequate training and formation of priests and religious to prepare and support them to live celibate lives (rather than celibacy per se) may have been a factor which contributed to the child sexual abuse crisis.

⁷⁵ Keenan, M., op cit., p. 38.

⁷⁶ Ibid p. 39.

⁷⁷ Cozzens, D., (2002) Sacred Silence, Liturgical Press, Mn, p. 29.

⁷⁸ Kaveny, C., 'In Ireland, Straying Far From the Mental Reservation'. In relation to the circumstances in Ireland, Kaveny cites the Murphy report: 'What were the circumstances under which the Irish prelates practiced mental reservation? According to the Murphy Report: 'The Dublin Archdiocese's preoccupations in dealing with cases of child sexual abuse, at least until the mid-1990s, were the maintenance of secrecy, the avoidance of scandal, the protection of the reputation of the church, and the preservation of its assets. All other considerations, including the welfare of children and justice for victims, were subordinated to these priorities. The archdiocese did not implement its own canon-law rules and did its best to avoid any application of the law of the state.'

⁷⁹ Haring, B., (1961) 'The Law of Christ', Vol 3. Mercia. p. 573.



- (iii) Clericalism may have been a factor which both contributed to the crisis and affected the response of church leaders.
- (iv) The response of church leaders was also affected by ignorance about the nature of paedophilia and by a failure to listen to survivors and give priority to responding pastorally to them.
- (v) A naivety on the part of many bishops and leaders led them to misperceive the abuse as a moral failure on the part of the offender and not a crime. This in turn led them to manage the cases on an internal, pastoral basis and not as a matter for civil authorities.

3 History and development of Church responses to child sexual abuse

The Catholic Church has made a concerted effort over the past 30 years to address the incidence, extent and management of child sexual abuse within its institutions.

Since the late 1980s the Church has developed and put in place a number of different approaches which have had varying levels of success.

The Council recognises that there have been considerable, justified criticisms of these approaches and has subsequently:

- consistently called for and supported the Royal Commission's recommendation for an independent redress scheme which would provide child sexual abuse survivors with consistent compensation regardless of where or when they were abused,
- acknowledged the need within the Church for more rigorous, autonomous oversight of church processes, policies and standards for managing the safety of children and vulnerable adults within dioceses and religious orders, and
- acknowledged the need for transparent and accountable performance by bishops and religious leaders to established national safety standards for children and vulnerable adults.

Together these points represent a fundamental change in the way the Church approaches reparation for abuse victims and also the management of child sexual abuse and the protection of children within the Church.

These changes reflect a deepening understanding over the past 30 years by those in positions of authority and influence of the child sexual abuse crisis within the Church and an increasing focus on properly addressing the issues with contemporary information.

3.1 1987 to 1993: The First Coordinated Response in Australia

1988: Establishment of the Special Issues Committee

As the incidence of child sexual abuse by clergy began to receive international attention in the 1980s the issue was canvassed at a meeting of the ACBC in late 1987, and then again 1988.

By November 1988 the ACBC had established the Special Issues Committee to, amongst other things, develop a protocol to be observed by Bishops and Major Superiors if an allegation of criminal behaviour was made against a priest or religious.

1989-90: The Initial Protocol

In 1989, the Special Issues Committee developed the first draft of the *Protocol for Dealing with Allegations of Criminal Behaviour* (**the Initial Protocol**).

The Initial Protocol was the first official document adopted by the Church in Australia to provide assistance and guidance to those dealing with allegations of child sexual abuse.



While the Initial Protocol contained many worthwhile features, and although it represented at least a beginning, it did not go far enough. In particular it did not sufficiently address or prioritise the needs of victims; rather it was mainly directed to the disciplining of priests and religious.

The Initial Protocol did stress that any church process must not interfere with any criminal justice process. It also envisaged that there would be canonical consequences for the accused, including the consideration of laicisation or dismissal from the religious institute.

The 1992 Protocol

The Special Issues Committee circulated draft amendments to the Initial Protocol in April 1991 in an attempt to improve the original protocol and to make it more victim-focused.

In 1992, an amended protocol was formally adopted which included changes addressing concerns that the Initial Protocol had not been sufficiently focused on the victim, and was overly concerned with the reputation of the Church.

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

However, again from today's perspective, the 1992 Protocol did not represent the breakthrough that was needed. In particular its main focus continued to be the accused rather than the victim, its language and tone were still formal and official, and it gave considerable emphasis to a two-stage investigative process.

Internal Training and Public Statements

Between 1991 and 1993, the Special Issues Committee worked on raising awareness of the Church's response to the issue of child sexual abuse including training for clergy and religious, presentations and in-service days around Australia.

On 19 December 1992, the ACBC and CRA issued *A Pastoral Statement on Child Protection and Child Sexual Abuse* which acknowledged church authorities had denied or minimised the seriousness of child sexual abuse and had too readily accepted the promise by an offender that such behaviour would not be repeated.

In July 1993, the ACBC and CRA issued a further statement, titled *Sexual Offences and the Church*, acknowledging that harm that is caused by abuse and betrayal of trust can be serious and long lasting. It also affirmed the Church's commitment to give first consideration to victims of sexual abuse and their families.

3.2 1993 to 1996: The Development of *Towards Healing*

Review of the 1992 Protocol

In July 1993, the ACBC authorised consultation about drafting a new set of policies and procedures to replace the 1992 Protocol.⁸⁰

⁸⁰ ACBC Meeting Minutes, July 1993



At the same meeting, the ACBC also approved the release of a public statement, '*Sexual Offences and the Church*', in which they again pledged 'their support in working with others in the community to bring healing to those who have been hurt'.⁸¹

Development of the *Towards Healing* Response

In early November 1993 the Special Issues Committee created a draft document entitled '*The Catholic Church's Principles in Relation to Sexual Abuse and Professional Misconduct 4/11/93*'.

In April 1994, the ACBC established the Bishops Committee for Professional Standards (***Bishops Committee***), which replaced the Special Issues Committee.

The 1993 document, which became *Towards Healing*, was intended to be a victim-centred response. The Bishops Committee deliberately sought to design a process specifically for victims, particularly those who were unwilling to approach the police or unable to seek redress through the police as the offender had died.

Initially two documents were drafted: a *Statement of Principles in relation to sexual abuse by priests and religious*, and a *Revised Protocol for dealing with allegations of sexual abuse*.⁸² The tone and structure of the new protocol reflected a strong desire that it be an accessible document, which could readily be understood by both victims and accused.

While the 1992 Protocol had been a confidential document for internal use by the dioceses and religious orders, the new protocol was to be a public document. The rationale was a need for a document that clearly announced where the Church stood – that it would not tolerate any form of sexual abuse, and that it would cooperate with police and victims.

1996: Adoption and Release of *Towards Healing*

At the April 1996 ACBC meeting the Bishops Committee presented a complete draft of *Towards Healing* to the ACBC.

Towards Healing departed from the 1992 Protocol in several significant ways including opening with an apology, being victim orientated, being written in a style that was simple, clear and accessible, simplifying the process of receiving and responding to complaints including introducing special contact people to work with individual victims, encouraging victims to go to the police and providing for a facilitated meeting between a victim and the Church authority.

At the November 1996 plenary meeting, the ACBC approved *Towards Healing*, to come into operation on 31 March 1997.⁸³ CRA had also approved the document in principle.

Additionally, the ACBC carried a motion replacing the Bishops Committee with the National Committee for Professional Standards (NCPS). The NCPS was established as a joint committee of the ACBC and CRA, and was to be funded equally by and to be equally responsible to both.⁸⁴ It was charged with general oversight and policy development of the professional standards in the Church.

⁸¹ ACBC Meeting Minutes, July 1993.

⁸² Professional Standards Committee Report to ACLRI Conference, 1996.

⁸³ See also *Facing the Truth, A Submission by the Catholic Church in Victoria to the Parliamentary Inquiry into the Handling of Child Abuse by Religious and Other Non-Government Organisations*, 21 September 2012, p. 64.

⁸⁴ ACBC Meeting Minutes, November 1996.



3.3 Features and Criticisms

The main features of the *Towards Healing* process can be briefly summarised in the following way:

- (a) pastoral and victim-focused,
- (b) restorative, optional, confidential – the victim need not have his or her story in the public domain,
- (c) non-adversarial, relatively quick and inexpensive,
- (d) tailored to the needs of each victim as an individual,
- (e) facilitates re-establishment of relationship with the Church if that is desired,
- (f) offers an apology and acknowledgement by the Church authority,
- (g) can provide financial payment as reparation,
- (h) assists in prevention of future abuse, and
- (i) seeks to assist in the psychological and spiritual healing of people affected by incidents of abuse.

Towards Healing provides many victims with the assistance they need in the very challenging process of seeking justice and healing, and potentially a degree of closure. It offers the possibility of outcomes which are not available or as readily achieved through other methods of dealing with the harm that has been suffered as a result of child sexual abuse.

However, *Towards Healing* has also attracted criticism including that it is inconsistently implemented, it lacks independence and transparency, its personnel sometimes lack qualifications, it can be used to avoid criminal proceedings, payments are low, it can re-traumatise victims and it is too influenced by lawyers and insurers.

Despite this, as the Commission has heard, for many people over the past twenty years, *Towards Healing* has been a source of compassion and support which has been of real value to them.⁸⁵

3.4 Melbourne Response

In October 1996, the Archdiocese of Melbourne announced the establishment of a new initiative (which became known as The Melbourne Response) to respond to complaints of abuse committed by a priest of the Archdiocese or by any religious or lay person working within the Archdiocese.

The Melbourne Response has three separate components, which operate independently of the Archdiocese and of each other.

They are the Independent Commissioners, who are responsible for receiving and investigating complaints; the Compensation Panel which considers applications from victims for compensation, and makes recommendations to the Archdiocese in respect of the ex gratia payment that ought to

⁸⁵ Evidence in CS4: Bernadette Rogers T2939:33; Emma Fenby T2990:36 and T2992:3; Deacon Wallace T3028:3; Patrick Mullins T2902:15; Brother Alexis Turton T3228:14; DK T3309:40; DL T3323:41; Michael Salmon T3605:31 and T3616:34. Evidence in CS6: Bishop William Morris T668:16. Evidence in CS8: Mr Brazil T5737:40; Msgr John Usher T6378:21 and T6386-T6388. Evidence in CS9: Archbishop Philip Wilson TSA1487:3.



be offered, having regard to the cap set by the Archdiocese; and Carelink which provides uncapped, ongoing professional support for needs arising in relation to the abuse.

The cap for ex gratia payments was originally set at \$50,000. It was increased to \$75,000 in 2008 and \$150,000 in 2016.

As a part of the Melbourne Response, spiritual support and guidance is also available at the parish level.

3.5 Professional standards infrastructure

In March 1997 the ACBC and CRA established the National Committee for Professional Standards (**NCPS**) to develop professional standards policies in the Church and to assist with the implementation of *Towards Healing*.

Towards Healing was implemented locally. To that end State Professional Standards Resource groups were established. State-based professional standards offices began to evolve from 1997.

As part of the *Towards Healing* implementation a network of contact persons, assessors, facilitators and reviewers was developed around the country and the Encompass treatment program was established

The first review of *Towards Healing* took place in 1999 and by 2001 a revised version of *Towards Healing* was in operation.

In 1999 the *Integrity in Ministry* document, which outlined expectations of appropriate behaviour for priests and religious, was developed. It was reviewed in 2001.

By 2003 a national assessment review panel had been established to be overseen by the NCPS.

By 2009 a second review of *Towards Healing* had been completed.

In 2011 *Integrity in the Service of the Church*, the standards protocol for lay employees and volunteers within the Church was developed by the NCPS.

Since the introduction of *Towards Healing* risk management, education and prevention seminars, child safety programs and improved protocols in schools have been implemented through professional standards offices and Catholic education offices around the country.

Local professional standards reference groups continued to advise church leaders on changes to complaints handling procedures and pastoral responses to victims.

3.6 Conclusion

In conclusion the Council submits that the instigation of *Towards Healing* and the Melbourne Response were major shifts in the approach the Church took to managing child sexual abuse cases.

These protocols were at the forefront of international efforts in the Catholic Church at the time. They also provided a much needed redress pathway for victims, particularly those who did not wish to pursue a legal response. The schemes have worked well for many and less so for others.



4 Towards Ensuring Institutions of the Church are Child Safe

This chapter presents an overview of the measures taken across the Australian Catholic Church to safeguard children and to create child safe environments.

4.1 Introduction

Arising from its studies, research and round table consultations, the Royal Commission has formulated specific elements that it considers institutions should adopt in order to be child safe. It intends to include in its final report a volume dedicated to the topic of making institutions child safe. That volume will include a detailed explanation of the child safe elements that institutions should adopt and the Commission's recommendations on the way in which institutions can better protect children.

The proposed elements, which the Royal Commission intends to further refine as it continues to examine institutions and their policies and procedures, were published by the Royal Commission in July 2016 in a paper entitled *Creating Child Safe Institutions*.

The 10 elements set out in that paper are:

1. Child safety is embedded in institutional leadership, governance and culture
2. Children participate in decisions affecting them and are taken seriously
3. Families and communities are informed and involved
4. Equity is promoted and diversity is respected
5. People working with children are suitable and supported
6. Processes to respond to complaints of child sexual abuse are child focussed
7. Staff are equipped with the knowledge, skills and awareness to keep children safe through continual education and training
8. Physical and online environments minimise the opportunity for abuse to occur
9. Implementation of child safe standards is continually reviewed and improved
10. Policies and procedures document how the institution is child safe.

Each of these elements as set out in the paper contained a number of sub-elements.

The Royal Commission has indicated to the Council that it intends to apply the child safe organisation framework to all institutions of the Catholic Church the subject of its hearing regarding Case Study 50.

This chapter of the Council's submission refers to the written statements from Church leaders which the Commission has requested for the purpose of the case study and directs the attention of the Commission to steps that those statements show have been taken towards making the particular institution child safe. The analysis is undertaken by reference to the above elements of a child safe institution.



At the outset, however, the Council considers that important qualifications need to be made in relation to applying the elements the Royal Commission has identified.

The first qualification is that there may be difficulties in applying a 'one size fits all approach' to the many different types of institutions which deal with children. A child-care facility may, for example, have requirements that differ from those of a parish.

The second qualification is that, so far as the whole of the Victorian schools sector is concerned, the Government of Victoria has now legislated the child safety standards that are to apply. That legislated regime is reflected in a set of minimum standards for schools set out in Ministerial Order No. 870 dated 22 December 2015 and a policy publication entitled 'PROTECT' published jointly by the Education Department, Independent Schools Victoria and the Catholic Education Commission of Victoria in 2016. All Victorian schools must comply with the order in order to be registered, and to remain registered. While the legislated standards are minimum ones, it is submitted that Catholic Education Offices and Catholic schools in Victoria should not be criticised, particularly in the early stages of this new regime, for any failure to go beyond the standards under which they are presently operating.

The Archdiocese of Melbourne and its parishes, and the Victorian non-metropolitan dioceses and their parishes, become subject to the new standards from 1 January 2017. Again the Council submits that, during this implementation phase, the policies and procedures of all these agencies which impact upon child safety should not be criticised for failing to go beyond the legislated minimum standards.

The third qualification that the Council makes about running a ruler over agencies of the Church by reference to the Royal Commission's elements of a child safe institution is that the policies and protocols towards safeguarding children that have operated for many years across the Church in Australia are *Towards Healing*,⁸⁶ *Integrity in Ministry* and *Integrity in the Service of the Church*. As indicated in chapter 3, those policies and protocols began to be implemented from 1997, some 20 years ago. The Council submits that, in applying to institutions of the Church the child safe organisation framework the Royal Commission has devised, the Royal Commission must take account of the policies and procedures the Church has had in place for many years – tailored as they are to the religious ministry the Church offers and the pastoral role it performs.

4.2 Embedding child safety within Church institutions

This section describes in general terms the structures and processes that now exist in dioceses and religious congregations aimed at embedding a culture of child safety within the institutions. In the case of archdioceses, a summary is provided for each. In the case of dioceses, a summary is provided largely by way of an overall State analysis. In the case of religious congregations, a summary is given for those congregations which were asked to provide statements.

The initiatives undertaken by all Church authorities in Australia have been essential because the high incidence of sexual abuse of children by clergy and religious that the activities of the Royal Commission have served to publicly reveal shows that many institutions of the Church, over many years, catastrophically failed to protect children in their engagement with the institutions. That

⁸⁶ The exception is the Archdiocese of Melbourne, which has not adopted *Towards Healing* but has adopted its own protocol, the *Melbourne Response*.



catastrophic failure, so antithetical to the profession by the Church of the values and message of Jesus Christ, is a matter of great shame to the Church.

Archdioceses

Sydney⁸⁷

The Sydney Archdiocese has taken deliberate steps to ensure that all victims of abuse at the hands of a Sydney priest or Sydney Church worker have someone who will listen to their concerns and help them obtain support, including financial assistance. The archdiocese also has clear processes for responding to survivors' claims. The Office of Safeguarding and Ministerial Integrity was established in November 2015 to take primary responsibility for managing child protection and safeguarding in the parishes and in the smaller agencies of the archdiocese. In addition the archdiocese developed a comprehensive suite of child protection materials following the Royal Commission's report on the YMCA Case Study (Case Study 2). A full-time Episcopal Vicar for Clergy was appointed in 2015 to assist the archbishop with early management of potentially problematic behaviour amongst clergy.

The child protection protocols and procedures of *Towards Healing*, *Integrity in Ministry* and *Integrity in the Service of the Church* have been in place in the archdiocese since their inception in 1997, 2004 and 2011 respectively, are followed and are the subject of continuing education of clergy and staff.

Sydney Catholic Schools (SCS) and CatholiCare separately have their own child protection and safeguarding offices.

The archdiocese reports all reportable complaints or allegations of child sexual abuse to the NSW Ombudsman under the 'reportable conduct' scheme of the *Ombudsman Act 1974* (NSW).

SCS now has a dedicated child protection team and is currently engaged in a safe schools project across Catholic schools, covering more comprehensive Working With Children Check implementation, education and training of principals and staff on safe school practices, review of policies and implementation of a Code of Professional Conduct for school staff.

The SCS has template reporting arrangements in place so that the archbishop is kept apprised of all significant child safety matters arising in Sydney Catholic Schools.

SCS, through the Child Protection and Professional Services Team, investigates complaints of child sexual abuse in situations where the alleged perpetrator is an employee or is engaged by SCS. If the alleged perpetrator is a member of the clergy or of a religious institution, the investigation is usually conducted by the Safeguarding and Ministerial Integrity Office or the religious institution, or jointly.

A Code of Professional Conduct is in place covering all school staff and volunteers.⁸⁸

Catholic Care has a comprehensive suite of policies relating to safeguarding and child protection that form part of the induction process for new employees.

⁸⁷ The following summary derives from evidence given by Archbishop Fisher in his two statements dated 25 November 2016.



Melbourne⁸⁹

Case studies of the Royal Commission that have involved the *Melbourne Response* have led to the archdiocese improving personal engagement of the archbishop with persons who seek redress under it. For those found to have been abused, personal letters of apology accompany any payment of redress and, for those who want it, a personal meeting with the Archbishop is available. Carelink has been relocated to premises that are more welcoming and comfortable for its clients.

In the light of the implementation, as mentioned above, of the Child Safe Standards in Victoria, Archbishop Hart has issued an instruction to parish priests and principals of primary and secondary schools in the archdiocese for the sacrament of reconciliation in schools to be celebrated in a Church in an open setting.

The child protection protocols and procedures of *Integrity in Ministry* and *Integrity in the Service of the Church* have been in place in the archdiocese since their inception in 2004 and 2011 respectively, are followed and are the subject of continuing education of clergy and staff. *May our Children Flourish*, a code of conduct for caring for children, applies throughout the parishes and the non-school sector of the archdiocese. Working with Children Checks also apply.

All Catholic schools within the archdiocese are implementing the child safe standards introduced by the Government of Victoria and which began operating within schools from 1 August 2016. The parishes and agencies of the archdiocese are proceeding with implementation of the standards within their areas from 1 January 2017.

Brisbane⁹⁰

The initiatives that have been taken in the Archdiocese of Brisbane to embed child safety as a matter of prime concern include:

- Increasing the working hours of the Director for Professional Standards for Queensland and increasing the resourcing of the office,
- Developing and implementing an archdiocesan Child Protection Policy, setting up a Safeguarding Advisory Committee and engaging a child protection officer and an assistant on a full-time basis,
- Implementing independent audits of compliance with the policy,
- Petitioning the Holy See to have all living offender priests dismissed from the clerical state,
- Reopening matters in which it has been determined that the Towards Healing process was not properly conducted,
- Instigating training and professional development on safeguarding,
- Arranging *Integrity in Ministry* seminars for newly ordained priests and priests newly arrived from overseas.

⁸⁹ The following summary derives from evidence given by Archbishop Hart in his two statements dated 8 December 2016 (CTJH.500.90001.0516 and CTJH.500.90001.0535).

⁹⁰ The following summary derives from evidence given by Archbishop Coleridge in his statement dated 14 October 2016 (CTJH.500.90001.0001) and his statement dated 1 December 2016 (CTJH.500.90001.0452).



Some of these initiatives were, in part at least, a response to the Royal Commission report in Case Study 4. Other steps taken in direct response to that report include:

- The archbishop personally, the vicar-general or another senior person within the archdiocese attends each facilitation under Towards Healing,
- The archdiocese ensures that survivors of child sexual abuse who seek redress from the archdiocese have access to independent legal advice in any compromise of their legal rights,
- The archdiocese engaged with REDACTED in an effort to reach agreement on a further amount to be paid REDA
- Archbishop Coleridge petitioned (ultimately successfully) the Holy See for the dismissal of Francis Derriman from the priesthood,
- The archdiocese has removed from deeds of release the clause preventing survivors from disclosing the terms of settlement.

The Archdiocesan Child Protection Policy and related documents were adopted in May 2014 and are on the website of the Archdiocese. A rolling program of audits of parishes is in place to ensure that the policy and related procedures are embedded in parishes.

As an agency of the Archdiocese, Brisbane Catholic Education has a requirement under the Archdiocese of Brisbane Safeguarding Children and Vulnerable Adults Prevention and Protection Policy and Procedure that staff of Catholic Education must follow their Student Protection Processes⁹¹ and observe all requirements of mandatory reporting under the law. The status of any matter of relevance is communicated to the archbishop and the vicar-general as part of scheduled monthly meetings.

The Student Protection Processes have been developed in accordance with the Education (Non-State Schools) Regulation 2001 requires schools to have written processes that include a process for reporting sexual abuse or suspected sexual abuse in compliance with the Education (General Provisions) Act. Each school website has a link to the Student Protection Processes.

Perth⁹²

When Archbishop Costelloe took over the role of archbishop in March 2012, he identified the Church's response to the crisis of child sexual abuse of minors as the most urgent priority for him as the new archbishop. He took the following steps, amongst others:

- Establishing the Parish Safeguarding Project. The primary aim of this project is to have safeguarding officers in parishes whose primary role is to be a point of contact at the local, parish level in relation to child sexual abuse matters. The safeguarding officers report to the Safeguarding Project Coordinator in the Safeguarding Office. A Compliance Officer was also appointed to that office in 2016. The Safeguarding Office conducts training at the parish level in child protection and in-service sessions for the various agencies which are part of the archdiocese,

⁹¹ CTJH.100.90001.0046

⁹² The following summary derives from evidence given by Archbishop Costelloe in his statement dated 29 September 2016 (CTJH.500.90001.0034) and his statement dated 10 November 2016 (CTJH.500.90001.0337)



- Re-organisation and relocation of the Professional Standards Office Western Australia,
- Strengthening of the archbishop's Consultative Committee,
- Strengthening of policies and practices in relation to the selection and ongoing formation of candidates for the priesthood, especially in relation to their psychosexual development,
- Development of ongoing formation for clergy in the area of professional standards.

Under the child protection procedures of the Catholic Education Commission of Western Australia, all principals of Catholic schools must report complaints of child sexual abuse to the Catholic Education Office and the Executive Director of Catholic Education has primary responsibility to investigate.

Since the commencement of *Towards Healing* some 20 years ago, complaints involving a member of the clergy or a member of a religious institute are forwarded to the Director of Professional Standards for investigation and resolution.

All teachers in WA are mandatory reporters under the Children and Community Services Act.

Adelaide⁹³

The Archdiocese of Adelaide has improved and streamlined professional standards policies and practices. The South Australian Professional Standards Office seeks to ensure that the approach to clients who approach the office is a direct personal response. All staff have had relevant training, including trauma-informed training and training on working with adult survivors of abuse, to ensure practices of the office are of a high standard.

A Child Protection Unit has been established. It is currently developing a program called 'Safe Environments for All', which is a review and audit program. The object is to review and audit existing practices to ensure they comply with policy. Child Safe Contact Persons have been appointed in parishes. Currently 45 parishes are part of the program. Eight reviews have been completed to date.

New policies cover information sharing, privacy and confidentiality, responding to clients in crisis, responding to aggression, responding to suicidal behaviour, provision of counselling and supervision and debriefing.

Royal Commission Case Study 9 relating to St Ann's Special School was particularly important for the Archdiocese. It led to the Archdiocese reviewing almost every facet of child protection in the Archdiocese. One of the learnings from the case study was the need for constant vigilance in child protection and the need to keep staff informed and trained on child protection matters. Another important lesson was the need for greater involvement of relevant family members in dealing with abuse claims and for a more pastoral approach generally in dealing with claims.

Child protection policies in schools are now reviewed annually. Several new policies have been put in place, including policies in relation to working alone with students, physical contact and risk assessment for excursions. Police checks have been introduced for all staff and volunteers. A Police Check Unit within the Archdiocese provides a centralised screening service for all schools and parishes, for Centacare and for various affiliated Catholic organisations.

⁹³ The following summary derives from evidence given by Archbishop Wilson in his statement dated 8 November 2016 (CTJH.500.90001.0349) and his statement dated 5 December 2016 (CTJH.500.90001.0481).



There have been changes in recruitment, selection and screening processes for staff, much of which is now done with the Teachers Registration Board. A Child Protection Curriculum has been developed which instructs children what to do when they feel uncomfortable with relationships or behaviour with adults or fellow students.

It is the responsibility of the Director of Catholic Education to notify the archbishop or vicar-general of allegations of child sexual abuse in Catholic schools.

Allegations of sexual misconduct in schools are managed in accordance with the Government of SA policy document, *Managing allegations of sexual misconduct in SA education and care settings* and the Catholic Education SA procedure document, *Dealing with Allegations of Misconduct*. A system of Principal Consultants is in place in the Catholic Education Office to assist with the management of such complaints.

Hobart⁹⁴

Tasmania's Registration to Work with Vulnerable People Act became law in 2013. The three- year implementation phase for child –related sectors under the Act began in July 2014. Leading up to the phase-in, the Archdiocese updated the suite of policies related to child protection. All policies are informed by the principles of *Integrity in Ministry* and *Integrity in the Service of the Church*, which establish values and behaviours for church workers.

Under the Archdiocese's policies all active clergy, employees and volunteers who are engaged in child-related employment are required to be registered. Records are maintained by the archdiocesan office.

Under the archdiocese's Safe Communities Project launched in 2016, a system of continuous compliance checks and assurance processes is being implemented across the archdiocese. Pursuant to the archdiocese's Children and Young Persons Protection Policy, online training for archdiocesan employees includes training on protecting children.

The policies of the archdiocese are informed by the principles of *Integrity in Ministry* and *Integrity in the Service of the Church*.

The Tasmanian Catholic Education Office *Child Safe Framework* establishes policies and procedures to ensure the safety of children. Induction programs for Catholic school staff include induction on the framework.

In schools in the Archdiocese of Hobart a Reportable Conduct Policy is being developed for approval by the Tasmanian Catholic Education Commission. Principals must advise the Tasmanian Catholic Education Office of all mandatory reporting notifications given to Tasmania Police and Child Safety Service authorities.

Canberra and Goulburn⁹⁵

The most significant step taken by the archdiocese to bring survivors of child sexual abuse into the centre of the archdiocese's pastoral response and to deliver effective and consistent services related to the safeguarding of children and the implementation of effective child safety standards

⁹⁴ The following summary derives from evidence given by Archbishop Porteous in his statement dated 6 October 2016 (CTJH.500.90001.0059) and his statement dated 14 December 2016 (CTJH.500.90001.0658).

⁹⁵ The following summary derives from evidence given by Archbishop Prowse in his statement dated 4 November 2016 (CTJH.500.90001.0258) and his statement dated 30 November 2016 (CTJH.500.90001.0462).



has been the creation in September 2015 of the Institute for Professional Standards and Safeguarding (IPSS). It is responsible across the archdiocese (including the Catholic school sector) for the development, implementation, delivery and monitoring of policy, procedures, formation and education to ensure compliance with legal and Church requirements for safeguarding children and vulnerable adults.

The Director of the IPSS has been delegated the archbishop's head of agency functions under the reportable conduct scheme in the NSW Ombudsman Act. The IPSS has been influential in the acceptance by the ACT Government of the introduction of a similar reportable conduct scheme in the ACT.

All persons working within schools in the ACT must have Working With Vulnerable People Checks and all persons working within schools in NSW must have Working With Children Checks. The Archdiocese of Canberra and Goulburn draft Investigation Procedure requires all allegations of child sexual abuse within schools be reported in writing to the IPSS. Protocols are in place for principals and staff of schools to inform the Catholic Education Office of complaints which raise concerns for the safety and wellbeing of a child.

Dioceses

New South Wales

With the exceptions of the dioceses of Parramatta and Newcastle, where the Royal Commission obtained statements from Church leaders covering both the diocese as such and the Catholic systemic schools, statements sought of Church leaders in NSW were directed to operation of the Catholic systemic schools.

The responses contained in the statements show that:

- All the dioceses operate under and comply with the reportable conduct scheme under the Ombudsman Act
- All the dioceses operate under and comply with the Working With Children Check (WWCC) requirements relating to diocesan and schools personnel. The Diocese of Wilcannia-Forbes, in introducing for all employees compulsory WWCCs, is believed to be the first Catholic education system in NSW to ensure a WWCC was required as a condition of employment.
- All the dioceses have in place a written child protection policy and written child protection procedures
- In Wollongong another key document is the Child Protection Head of Agency Charter,⁹⁶ which seeks to integrate civil and church requirements by bringing them under the broader context of building a safe and supportive environment for all
- Maitland- Newcastle has the important additional feature of Zimmerman Services. It is an agency of the diocese. It works with a number of government agencies and the police with the mandate of abuse prevention, responding to complaints of child abuse, and the provision of support to persons affected by child abuse. It is staffed by lay people with specialist child

⁹⁶ Statement of Bishop Ingham dated 29 November 2016 (CTJH.500.90001.0423).



protection qualifications and experience. Zimmerman traces its history back to 2007.⁹⁷ It covers both the school and non- school sectors of the Diocese.

- In Parramatta, the Office for Safeguarding and Professional Standards is an additional key feature of its child safeguarding structure. It was established in July 2014 as a professional, independent outreach, healing and support service for survivors of abuse.

Victoria⁹⁸

With the exception of the diocese of Ballarat, where the Royal Commission obtained statements from Bishop Bird covering both the diocese as such and the Catholic systemic schools, statements sought of the other dioceses in Victoria, namely, Sandhurst and Sale, were directed to operation of the Catholic systemic schools.

The responses contained in the statements show that:

- In all the dioceses persons employed within Catholic Education are required by law to have a WWCC or criminal record check (via Victoria Institute of Teaching registration)
- All the dioceses adopt the policy document, PROTECT, developed as a joint policy of the State Department of Education, the Catholic Education Commission of Victoria and Independent Schools Victoria containing requirements to report all forms of sexual abuse
- All the dioceses are subject to Ministerial Order 870 setting out the specific actions that all Victorian schools must take to meet child safe standards
- In addition, all the non-metropolitan dioceses have in place their own written child safe policies
- Ballarat has taken the additional step of establishing a Coordinator for Professional Standards position to develop, facilitate and evaluate implementation of policies and procedures relating to children and vulnerable people and to provide education and assistance to clergy and staff. Parish Safeguarding Officers have also been introduced in the parishes.

Queensland⁹⁹

With the exception of the diocese of Cairns, where the Royal Commission obtained a statement from Bishop Foley covering both the diocese as such and the Catholic systemic schools, statements sought of the non-metropolitan dioceses in Queensland, namely, Toowoomba, Rockhampton and Townsville, were directed to the operation of the Catholic systemic schools.

The responses contained in the statements show that:

- All the schools in the dioceses are subject to the requirements under the Education General Provisions Act for the reporting of suspicions of abuse
- All the dioceses have in place written policies and procedures for student protection and they conduct related training

⁹⁷ Statement of Bishop Wright dated 26 August 2016 (STAT.1155.001.0001).

⁹⁸ The non-metropolitan dioceses are Ballarat, Sandhurst and Sale.

⁹⁹ The non-metropolitan dioceses are Toowoomba, Cairns, Rockhampton and Townsville.



- The bishop is made aware of any complaint of sexual abuse involving school personnel. (In the case of Cairns, reporting responsibilities in relation to schools are delegated to the Executive Director of Catholic Education Services. The Executive Director and Episcopal Vicar for Education hold regular executive meetings with the Bishop.)¹⁰⁰

Broome

Across the Broome Diocese, the policies and protocols of *Towards Healing* and *Integrity in Ministry* apply.

There is only one Catholic Education Office in Western Australia. As Archbishop Costelloe in his statement covered operation of the Catholic education system, this was not addressed by Bishop Saunders.

Darwin

In his statements dated 14 October 2016¹⁰¹ and 28 November 2016¹⁰² Bishop Hurley indicated that the policies and protocols of *Towards Healing*, *Integrity in Ministry* and *Integrity in the Service of the Church* apply in the Diocese of Darwin and their application is managed by the diocesan Professional Standards Office. In addition a range of policies and procedures relating to child protection are in place.¹⁰³ The Diocesan Integrity Officer has responsibilities that include oversight of the Protection of Children and Vulnerable Adults Policy and Procedure. All workers and volunteers in the diocese must uphold the Diocesan Code of Conduct.

In any case where an allegation of abuse of a child involves a member of the diocesan clergy, the Safeguarding Children and Vulnerable Adults Policy requires that the bishop be notified.

Congregations

Vincentians¹⁰⁴

The Vincentians – The Congregation of the Mission have a Congregation of the Mission Child Protection Policy and a Professional Standards Committee to assist the Provincial in relation to professional standards matters. The congregation follows and applies *Towards Healing*.

2St Stanislaus College has operated as a separate, incorporated legal entity since 2000. It has its own extensive set of child protection policies.

Salesians¹⁰⁵

The Child Protection Policy of the Salesians of Don Bosco Australia- Pacific Province was promulgated in August 2015. Successive drafts of the document were circulated for discussion throughout the Province as part of a learning and awareness raising process. A Child Safeguarding Officer was appointed and part of that person's role is to visit Salesian communities to record compliance with the Child Protection Policy. In accordance with that policy, a Child

¹⁰⁰ Statement of Bishop Foley dated 8 December 2016 (CTJH.500.90001.0626).

¹⁰¹ CTJH.500.90001.0075

¹⁰² CTJH.500.90001.0411

¹⁰³ These are listed in paragraph 10 of the statement of 14 October 2016.

¹⁰⁴ The following summary derives from evidence given by Father Gregory Brett, Provincial, in his statement dated 23 October 2016 (CTJH.500.90001.0198)

¹⁰⁵ The following summary derives from evidence given by Father Gregory Chambers, Provincial, in his statement dated 30 September 2016 (CTJH.500.90001.0126)



Protection Commission has been established to assist the Provincial and the Provincial Council in preventing any form of child abuse and in dealing with any allegations of abuse.

The Salesians follow and apply *Towards Healing* in responding to claims of abuse.

Marist Brothers¹⁰⁶

In February 2013 the Marist Brothers established two new standing committees to advise on all aspects of professional standards, the Province Professional Standards Advisory Committee and the Ministries Professional Standards Advisory Committee. The Professional Standards Office has been enhanced.

External advisers have been engaged to provide advice on improving and enhancing the current suite of child protection policies and procedures.

There has been an emphasis on improvement of training of Brothers and staff in the area of child protection.

The Marist Brothers have funded a research project to investigate the factors that contributed to historical incidents of child sexual abuse involving members of the order.

Christian Brothers¹⁰⁷

Since 2007, management of Christian Brothers schools transitioned from the Trustees of the Christian Brothers to Edmund Rice Education Australia (EREA). Child protection policies in EREA schools are the responsibility of EREA.

The Brothers have policies in place for responding to claims of historical child sexual abuse, a code of conduct relating to interacting with children and young people and a range of policies and procedures relating to the prevention of child abuse and the safeguarding of children.

De La Salle Brothers¹⁰⁸

The De La Salle Brothers have instituted common child protection standards for all their works across Australia, New Zealand, Pakistan and Papua New Guinea and have established a full-time Professional Standards Office. A range of child safeguarding policies and procedures are in place.

Hospitaller Order of St John of God¹⁰⁹

The Hospitaller Order of St John of God, Oceania Province, does not currently auspice any services in Australia. Since July 2007, the public juridic person, St John of God Australia Ltd, has had responsibility for services formerly under the auspices of the Province.

The order has no members in child-related employment.

The order operates under the policies and procedures of *Towards Healing*.

¹⁰⁶ The following summary derives from evidence given by Brother Peter Carroll, Provincial, in his statement dated 17 October 2016 (CTJH.500.90001.0160)

¹⁰⁷ The following summary derives from evidence given by Brother Peter Clinch, Province Leader, in his statement dated 20 October 2016 (CTJH.500.90001.0230)

¹⁰⁸ The following summary derives from evidence given by Brother Ambrose Payne, Professional Standards Officer, in his statement dated 31 October 2016 (CTJH.500.90001.0104)

¹⁰⁹ The following summary derives from evidence given by Brother Timothy Graham, Provincial, in his statement dated 17 October 2016 (CTJH.500.90001.0115)



Sisters of Mercy, Australia and Papua New Guinea¹¹⁰

The Institute has a Professional Standards Unit which is responsible for provision of child protection measures and managing the institute's response to any professional standards complaint. Child protection policies of the institute include a professional standards policy and a protection for children and vulnerable adults policy.

The institute is developing an on-line unit so that education of sisters and staff in professional standards matters can be delivered more consistently across the institute.

The Society of Jesus (Jesuits)¹¹¹

In August 2015 the Australian Province of the Society of Jesus published and made publicly available *The Australian Province of the Society of Jesus: Policy for Safeguarding Children & Vulnerable Adults*. This followed a review of the Province's professional standards and child protection policies by a US expert, Dr Kathleen McChesney.

Since the review the Province has also restructured its Professional Standards Office and reconstituted its Professional Standards Consultative Panel.

Each of the Province's five schools has location specific child protection policies and procedures and each school requires staff to complete training in relation to child protection matters. It is incumbent on school principals to report any complaint of child sexual abuse to the Director of Professional Standards.

4.3 Conclusion

The Council submits that the Church has made significant progress in establishing regimes and protocols to fulfil its obligation to create a safe environment for children and vulnerable people. This is not mere lip-service: the commitment is real. However, there is more to be done.

One of the major (but not the only) areas in which child safety is an issue is, of course, the school environments. Given the government's introduction in Victoria of child safe standards to operate in all school environments, the Council submits that the Royal Commission should give consideration to the adequacy of those standards for national adoption and, subject to any modification the Royal Commission might recommend, should also give consideration to recommending to state and territory governments across Australia the introduction of similar standards. The advantage in the Council's view of such an approach is that there exists in the existing systems across the country for registration of schools a ready mechanism for measuring and ensuring compliance with the standards.

¹¹⁰ The following summary derives from evidence given by Sister Berneice Loch, Institute Leader, in her statement dated 29 September 2016 (CTJH.500.90001.0141)

¹¹¹ The following summary derives from evidence given by Father Brian McCoy, Provincial, in his statement dated 15 December 2016 (CTJH.500.90001.0668)

5 Improved training and formation

As noted in section 2.8, during case studies involving the Church, the Royal Commission has heard evidence that historically, many priests and religious received formation that was inadequate to prepare them to live their vocation, including in relation to human formation and celibacy.¹¹²

The Council submits that the selection, screening and training of priests and religious has changed markedly from the approach in place until the early 1990s. While there is always room for improvement, seminary curricula and the education of personnel in Church authorities and Church service organisations generally have advanced considerably.

5.1 Historical Development of Training and Formation Programs

Since the Second Vatican Council, there has been a deliberate attempt to shift seminary training to become more integrated with contemporary understandings of human development and psychological wellbeing.¹¹³ This was accompanied by a shift from a monastic, cloistered model of religious life towards a more integrated, communal life.

From about the mid-1960s candidates for the priesthood and religious life began to be screened more intently, including through psychological testing. In addition, entry ages were raised to a minimum of 18 years of age and aspirancy or trial periods were introduced, to assess the suitability and fit of candidates before their entry into formation.¹¹⁴

By 1992 these developments found formal expression in the Apostolic Exhortation of Pope John Paul II, *Pastores dabo vobis* (1992),¹¹⁵ prepared following the 1990 Synod of Bishops on Priestly Formation. *Pastores dabo vobis* addressed the formation of priests and expanded seminary curriculum, integrating programs designed under four 'pillars' of formation: human, spiritual, pastoral and intellectual. This more holistic approach reflected a growing awareness of the contemporary challenges, both ecclesial and cultural, facing those pursuing a priestly vocation in 'today's society and today's Church'.¹¹⁶ This was, and remains, a significant shift from the seminary training of the 1950s, 60s and into the 70s, where intellectual education, through theology and philosophy courses, overwhelmingly dominated the training years and human

¹¹² See for example the evidence of Archbishop Mark Coleridge, CS4, Transcript 2757 (11 December 2013) and the evidence of Brother Julian McDonald, CS11, Transcript WA2250 (7 May 2014).

¹¹³ 'In recent years some have voiced a need to return to the theme of the priesthood, treating it from a relatively new point of view, one that was more adapted to present ecclesial and cultural circumstances. Attention has shifted from the question of the priest's identity to that connected with the process of formation for the priesthood and the quality of priestly life. The new generation of those called to the ministerial priesthood display different characteristics in comparison to those of their immediate predecessors. In addition, they live in a world which in many respects is new and undergoing rapid and continual evolution. All of this cannot be ignored when it comes to programming and carrying out the various phases of formation for those approaching the ministerial priesthood.' Pope John Paul II (1992) Post-Synodal Apostolic Exhortation *Pastores dabo vobis* (I shall give you shepherds) at [3] http://w2.vatican.va/content/john-paul-ii/en/apost_exhortations/documents/hf_jp-ii_exh_25031992_pastores-dabo-vobis.html, accessed 14 December 2016.

¹¹⁴ Currently entrants to seminaries in Australia are a minimum of 18 years of age, with many having completed a period of tertiary education before entry, if not a full undergraduate degree: see for example evidence contained in the Statement of Fr Brendan Lane (CTJH.500.90001.0500) at [14]; Statement of Fr Daniel Meagher (CTJH.500.90001.0441) at [11d], Statement of Fr Kevin Saunders, OP (CTJH.500.90001.0392) at [17]. The Society of Jesus does not accept candidates direct from school: see Statement of Fr Brian McCoy, SJ (CTJH.500.90001.0668) at [72]. Entrants generally also complete a period of preparation or aspirancy prior to entry: see evidence contained in the Statement of Fr Brendan Lane (CTJH.500.90001.500) at [40-41]; Statement of Fr John Hogan (CTJH.500.90001.0725) at [22-23]; Statement of Fr Eric Skruzny (CTJH.500.90001.0694) at [34].

¹¹⁵ Pope John Paul II (25 March, 1992) Post-Synodal Apostolic Exhortation *Pastores dabo vobis* (I shall give you shepherds) http://w2.vatican.va/content/john-paul-ii/en/apost_exhortations/documents/hf_jp-ii_exh_25031992_pastores-dabo-vobis.html, accessed 14 December 2016.

¹¹⁶ *Pastores dabo vobis* [5].



formation was neglected. While study of philosophy and theology remains an integral part of current seminary training emphasis is now placed on the four pillars.

A concerted attempt has also been made in recent years to provide nurturing formation environments whereby seminarians are supported to explore their personal development, understand their vocation to the priesthood and come to appreciate the social complexities within which they will minister in the community. As discussed below, contemporary seminary training emphasises holistic understandings of human development. Seminarians are encouraged to form mature and healthy relationships with a range of men and women and are educated to be aware of appropriate boundaries in words and actions with both adults and children. Formation occurs against the background that human growth and development is process oriented, requires structured reflection and on-going supervised support. The intention behind this model is to enable seminarians to reach a level of self-knowledge that assists them to confidently move forward into their priestly career with a realistic appreciation of priestly ministry and the appropriate exercise of power and authority, or to choose otherwise. The resources of the seminary are partly deployed to facilitate these outcomes.

Seminary staff now include experienced and highly trained priests and lay professionals including women. Seminarians are generally not cloistered, but rather participate in courses within tertiary settings and gain experience through parish and work placements within the community.

In addition to this more rigorous approach to formation and training, the introduction in 1996 of *Towards Healing* and the *Melbourne Response* provided Church authorities in Australia with resources for training and formation in child protection and professional standards matters.

Responsibility for the design of seminary formation programs in Australia rests with the Australian Catholic Bishops Conference. The current program is contained in the 'Program for Priestly Formation Australia, *Ratio Nationalis Institutionis Sacerdotalis*' (2015) (*Ratio Nationalis* program).¹¹⁷ The *Ratio Nationalis* program has been prepared in accordance with the requirements of the Congregation for the Clergy, as contained in its document 'Spiritual Formation in Seminaries' *Ratio Fundamental Institutionis Sacerdotalis*.¹¹⁸

5.2 Selection of Candidates

The Second Vatican Council generated a significant shift in the approach to selection of candidates for the priesthood and religious life. Previously, the bishop might have taken advice from the local parish priest as to the suitability of candidates. Since Vatican II Vocations Directors have been introduced, particularly in dioceses, to recruit candidates and complete a process of discernment with them, before advising the relevant bishop as to the suitability of the candidate for entry into the seminary.

¹¹⁷ CTJH.301.15001.0008

¹¹⁸ It is noteworthy that on 8 December 2016 the Congregation for the Clergy released a revised *Ratio Fundamental Institutionis Sacerdotalis* 'The Gift of Priestly Vocation' on 8 December 2016 (revised *Ratio Fundamental*), see: <http://www.clerus.va/content/dam/clerus/Ratio%20Fundamentalis/The%20Gift%20of%20the%20Priestly%20Vocation.pdf>, accessed 15 December 2016. This is a major reworking of the requirements of priestly formation since the previous version was released in 1985. As a result, during 2017 the ACBC is likely to undertake a process of consultation and review of the current *Ratio Nationalis* program in order to revise and update it appropriately. The Council notes that the revised *Ratio Fundamental* includes an exhortation that 'future priests should be educated so that they do not become prey to 'clericalism' but rather so that 'authority is exercised in a spirit of service... for the good of the flock' at [33]-[34]... It also includes requirements for seminarians and priests to be adequately educated about the protection of minors, proposing that bodies such as the ACBC which are responsible for formation establish dialogue with the Pontifical Commission for Minors, thus ensuring that 'we may do everything possible to ensure that crimes such as those which have occurred are no longer repeated in the Church' at [202].



The model has now evolved to include a range of advisors, both priests and lay people, sometimes grouped formally into formation councils and panels brought together to advise the bishop or religious leader. Vocational assessment tools have been developed whereby the physical, sociological and psychological factors that motivate someone seeking entry into the priesthood or religious life are evaluated.

This has also coincided with a shift away from accepting candidates as soon as they had completed their secondary schooling, as was historically the case. While there is capacity for candidates to enter formation training straight from school, this is not the norm.¹¹⁹

For candidates for the seminary and religious life, psychological testing, review of personal references, medical tests and background checks, including police and working with children checks are now universal.¹²⁰ As well, in most cases, much is known about the candidate before they apply, due to their involvement in the Church over time, participation in their parish or community and attendance at discernment processes, run through the wider diocesan community.¹²¹

Some religious institutes also offer a period of aspirancy or discernment during which a candidate may spend a period of time living in a religious community, gaining some experience in a particular ministry of the institute, and living a lifestyle consistent with the values of religious life before entry and commencement of formation training.¹²²

5.3 Contemporary Training and Formation

Psychological screening

As Dr David Ranson has argued, 'at the core of celibate formation must be the enlargement of the person's capacity for authentic, lasting and healthy relationships marked by intimacy and freedom'.¹²³

The introduction of psychological screening for potential seminarians from the 1970s heralded more concerted attention on the suitability of candidates for the priesthood. Today, pre-entry¹²⁴ psychological evaluation of candidates for formation is performed by qualified psychologists using a combination of interview and multifaceted psychological testing. The assessment aims to identify any emotional and/or psychosexual development issues or pathologies. Tests used

¹¹⁹ See the evidence contained in the Statement of Fr Brendan Lane (CTJH.500.90001.0500) at [14]; Statement of Fr Daniel Meagher (CTJH.500.90001.0441) at [11d]; Statement of Fr Peter Thompson (CTJH.500.90001.0468) at [18]; Statement of Fr Kevin Saunders, OP (CTJH.500.90001.0392) at [17]. The Society of Jesus does not accept candidates direct from school: see evidence contained in the Statement of Fr Brian McCoy, SJ (CTJH.500.90001.0668) at [72].

¹²⁰ See the evidence contained in the Statement of Fr Brendan Lane (CTJH.500.90001.0500) at [15] and [53]; Statement of Fr Daniel Meagher (CTJH.500.90001.0441) at [11e] and [18]; Statement of Fr Peter Thompson (CTJH.500.90001.0468) at [20] and [32]; Statement of Fr John Hogan (CTJH.500.90001.0725) at [13] and [26]; Statement of Mons John Grace (CTJH.500.90001.0640) at [17]; Statement of Fr Eric Skruzny (CTJH.500.90001.0694) at [24-5] and [38]; Statement of Fr Kevin Saunders, OP (CTJH.500.90001.0392) at [18] and [28]; Statement of Fr Brian McCoy, SJ (CTJH.500.90001.0668) at [67] and [71].

¹²¹ See the evidence contained in the Statement of Statement of Fr Daniel Meagher (CTJH.500.90001.0441) at [11e]; Statement of Fr John Hogan (CTJH.500.90001.0725) at [8]; Statement of Mons John Grace (CTJH.500.90001.0640) at [31]; Statement of Fr Eric Skruzny (CTJH.500.90001.0694) at [12] and [34]; Statement of Fr Brian McCoy, SJ (CTJH.500.90001.0668) at [67].

¹²² See the evidence contained in the statement of Mons John Grace (CTJH.500.90001.0640) at [34]; Statement of Fr Brendan Lane (CTJH.500.90001.0500) at [42-3]; Statement of Fr Daniel Meagher (CTJH.500.90001.0441) at [11d].

¹²³ Ranson, D., (2002) *The Climate of Sexual Abuse* The Furrow 53:7-8 pp. 387-397.

¹²⁴ Psychological evaluation of a candidate for formation may not occur prior to entry where the candidate's command of English is not sufficient, or their application is received late. Testing is completed as soon as possible after commencement, or when English proficiency is sufficient, as applicable. In either case, acceptance into the seminary is conditional upon the outcome of a subsequent psychological evaluation being satisfactory. See the evidence contained in the statement of Fr Daniel Meagher (CTJH.500.90001.0441) at [21]; Statement of Fr Eric Skruzny (CTJH.500.90001.0694) at [40].



across Australia vary somewhat according to the psychologist performing the evaluation, but include:

- MMPI-2,
- Sexual Addiction Screening Test for men,
- The Bumby Molest Scale,
- The Clinical Interview,
- Hamilton Anxiety rating scale,
- Hospital Depression Scale, and
- Mental Health examination.¹²⁵

The report of this testing is made available to the rector of the seminary and the relevant bishop or provincial, usually via the Vocations Director. These reports are insightful and form part of the assessment of the suitability of the candidate: whether they are capable of receiving formation for the priesthood and, upon ordination, will make a good priest.¹²⁶

Admission and evaluation

Once admitted to the seminary, in terms of support, rectors and vice-rectors are involved directly with the progress of each seminarian. Additionally, a person, usually a priest, who has received requisite graduate formation, is appointed to the position of first year formator. He is directly responsible for the initial formation of the seminarians. He does this not only in a teaching capacity, but also acts as a mentor (but not a spiritual advisor). He is assisted by other members of the seminary staff to fulfill the first year requirements.

At least each month and more regularly in some seminaries, seminarians meet with their formators to discuss their progress, to receive observations and feedback from seminary staff and to express thoughts and feelings about their formation journey. Seminary staff meet with the rector to review and evaluate the progress of each seminarian.

At least one major, formal evaluation of each seminarian takes place each year, usually at the conclusion of the academic year, across the four pillars of the education undertaken by the seminarian. This consists of self-evaluation, evaluation by seminary staff and peer-evaluation, before a progress report is provided by the rector to the seminarian's bishop.¹²⁷ This report will highlight any emerging issues and a (usually mutual) decision taken by the seminarian and his formators as to their continuation towards ordination. These matters are clearly recorded on the file of the seminarian and his bishop is informed of the decision.

¹²⁵ See the evidence contained in the Statement of Fr Brendan Lane (CTJH.500.90001.0500) at [63-5]; Statement of Fr Daniel Meagher (CTJH.500.90001.0441) at [25]; Statement of Fr Peter Thompson (CTJH.500.90001.0468) at [36-7]; Statement of Mons John Grace (CTJH.500.90001.0640) at [43-4]; Statement of Fr Eric Skruzny (CTJH.500.90001.0694) at [41-3]; Statement of Fr Kevin Saunders, OP (CTJH.500.90001.0392) at [31-2] and [34-5]; Statement of Fr Brian McCoy, SJ (CTJH.500.90001.0668) at [69-70].

¹²⁶ See evidence contained in the statement of Fr Daniel Meagher (CTJH.500.90001.0441) at [25]; Statement of Fr Peter Thompson (CTJH.500.90001.0468) at [43]; Statement of Mons John Grace (CTJH.500.90001.0640) at [47]; Statement of Fr. John Hogan (CTJH.500.90001.0725) at [34-5].

¹²⁷ See evidence contained in the Statement of Fr Brendan Lane (CTJH.500.90001.0500) at [86]; Statement of Fr Peter Thompson (CTJH.500.90001.0468) at [56-8]; Statement of Mons John Grace (CTJH.500.90001.0640) at [63]; Statement of Fr. John Hogan (CTJH.500.90001.0725) at [52-5].



5.4 Elements of seminary curricula

Human Formation

Of the four pillars of seminary training, human formation is designated the ‘necessary foundation’ of all priestly formation.¹²⁸ The aim of human formation is to help the seminarian become aware of himself, his evolving sense of identity and how he can relate in a healthy way with others. It is deliberately process-oriented and requires the provision of opportunities for professional psychological and spiritual support.

Importantly, sexuality, sexual orientation and celibacy and its challenges are each addressed. In so doing, seminaries implement the requirements of *Pastores dabо vobis* (1992) and the *Instruction concerning the Criteria for the Discernment of Vocations with regard to Persons with Homosexual Tendencies in view of their Admission to the Seminary and to Holy Orders* (2005).¹²⁹ The aim is to provide a language for seminarians to use to discuss and establish a normality about these issues and to provide on-going support and access to psychological assistance.¹³⁰ In this way it is intended that psychological health and matters concerning sexual maturity and literacy become a normal part of the formative program.

The essential and typical elements of the human formation program currently include:

Year One: Propaedeutic (Spiritual) Year

To begin the human formation process, seminaries have a ‘propaedeutic’ (preliminary or introductory) year that furthers the discernment process and focuses on human formation and the gaining of a rich understanding of the spiritual life. The program taught during this year typically emphasises prayer and spiritual contemplation, allowing the seminarian time to ‘deeply discern his vocation to the priesthood’.¹³¹ This is a critical year, since it establishes the foundation for a mature formation in the following years.

Years Two through Seven

Psycho-sexual development

Human maturity requires sexual integration and harmony. It is entirely necessary that the seminarian understand physiological sexual development and psycho-sexual development. When combined with the insights from philosophy and theology into human sexuality, the candidate receives a thorough introduction into the mystery of human sexuality. This course is usually taught by staff with backgrounds in psychology and gives seminarians a ‘language’ in which to interpret his own experience with the help of seminary staff.¹³²

¹²⁸ Congregation for Catholic Education (2005) *Instruction Concerning the Criteria for the Discernment of Vocations with regard to Persons with Homosexual Tendencies in view of their Admission to the Seminary and to Holy Orders* [3] http://www.vatican.va/roman_curia/congregations/ccatheduc/documents/rc_con_ccatheduc_doc_20051104_istruzione_en.html accessed 15 December 2016.

¹²⁹ Ibid

¹³⁰ See evidence contained in the Statement of Fr Peter Thompson (CTJH.500.90001.0468) at [49]; Statement of Mons John Grace (CTJH.500.90001.0640) at [52].

¹³¹ See for example Programme of Priestly Formation – Propaedeutic Year in *Formation Guidelines for Holy Spirit Seminary* (CTJH.082.90001.0047 at 0053) referred to in the Statement of Mons John Grace (CTJH.500.90001.0640).

¹³² See evidence contained in the Statement of Fr. John Hogan (CTJH.500.90001.0725) at [45].



The Four Cardinal Virtues

Based on ancient Greek philosophy, the formation for priesthood seeks to instill an interior disposition and stance towards life based on what are described as the cardinal virtues: Prudence, Justice/Piety, Fortitude, Temperance and Pietas. These virtues give the seminarian the capacity to develop a well-balanced, insightful personality that contributes constructively with others. Beyond mere understanding, it is sought for seminarians to develop a personal integrity.

The Religious Life Cycle

The course emphasizes the dispositions of poverty, chastity and obedience. These correspond to the particular challenges such as the appropriate exercise of authority, the living out of human sexuality and attitudes to money and material goods. These are explicitly taken as vows by those in religious life. An adaption to priestly formation includes:

- promise of celibacy, obedience and simplicity,
- virtues needed to live the priestly life well,
- priestly growth, and
- priestly temptations and struggles.

Theological Virtues of Faith, Hope and Love

This course attempts to build upon the four cardinal virtues, by encouraging seminarians to reflect upon and deepen the gifts of faith, hope and love received at Baptism. One of the hoped for fruits of this year of formation is a deepening awareness in the candidate of the strength and grace of God and of his own frailty, vulnerability and human weakness, fostering a sense of personal integrity and vocation.

Year Six and Seven: Workshops

Later years focus on the very practical questions and issues that arise as the seminarian moves closer to ordination. Examples of the topics covered include:

- preparation for the sacraments,
- parochial preparation,
- professional standards, and
- parish administration.

Pastoral Formation

1992 signaled a change in the approach taken to pastoral formation. The first years in the seminary now focus on those ministries that form part of the practical duties of a priest, such as visiting the sick and aged, catechesis in state schools and in Catholic schools and hospital



ministry. Clinical Pastoral Education and theological reflection on these experiences, are elements of this process.¹³³

In later years, seminarians begin to focus on those aspects of ministry that are specific to the ministerial priesthood, such as preaching, sacramental formation, aspects of governance and some features of hospital ministry that are reserved to the priest.

Importantly, seminarians usually complete annual placements in parishes each year and a six to eight month or longer placement in a parish in a later year as they progress.¹³⁴ This gives them the experience of an apprenticeship of sorts, allows them to experience priestly life in its many and varied dimensions. Care is taken so that the seminarian and the supervising priest can have an effective, hopefully productive, working and living relationship.

All of these activities are supervised by specialists, mostly outside the seminary system. A process of evaluation and reflection, including self-reflection by the seminarian, is an important part of this process. Seminary staff receive reports from the external supervisors and others providing feedback on the seminarians' performance.¹³⁵

Emphasis on formation for celibacy

Importantly, throughout the period spent in seminary formation, celibacy and issues surrounding human affectivity are regularly discussed and explored within the on-going consideration of sexuality. Attention is given to the daily expression of affectivity within an atmosphere whereby seminarians are encouraged to acknowledge their own sexual orientation and its expression in a chaste and life giving friendship.

Ordination

Once seminary formation training has been completed, the decision to ordain the seminarian rests with his sponsoring bishop.

The bishop has a number of consultative options available to him to help him make wise and prudent decisions with regard to the selection of candidates for ordination to the priesthood. Several bishops have established a Commission of Orders to evaluate and advise on the suitability or otherwise of candidates for ordination.¹³⁶ Others rely on reports and recommendations from the seminary rector, who in turn makes his view based on his own knowledge, and evaluation of the seminarian by seminary staff and others who have worked closely with him.

It is clear that if the candidate is seriously lacking in any one of the four areas of formation, then he should not be admitted to the priesthood. In statements provided to the Royal Commission,

¹³³ See the evidence contained in the Statement of Fr Daniel Meagher (CTJH.500.90001.0441) at [38]; Statement of Fr Eric Skruzny (CTJH.500.90001.0694) at [52]; Statement of Fr Peter Thompson (CTJH.500.90001.0468) at [60]; Statement of Fr. John Hogan (CTJH.500.90001.0725) at [50].

¹³⁴ See the evidence contained in the Statement of Fr Daniel Meagher (CTJH.500.90001.0441) at [39]; Statement of Fr. John Hogan (CTJH.500.90001.0725) at [54]; Statement of Fr Brendan Lane (CTJH.500.90001.0500) at [102].

¹³⁵ See the evidence contained in the Statement of Fr Brendan Lane (CTJH.500.90001.0500) at [85]; Statement of Mons John Grace (CTJH.500.90001.0640) at [66]; Statement of Fr Peter Thompson (CTJH.500.90001.0468) at [65(e)]; Statement of Fr Eric Skruzny (CTJH.500.90001.0694) at [58].

¹³⁶ See evidence contained in the Statement of Fr Eric Skruzny (CTJH.500.90001.0694) at [47]; Statement of Fr. John Hogan (CTJH.500.90001.0725) at [39].



seminary rectors report that they have not had an experience in which they and the bishop have had differing views regarding suitability of particular candidates for ordination.

5.5 Ongoing formation - Professional Development and Supervision of priests and religious

The degree to which dysfunctional situations and lifestyles lead to abusive sexual behaviours, in particular in regard to adults with children, has been the subject of discussion within the literature. The Council submits that it is important for all priests and religious to participate in ongoing formation, continuous professional development and be provided with ready access to appropriate support and supervision throughout their time in ministry. This is not presently as readily available, or utilised, as it should be.

In 1992 the ACBC established the Australian Council for Clergy Life and Ministry to enhance the ongoing formation and education of priests and to ensure their ongoing support and care.¹³⁷ To date, however, on-going education and formation programs for priests and religious have been ad hoc at best. Anecdotally such programs have been taken up more concertedly by religious institutes, and overwhelmingly by female rather than male religious.

At the diocesan level, for example through the Ministry for Priests program in the Archdiocese of Melbourne, various support initiatives and on-going education seminars are offered to priests.¹³⁸ However, while bishops and religious leaders increasingly make known their expectation that priests and religious should attend various clergy days and other in-service programs, particularly in relation to current child protection and safeguarding practices,¹³⁹ for the most part continuing formation and support of priests and religious is conducted on a voluntary, opt-in basis. There is a lack of any formal requirement for priests and religious to engage in ongoing education and professional supervision in the manner that other professions such as lawyers, accountants and doctors require of their members.

As has been encouraged by the Holy See,¹⁴⁰ currently, in both religious institutes and dioceses the institution of formal, structured, on-going support and professional supervision of priests and religious is under active consideration. Moves are afoot to structure formation and support programs within agreed national frameworks for priests and religious. These frameworks would make Church authorities responsible for ensuring their members are engaged in regular ongoing formation and are suitably trained in child protection matters and related legal obligations. The participation of members in these aspects of the program would be compulsory.

¹³⁷ See <http://clergy.org.au/index.php> accessed 16 December 2016.

¹³⁸ See <http://www.cam.org.au/News-and-Events/Features/General-Features/Article/14564/Ministry-to-Priest> accessed 15 December 2016.

¹³⁹ See for example the evidence contained in the Statement of Mons John Grace (CTJH.500.90001.0640) at [25]; Statement of Fr Brendan Lane (CTJH.500.90001.0500) at [29]; Statement of Fr Daniel Meagher (CTJH.500.90001.0441) at [13(a)]

¹⁴⁰ The Apostolic Letter 'motu proprio' of Pope Benedict XVI *Ministorum Institutio* (2013) affirmed the view that formation of seminarians prior to ordination finds a natural continuation in the ongoing formation of priests, so that the two form one single reality: *'It is particularly important to be aware of and to respect the intrinsic link between formation before ordination to the priesthood and formation after ordination. Should there be a break in continuity, or worse, a complete difference between these two phases of formation, there would be serious and immediate repercussions on pastoral work and fraternal communion among priests, especially those in different age groups. Ongoing formation is not a repetition of the formation acquired in the seminary, simply reviewed or expanded with new and practical suggestions. Ongoing formation involves relatively new content and especially methods; it develops as a harmonious and vital process which — rooted in the formation received in the seminary — calls for adaptations, updating and modifications, but without sharp breaks in continuity'* see http://w2.vatican.va/content/benedict-xvi/en/motu_proprio/documents/hf_ben-xvi_motu-proprio_20130116_ministorum-institutio.html accessed 15 December 2016. This is also a theme of the revised *Ratio Fundamental* released by the Congregation for the Clergy on 8 December 2016: see <http://www.clerus.va/content/dam/clerus/Ratio%20Fundamentalis/The%20Gift%20of%20the%20Priestly%20Vocation.pdf>.



The main philosophy behind the frameworks is based on a continuous improvement model of human development. The frameworks will refresh and update human formation elements taught during seminary formation, emphasising the intellectual, psychological, cultural and spiritual aspects of human development. Acknowledging that today, a significant element of being a diocesan priest involves working as a sole practitioner, they will seek to properly integrate and support priests and religious of all ages, including those from other cultures and from overseas.

The protection of children and vulnerable adults component of the frameworks will require priests and religious to attend for content education sessions surrounding child protection issues, complete ongoing education covering relevant Commonwealth and state/territory legislation, mandatory reporting requirements, knowledge of relevant Church policies, (currently *Towards Healing, Integrity in Ministry, Integrity in the Service of the Church*) and their requirements. As well, participants will be able to access holistic personal development programs covering important aspects such as personal self-care, sexuality, healthy balanced lifestyles and life management skills.

It is anticipated that this support and supervision framework will be articulated in national standards that will be required to be implemented by every Church authority. Through individual Church authorities becoming accountable for the provision of ongoing formation and support for priests and religious it is anticipated that the quantity and quality of ongoing formation programs will improve and participation in such programs will increase, with the goal of establishing a culture of support and continuous development for all priests and religious.

5.6 Summary

In summary, the Council submits:

- (i) Seminary formation has changed significantly since the 1980's in Australia with the introduction of better screening and psychological testing procedures.
- (ii) Although human development programs are now a compulsory feature of seminary training there is a need for consistency and quality control of their applications.
- (iii) Standards of educational outcomes should be developed for all seminaries that operate in Australia.
- (iv) Standards need to be established that direct the level of on-going formation clergy and religious are provided throughout the course of their active service life.



6 Canon Law

The Commission, through its case studies and private roundtables, has inquired into the interface between canon law and civil law. The Council has provided expert opinion on this and related matters through the statement by Dr Rodger Austin.

Specifically that opinion covered the areas of:

- (a) the relationship between canon law and civil law,
- (b) the canonical governance of Church authorities,
- (c) the interpretation and application of canon law,
- (d) what canon law has to say about the delict of sexual abuse of minors,
- (e) the obligation of clerics to observe celibacy,
- (f) canon law provisions and instructions of the Holy Office concerning responding to sexual abuse of minors by clerics,
- (g) matters concerned with the maintenance of confidentiality,
- (h) the canonical status of Towards Healing,
- (i) loss of the clerical state,
- (j) canonical considerations around reporting of child sexual abuse to civil authorities, and
- (k) the Sacrament of Penance.

As a consequence the Council submits the following over the role canon law has played in the handling of child sexual abuse cases in Australia.

- i. There were no Church laws or other legal requirements that either prohibited or encumbered bishops from complying with civil laws in regard to reporting priest offenders of child sexual abuse to civil authorities.
- ii. The exercise of the power of governance in the internal forum did not apply to child sexual abuse cases when managing the reporting of priest offenders to civil authorities.
- iii. There are no Church laws that prescribe the concealment of details of priest offenders from the investigative or legal requirements of civil authorities.
- iv. The laws of the Church regulating the retention of child sexual abuse documents in the secret archive of a diocese do not prohibit civil authorities obtaining access to these documents in accordance with civil laws.
- v. The provisions of *Crimen Sollicitationis* had no practical effect on Australian bishops in their obligations under civil law to report priest offenders to the police.



- vi. The provisions of *Crimen Sollicitationis* that obliged confidentiality of those involved in an ecclesiastical process regarding child sexual abuse did not preclude the passing of information to civil authorities either before or after the process.
- vii. A victim of child sexual abuse by a priest offender was free to go to the police at any stage of an ecclesiastical process, either before, during or after that process had concluded.
- viii. The obligation of pontifical secret/confidentiality applicable to the matters dealt with by the departments of the Roman Curia did not, and does not, amount to a concealment of information from civil authorities when providing such information is required by civil laws.



7 Participation of children in the Sacrament of Reconciliation

7.1 Introduction

This section of the submission responds to a request the Royal Commission made for archbishops, certain bishops and certain leaders of religious orders to provide information about the participation of children in the sacrament of reconciliation. In response to this request the Council surveyed archdioceses and dioceses as to the practices followed. Some 20 of them responded. The answers provided by the archdioceses and dioceses are organised below under the particular topics concerning administration of the sacrament to children on which the Royal Commission sought information.

It is convenient first to say something about the different rites of the sacrament and the extent to which preparation for reception of the sacrament is parish-based or school-based.

7.2 Key Understandings of the Sacrament of Reconciliation

Although 'Confession' is the popular name for this sacrament, strictly speaking the Church refers not to the 'Sacrament of Confession' but to the Sacrament of Reconciliation (and/ or Penance) because the act of 'confessing ones' sins' is only *one* element in the sacrament. A proper understanding of the 'seal of confession' presupposes an accurate understanding of the Sacrament of Reconciliation as a whole.

Like the other sacraments, the celebration of the Sacrament of Reconciliation is a religious ritual which for the believer both symbolises and effects an experience of God's grace, here the grace of forgiveness: the actions of the penitent (the person confessing) and the priest (the minister speaking God's word of forgiveness) together constitute the sacramental event. It follows that a genuine desire for forgiveness and an intention to amend one's life are essential to the integrity of the sacrament and a prerequisite for the priest's words of 'absolution' and with the appointing of a suitable 'penance' – which should include restitution for any injustice that has been done (which, in turn, might require surrendering oneself to the police). It is because the Sacrament of Reconciliation touches so intimately upon a person's relationship with God and their own moral integrity, that the Church holds that the seal of confession is inviolable. Current legal protections of the 'seal of confession' accord with the fundamental human right freely to practice one's religion.

Moreover in the Sacrament of Confession the penitent is effectively speaking to God. The priest is not personally forgiving sin, God is forgiving sin. The intimacy of this act is important to understand. Requiring disclosure of the content of a confession is therefore akin to requiring under compulsion of law, disclosure of the inner thoughts of a person, their private communication with God. So interference with this relationship would be akin to abrogation of the right of an accused person to remain silent. This is why the seal of confession is so fundamental to Catholics and why the canon law provides that:



The sacramental seal is inviolable. Accordingly, it is absolutely wrong for a confessor in any way to betray the penitent, for any reason whatsoever, by word or in any fashion.¹⁴¹

The confessor is wholly forbidden to use knowledge acquired in the confession to the detriment of the penitent even when all danger of disclosure is excluded.¹⁴²

Accordingly, if a person sought to manipulate the sacrament – e.g. by confessing their sin to a superior in order to secure that person's silence – he or she would thereby render the sacrament invalid. Indeed, Canon law holds that a superior, eg. A bishop (or rector of a seminary) should not hear the confession of one of his priests (or seminarians). In addition, canon law forbids a person from celebrating the sacrament and absolving his accomplice in sin.

A proper understanding of the Sacrament of Penance also highlights its difference from spiritual direction and counselling – which are other contexts in which the revelation or 'confession' of one's sins might occur.

Thus, it is only when the Sacrament of Penance is being celebrated that the sacramental seal of confession arises and is inviolable,¹⁴³ such that a priest is forbidden ever to betray the confession of a penitent. Importantly this makes a distinction between conversations between a priest and a penitent prior to the commencement of the sacrament and those that occur during the administering of the sacrament.

This understanding of the act of confession within the Sacrament of Penance helps to explain why most priests will say that over many years of priesthood they have never heard a priest (or anyone else) confess to sexually abusing a minor. Perpetrators typically do not regard their actions as sinful or wrong, and/or they realise they are unwilling or unable to desist. Unless there is genuine repentance and an intention to amend one's life and make restitution in accord with the requirements of the criminal law, the celebration of the Sacrament of Reconciliation (including the confession of one's wrongdoing) does not make sense. In addition, if it is supposed that a perpetrator of abuse might seek both to receive forgiveness in the Sacrament and to continue to abuse, such a person would presumably not reveal their identity when making their confession.

Finally, it is important to distinguish the 'confession of sins' from the place where it takes place, which is often called the 'confessional'.

7.3 Protection of the Seal in the Common Law World

The Council submits that the Commission should not make any recommendation that would interfere with the pastoral and ecclesial aspects of the seal of confession because it would be futile to do so. Catholicism is a worldwide Church and this sacrament is celebrated throughout the world. The Australian Church has no power to change the seal of its own volition. That could only be done by an act of the Magisterium affecting Catholic practice in all parts of the world. The Magisterium is not subject to the jurisdiction of an administrative enquiry established by an individual, albeit sovereign, government. For reasons explained below, the Council also submits that the Commission ought not to make any recommendations abrogating civil law protections attaching to the seal of the confession.

¹⁴¹ Canon 982.

¹⁴² Canon 984.

¹⁴³ Canon 983 §1.



The seal of the sacrament of confession is protected around the common law world. The first religious freedom statute in the world was the 1828 New York statute passed to clarify the legal position after two ambiguous decisions. This New York statute provided the model from which all subsequent statutes have been developed. It read:

No minister of the gospel, or priest of any denomination whatsoever, shall be allowed to disclose any confession made to him in his professional character, in the course of discipline enjoined by the rules or practice of such denomination.¹⁴⁴

By 1963 forty-four states of the United States had enacted religious confession privilege statutes.¹⁴⁵ During the century after the first New York statute was passed in 1828 it began to spread.¹⁴⁶ Wigmore's first edition in 1904 records that twenty-five states had such statutes.¹⁴⁷ Four additional states passed such statutes by 1938.¹⁴⁸ There was an upsurge in interest between 1955 and 1963, with new states passing such statutes for the first time, and many states broadening their existing statutes.¹⁴⁹ The experience of the war and of the Holocaust in particular and the Cold War appear to have been among the factors which prompted these changes.¹⁵⁰

In 1885 New Zealand became the first jurisdiction in the British Commonwealth to pass a religious confession privilege statute.¹⁵¹ This reform occurred four years after Sir George Jessel MR's obiter statements in *Wheeler v Le Marchant*¹⁵² to the effect that there was no religious confession privilege at common law. Section 7 of the Evidence Further Amendment Act 1885 reads like a legislative response to correct an error, in much the same way as the first religious confession privilege statute in New York in 1828,¹⁵³ is said to have been passed to correct the error.¹⁵⁴ In *The People v Christian Smith*¹⁵⁵ in 1817. From its passing until 1983, when the New Zealand Court of Appeal considered the meaning of s 31 of the Evidence Amendment Act 1980, there is no reported case which considered or interpreted the statute though it has been amended three times since¹⁵⁶ and was completely rewritten as a part of the completely new Evidence Act passed in 2006.

¹⁴⁴ N.Y. Revised Statutes, 1828, Pt. 3, c.7. tit. 3. §72.

¹⁴⁵ Wright, CA, and Graham, KW, *Federal Practice and Procedure: Evidence*, (Wright and Graham) (3rd ed, St Paul Minnesota, West Publishing Co, 1992), § 5612, 48.

¹⁴⁶ *Idem*.

¹⁴⁷ Wigmore. *A Treatise on the Anglo-American System of Evidence in trials at common law: including the statutes and judicial decisions of all jurisdictions of the United States and Canada*, (Boston, Little Brown, 1904)

¹⁴⁸ Wright and Graham, 47-49.

¹⁴⁹ *Ibid*, 49.

¹⁵⁰ *Idem*.

¹⁵¹ The first New Zealand religious confession privilege was enacted in the *Evidence Further Amendment Act 1885*, s 7 (49 Vict No 15).

¹⁵² *Wheeler v LeMarchant* (1881) 17 Ch D 675.

¹⁵³ Revised Statutes of N.Y. (1828), Pt. 3. c.7.tit.3 §72.

¹⁵⁴ 'Privileged Communications to Clergymen', *The Catholic Lawyer* 1 (1955) 198, 213. Walter J. Walsh however says that this view is an error. He says 'the New York evidentiary revisers'...under[stood] that in *Smith*, Judge Van Ness had approved the priest-penitent privileges announced in *Philips* and simply sought to give the *Philips* rule 'the sanction of legislative authority' ('The Priest-Penitent Privilege: An Hibernocentric Essay in Postcolonial Jurisprudence', *Indiana Law Journal* 80 (2005) 1037, 1055-1056 quoting in part Duer J, Butler, Benjamin F., and Spencer, John C., *The Revised Statute of the State of New York* (1828)).

¹⁵⁵ *The People v Smith*, 2 City Hall Recorder (Rogers) 77 (Richmond County Court 1817). Note however, that the judge admitted the testimony of the clergyman because he had no objection to providing the relevant evidence. Thus, if the New York statute was passed to correct the error of this trial judge, his error was in holding that a clergyman could waive a claim of privilege by a parishioner who had made confession. The 1828 New York statute stated that '[n]o minister of the gospel, or priest of any denomination whatsoever, shall be allowed to disclose any confessions made to him in his professional character' confirming that if religious confession privilege could be waived, it could only be waived by the parishioner. It is further noteworthy that the *Smith* jury acquitted the accused notwithstanding admission of the clergyman's testimony, despite the confessional evidence to effect that the accused had committed the murder.

¹⁵⁶ The *Evidence Amendment Act 1980*, s 31. The first New Zealand religious confession privilege was enacted in the *Evidence Further Amendment Act 1885*, s 7 (49 Vic. No. 15).

This statutory statement of the privilege was broadened 10 years later in the *Evidence Further Amendment Act 1895*, s 9(1) (59 Vict. No.10) with the requirement of religious discipline to read as follows restated though further adjusted in section 8 of the *Evidence Act 1908*



The 1885 statute followed the intent of the original New York statute by denying that a clergyman could waive religious confession privilege and testify in any proceedings, but it was cumbersome. It read:

7. The following confessions and communications shall be privileged, and shall not be admissible in evidence in any civil or criminal proceedings, except with the express consent of the person alleged to have made such confession or communication:-

(a) All confessions made to a minister of any religion or priest of any denomination whatsoever, in his professional character, in the course of discipline enjoined by the law or practice of such denomination, or under sanction thereof.

An 1895 amendment simplified the expression of the privilege considerably and made the privilege much more ecumenical by the removal of the original requirement that a confession needed to have been made as a part of the established discipline of an established church. The restated and broadened privilege read:

9.(1) No minister shall, without the consent of the person alleged to have made a confession, divulge in any proceeding any confession made to him in his professional character.

Section 8 of the *Evidence Act* of 1908 which restated the New Zealand evidence code completely, changed the way the privilege was expressed yet again, but only to state it affirmatively. This time the privilege was stated as follows:

8. **Communications to clergymen....** – (1) A minister shall not divulge in any proceeding any confession made to him in his professional character, except with the consent of the person who made such confession.

The only change made by the *Evidence Amendment Act 1980*, was to substitute the word 'disclose' for the word 'divulge' which had endured since 1895. It appears that the reason for this change was simply to keep the expression consistent with the rest of the amendment which referred to 'disclosures' of evidence as a matter of style which again makes it difficult to understand why there was a need for this amendment at all.

But the *Evidence Act 2006*, moved in a completely new direction. It created a broad and unarguably ecumenical privilege and states the current law thus:

58 Privilege for communications with ministers of religion

(1) A person has a privilege in respect of any communication between that person and a minister of religion if the communication was—

(a) made in confidence to or by the minister in the minister's capacity as a minister of religion; and

(b) made for the purpose of the person obtaining or receiving from the minister religious or spiritual advice, benefit, or comfort.

(2) A person is a minister of religion for the purposes of this section if the person has a status within a church or other religious or spiritual community that requires or calls for that person—



- (a) to receive confidential communications of the kind described in subsection (1); and
- (b) to respond with religious or spiritual advice, benefit, or comfort.

The privilege has thus been recast as a religious communications privilege rather than a religious confession privilege.

Australia's first religious confession privilege statute came in Victoria five years after New Zealand's first statute (*Evidence Act 1890*, c 55 – 54 Vict. No. 1088), Tasmania followed in 1910 (*Evidence Act 1910*, s 96 – 1 George V. No. 20), and the Northern Territory in 1939 (*Evidence Ordinances 1939*, section 12(1)). Then there was a lull until 1989 when New South Wales' first statute¹⁵⁷ was passed by the parliament in response to the imprisonment of a priest for contempt in Lithgow following a murder on New Year's Eve 1988.¹⁵⁸ The New South Wales statute was amended in 1995 and became the template for the provision in Australia's Uniform Evidence Act which has spread across Australia since.¹⁵⁹ Section 127 of the NSW and Commonwealth *Evidence Acts* provides:

A person who is or was a member of the clergy of any church or religious denomination is entitled to refuse to divulge that a religious was made, or the contents of a religious confession made, to the person when a member of the clergy....

In this section: '*religious confession*' means a confession made by a person to a member of the clergy in the member's professional capacity according to the ritual of the church or religious denomination concerned.

There are seven jurisdictions with statutes confirming such privilege¹⁶⁰ and three without.¹⁶¹ Even though the previous statutes expressed the privilege in different ways,¹⁶² they feature an unambiguous consistent theme of recognition. In light of the High Court's confirmation that analogies can and should be drawn between statute law and common law to keep the law of Australia as consistent and seamless as possible,¹⁶³ in the absence of any statutory instrument abrogating religious confession privilege, a decision in the High Court of Australia denying a religious confession privilege of some kind at common law, seems unlikely. There is a solid basis for arguing that a common law religious confession privilege would be recognised in Australia if that subject were litigated in a jurisdiction without a relevant statute in light of:

¹⁵⁷ The first religious confession privilege provision in statute in New South Wales was the *Evidence (Religious Confessions) Amendment Act 1989* which inserted section 10(6) into the New South Wales *Evidence Act 1898*. That provision was superseded by the *Evidence Act 1995*, s 127 (No 25 of 1995).

¹⁵⁸ An unreported case which was celebrated in the NSW Press because Father Mark McGuigan a Catholic priest in Lithgow, refused to tell whether or not he had heard a confession from Pamela Young, who was charged with murdering her husband on New Years Eve in 1988. The Daily Mirror reported that Ken Horler QC had opined that the Priest should be charged with contempt but that Attorney-General John Dowd had stepped in to prevent such a charge being laid (Daily Mirror (NSW) 18 August 1988).

¹⁵⁹ *Evidence Act 1995* (Cth); *Evidence Act 2001* (Tas); *Evidence Act 2008* (Vic); *Evidence Act 2011* (ACT); *Evidence (National Uniform Legislation) Act 2011* (NT)

¹⁶⁰ Religious confession privileges were first passed in the following states on the dates indicated: Victoria (1890), Tasmania (1910), Northern Territory (1939), New South Wales (1989), Commonwealth (1995), Australian Capital Territory (1995), Norfolk Island (2004).

¹⁶¹ Queensland, South Australia and Western Australia.

¹⁶² The statutory provisions operative in New South Wales, the Australian Capital Territory, and the Commonwealth have been identical since 1995. Tasmania adopted the Uniform *Evidence Act* including the identical religious confession privilege provision (s 127) and it was proclaimed effective from 1 July 2002 (*Evidence Act 76/2001*). Norfolk Island adopted the same legislation in 2004, Victoria in 2008, and the Northern Territory in 2011. The Victorian Law Reform Commission has also observed that, '[a] Parliamentary Committee of Western Australia and the WALRC' have 'recommended the adoption of the UEA' and that the 'Queensland LRC appears to be moving in the same direction, though, perhaps, not as clearly' (www.nt.gov.au/justice/docs/lawmake/discussion_paper_uniform_evidence_act.pdf p 3, site last visited June 27, 2006).

¹⁶³ *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520.



- (a) The judicial statements to effect that common law privileges or immunities¹⁶⁴ cannot be abrogated without clear and unambiguous statutory words. These statements may protect common law religious confession privilege if a court could be convinced that religious confession privilege was indeed well established.
- (b) The duration of the existence of religious confession privilege statutes in Victoria,¹⁶⁵ Tasmania,¹⁶⁶ the Northern Territory,¹⁶⁷ New South Wales¹⁶⁸ and the Commonwealth¹⁶⁹ which exert 'gravitational pull'¹⁷⁰ in Australian jurisdictions without such statutes.¹⁷¹
- (c) The notion that Australia's commitment to various international human rights instruments which affirm constitutionally established freedom of religious belief in Australia may provide some protection for religious confession privilege in the future.

There are a range of explanations for the retention of protections of this kind but one is futility and the risk of damaging the respect due to the court system which would arise if, for example, a Catholic priest (rather than defying his Church and incurring the penalty of excommunication) refused to disclose the contents of a confession and was jailed for contempt of court as a consequence.¹⁷²

7.4 Do child abusers confess their child sexual assault?

While elements of the popular press have sensationalized this issue, for example by saying that religious 'confession was used to absolve paedophile priests and keep church problems out of the public eye',¹⁷³ many professionals doubt that child abusers make much use of confession at all because confession is inconsistent with the underlying psychology of any child abuser. During evidence given before the Royal Commission into Institutional Responses to Child Abuse, on 27 May 2015, infamous child abuser Gerald Ridsdale 'said he never told anyone about his sexual abuse of boys, even during confession, because the 'overriding fear would have been losing the priesthood.'¹⁷⁴ Other authors point out that the idea that people who are sexually attracted to

¹⁶⁴ Particularly in *Daniels Corporation v ACCC* (2002) 192 ALR 561 and in *R v Young* (1999) 46 NSWLR 681.

¹⁶⁵ The original Victorian statutory religious confession privilege was created by the *Evidence Act 1890*, c 55, 54 Vict No 1088. The current statute is the *Evidence Act 1958*, s 28(1).

¹⁶⁶ The original Tasmanian statutory religious confession privilege was the *Evidence Act 1910*, section 96. However, Tasmania adopted the Uniform Commonwealth *Evidence Act* in 2001 (Tasmanian *Evidence Act 76/2001*) and it was proclaimed effective 1 July 2002.

¹⁶⁷ The *Evidence Ordinances 1939*, s12.

¹⁶⁸ The *Evidence (Religious Confessions) Amendment Act 1989* inserted section 10(6) into the New South Wales *Evidence Act 1898*. The current provision is s127 of the New South Wales *Evidence Act 1995*.

¹⁶⁹ The current provision is s127 of the Commonwealth *Evidence Act 1995*. The Uniform Commonwealth *Evidence Act* was adopted by the Australian Capital Territory in 1995, by Tasmania in 2001 and Norfolk Island in 2004.

¹⁷⁰ The quoted words are original to Mason P in *Akins v Abigroup Ltd* (1998) 43 NSWLR 539, 547-548. Both Beazley, JA and James, J reference the concept in discussion of a proposed common law sexual assault communications privilege in *R v Young* (1999) 46 NSWLR 681, respectively at 719, [205] and 743, [326].

¹⁷¹ Queensland, South Australia and Western Australia.

¹⁷² CCC [1467], Seward Reese, *Confidential Communications to the Clergy*, (1963) 24 *Ohio State Law Journal* 1, 60-61; *R v Gruenke* [1991] 3 SCR 263, 303-304. This is not to suggest that futility is the only reason for the protection of religious confession privilege as there are a number of justifications for that protection: see

Reese at 80-87. See also A. Keith Thompson, 'Religious Confession Privilege at Common Law: An Historical Analysis', PhD Thesis Murdoch University, August 2006, 220 available at <http://researchrepository.murdoch.edu.au/358/2/02Whole.pdf>, A. Keith Thompson *Religious Confession Privilege and Common Law* (Martinus Nijhoff, 2011) 340-341 and Gregory J Zubacz, *The Seal of Confession and Canadian law* (Wilson and Lafleur, 2009) 102-106

¹⁷³ ABC radio report, (accessible at <http://www.abc.net.au/radionational/programs/latenightlive/5375766>) quoting Cornwell and referring to his book, *The Dark Box* Note however that in the book, the reference is to 1500 confessional visits to about thirty different priests over a twenty-five year period (*The Dark Box*, 189).

¹⁷⁴ <http://www.news.com.au/national/courts-law/vile-paedophile-gerald-ridsdale-will-give-evidence-at-royal-commission-today/news-story/63054c92d762e9c3d53629b8da59ccab>.



children would tell anyone of their sexual desires is unbelievable when such tendencies are so widely detested and punished in society.¹⁷⁵

In his book, *The Dark Box*, John Cornwell suggests that priests did confess child abuse but in such a way that the priest hearing the confession would never have suspected that the sin confessed involved the sexual abuse by a priest of a child. He wrote:

'Priests who have served prison sentences for sexual crimes admit that they would seek out confessors to secure absolution while concealing the ages of their 'sexual partners' and their own priestly identities.'¹⁷⁶

Other evidence from psychology suggests that child abusers are unlikely to confess their sins because they do not perceive that they are participating in what society has labeled as child abuse; rather they are developing special relationships with children that develop and strengthen those children for the future and may even protect them in the present.¹⁷⁷ There are also contrary views that suggest child abusers who were themselves abused as children, abuse others in a search for the control that they lacked when they were abused as children.¹⁷⁸

There is no empirical evidence that conclusively answers the question whether child abusers confess, but anecdotal evidence and analogy tend to refute (rather than support) the thesis that absolution in the confessional contributes to the repetition of child abuse offences. For example, in John Cornwell's anecdotal story of the priest who confessed 1400 times to 32 different priests,¹⁷⁹ Cornwell went on to explain that these confessions were purposely disguised by the abuser so that the priests receiving them did not recognize them as involving children, and because so many different priests were consulted. Such manipulation of a rite which Cornwell acknowledges serves an essential function in society, does not discredit the rite so much as it underlines how deviously child abusers work to perpetrate their crimes and then to cover them. Confession is not a licence for a child sex abuser to continue to abuse children. In confession, as mentioned above a penitent must be truly penitent to obtain the forgiveness of sins by God offered by the sacrament:

'In order that the faithful may receive the saving remedy of the sacrament of penance, they must be so disposed that, repudiating the sins they have committed and having the purpose of amending their lives, they turn back to God.'¹⁸⁰

The penitent must also have the definite intention not to sin again in order to gain forgiveness through the sacrament. As the Catechism explains:

'Among the penitent's acts contrition occupies first place. Contrition is 'sorrow of the soul and detestation for the sin committed, together with the resolution not to sin again.'¹⁸¹

Cornwell acknowledges that all the Catholic versions of the sacrament of confession include the requirement that the person confessing forsake the sin and make reparation. In the case of the

¹⁷⁵ <https://psmag.com/facing-disturbing-truths-about-pedophilia-could-help-us-keep-kids-safer-edc3379c43ae#9un609mmz>.

¹⁷⁶ John Cornwell, *The Dark Box*, Basic Books, New York, 2014, xxii, citing Marie Keenan, *Child Sexual Abuse and the Catholic Church: Gender, Power, and Organizational Culture* (italics), Oxford, 2012, 162-169.

¹⁷⁷ http://www.chabad.org/thejewishwoman/article_cdo/aid/1707466/jewish/Things-You-Need-to-Know-About-Child-Molesters.htm where the author says that many predators believe that what they are doing is actually 'healthy' for the child.

¹⁷⁸ <https://neuroanthropology.net/2010/05/10/inside-the-mind-of-a-pedophile/>

¹⁷⁹ ABC above n 85 quoting John Cornwell, *The Dark Box*. Basic Books, New York, 2014, xvii

¹⁸⁰ Canon 987.

¹⁸¹ CCC [1451] (references omitted)



sin of child sexual abuse which is also a crime, if the penitent had confessed to that sin there are few priests who would not include the strongest of encouragement to the penitent to go to the police as a part of the reparation process.

Cornwell also acknowledges that Church doctrine has always held that a confession made without the intention of relinquishing the sin has no efficacy and even though absolution may have been pronounced, it is without validity in such a case. Child sexual abusers who attend a confessional (it would be wrong to refer to them as participating in the sacrament) deliberately orchestrating confessions in which they consciously avoided recounting their sins demonstrate the capacity for self-deception of child sexual because in doing so they have deliberately sought to pervert an essential part of the sacrament.¹⁸²

7.5 Is confession beneficial to society?

The fact that a Catholic confession must be verbal provides an opportunity for priests to hear of actions of penitents which might not otherwise be disclosed to anyone. In the sacrament, the priest does not purport to and does not, act in any way on behalf of the State or forgive the crimes of a criminal vis a vis the State. Criminals are no less liable to imprisonment or any other form of State punishment for crimes which they have committed whether they have confessed them to a priest or not. This is just as true, as when/if a criminal from another faith tradition who made an honest confession directly to God within the theology of that faith tradition would still remain liable for criminal prosecution by the State for that crime. Catholics are not confused about the difference between the laws of the Church and the laws of the State.

Priests hearing confession are not required or expected to be silent sponges. On the contrary. Where a penitent has committed sins which have injured another confession is not enough, satisfaction is required. As the Catechism states:

‘Many sins wrong our neighbour. One must do what is possible in order to repair the harm (eg. return stolen goods, restore the restoration of someone slandered, pay compensation for injuries).’¹⁸³

Child molesters have a great capacity for self-deception and engage in all kinds of minimisation and rationalisation to excuse for their sinful behaviour.¹⁸⁴ This makes it unlikely that they would seek to confess, what to others obviously are and what the Catechism and Canon Law clearly recognise, as grievous mortal sins. As the Royal Commission heard in the evidence of Gerard Ridsdale, for example, he never confessed his sexual abuse in confession. In the unlikely event that a child sex abuser were to disclose his or her crimes to a priest in confession, the priest would have the opportunity of encouraging that penitent to turn themselves in to the police. Without confession – for example, in a faith tradition in which sins are forgiven by silent admonition – such an opportunity may never present. Rather than being somehow causative of child sexual abuse, the Catholic sacrament of confession, provides an opportunity (in what are likely to be extremely rare instances of a child sexual abuser disclosing his or her crimes in confession) to encourage that abuser to come forward.

Were the seal of confession not protected by Canon Law and by civil law, penitents would not be able to avail themselves of the sacrament. As noted above, it seems very unlikely that a child

¹⁸² CCC [1456]

¹⁸³ CCC [1459]

¹⁸⁴ Parkinson, P., op. cit.



molester would seek the sacrament of confession and doing so in such a way as to disclose the fact that they were confessing to child sexual assault, but the prospects of perpetrators doing so if the seal of confession were not inviolate and respected by law must be nil. The sacrament of confession provides an opportunity for a priest to encourage an abuser to come forward. Without the seal of confession applying even in this most heinous of crimes, this opportunity, likely to arise rarely admittedly, would be lost. For these reasons, there is no basis for the view that the seal of confession has contributed in any way to the occurrence of child sexual abuse.

The Council submits that a religious confession should remain a privileged communication under the law in Australia.

7.6 Pastoral Practice and Protocols

The Sacrament of Reconciliation is normally celebrated in the place designated in the local church (the 'confessional'). The Code of Canon Law prescribes that 'confessionals... are located in an open place, and fitted with a fixed grille between penitent and the confessor'.¹⁸⁵ Various styles of confessional are to be found, ranging from a booth in which the priest is located with windows which the penitent may approach, to small adjoined cubicles with a grilled window allowing the penitent to speak to the priest. In many churches today there are Reconciliation rooms which allow the penitent the choice between remaining anonymous, kneeling behind a screen, or sitting and speaking with the priest directly, usually with a table between them. These rooms often have glass doors. In the case of children, the custom in most parishes today is for confessions to be heard not in a reconciliation room, but in an open place in the church which is clearly visible to teachers, parents and others in the congregation, while distant enough to allow the penitent to speak confidentially to the priest. *Integrity in Ministry* states that out of concern for the dignity and safety of children and youth, clergy hearing the confession of a child should ensure whenever reasonably possible that another adult is present or close.¹⁸⁶ Also, *Integrity in Ministry* affirms the penitent's right to privacy and a safe environment when celebrating this sacrament.¹⁸⁷ Consequently, an operational principle that calls for the sacrament to be conducted with children at least in the line of sight of an adult must apply.

These provisions and customs highlight several key features of the way the Sacrament of Reconciliation should be celebrated:

- with a physical separation between priest and penitent,
- with the right to remain anonymous,
- with a clear demarcation in time and space between what occurs within the sacrament, and what occurs outside of the sacrament (and its seal of confession), and
- with the pastoral sensitivity that respecting professional boundary issues and child safety require.

Accordingly, when approached in the presbytery to celebrate the Sacrament of Reconciliation the priest, where possible and appropriate, should direct the penitent to the church and vest in alb and stole for the celebration of the sacrament.

¹⁸⁵ Canon 964 §2.

¹⁸⁶ *Integrity in Ministry* [1.5].

¹⁸⁷ *Integrity in Ministry* [2.3].



Likewise, the priest will use the ritual and prayers to clearly distinguish when the sacramental celebration begins and ends. This establishes that the exchange between penitent and confessor is 'under the seal' (or belongs to the 'internal forum' by contrast to the public, external forum). Thus in the case of a person seeking advice, the priest should make clear that their conversation is not under the seal of confession, even if it happens to be taking place in the confessional or the reconciliation room.

In relation to sexual abuse the following scenarios might be considered.

- (i) If a child entered a confessional with no intention of confessing sins but merely to seek counselling or advice from the priest about sexual abuse that had been perpetrated on him/her by another person, with the mistaken belief that whatever was discussed within the confessional was under the seal of the sacrament, the priest should immediately instruct the child that mere counselling was not under the seal of the sacrament because the actual sacrament had not formally commenced. Then he should counsel the child to notify the required civil authority and even offer to accompany the child to make that report, or even offer to do this on the child's behalf.
- (ii) A person begins to confess that they have sexually abused a minor. (Note, a person might also confess to abuse of an adult e.g. Rape or domestic violence – or some other crime. Analogous issues will arise). As explained, the integrity of the sacrament requires a person is genuinely repentant and seeks to make amendment and restitution: so if it is possible, the priest should immediately halt the confession and establish whether the person is repentant and willing to go to the police, preferably accompanied by the priest. If they are, this should occur before the sacrament is continued (i.e. Absolution is postponed). If the priest has not been able to halt the confession, and the abuse has been disclosed, he should make it a condition of continuing the sacrament and concluding with the prayer of forgiveness, that the person will surrender to the police as soon as possible. Without this promise, absolution should be withheld. But insofar as the person was making a genuine confession (and not seeking to manipulate the sacrament), the priest will be bound by the seal and cannot disclose what he has heard. In the course of their personal confession an individual discloses they have *suffered* abuse, with or without mention of who is the abuser. The priest is unable to disclose this information due to the seal of the sacrament. All he can do is to urge the penitent to go to the police or to someone who can help them, such as a parent or teacher, or arrange to discuss the matter outside of the confession. It is also important to note that the penitent might not be telling the truth, so that in any case, the priest ought not to act on this information.
- (iii) Likewise, if information arises within the celebration of the sacrament that pertains to another person being subject to sexual abuse or being a perpetrator, the priest should urge the penitent to go to the police, or to someone who can help them, such as a parent or teacher, or arrange to discuss the matter outside of the confession. Again the qualification as to the truthfulness of this such information is relevant.
- (iv) Bringing information from a sacramental confession that is under the seal into the external forum raises several issues. First, the priest/confessor may under no circumstances divulge information learned under the seal of the sacrament.



Second, the penitent should be urged to bring this information into the external forum, e.g. by arranging to speak about it outside the sacrament. At the meeting in the external forum following on the sacrament of confession the penitent must outline the matter before the confessor can engage in discussion. To do otherwise is to infringe the sacramental seal. For this reason, it is better the person is encouraged to speak with someone else, other than the priest, in order to preserve the integrity of the seal of confession.

- (v) Finally, to safeguard the integrity of sacramental confession a confessor should not explicitly acknowledge whether an individual has or has not made their sacramental confession to him. Although stating the mere fact whether someone has made a sacramental confession does not strictly speaking 'break the seal' it is likely to be prejudicial to the penitent, and to endanger respect for the seal.

7.7 The Sacrament of Reconciliation

There are three rites of Reconciliation in the Sacrament of Penance available for use in the church. The First Rite and Second Rite are usually used in the school context.

The priest, as the celebrant, can decide which rite will be offered.

First Rite

Reconciliation for Individual Penitents, or 'First Rite of Reconciliation', is celebrated by an individual in the presence of the priest. The place where this happens is usually a Reconciliation Room (what used to be called a 'Confessional'). A bible, a crucifix and candle are placed on a table in the centre of the space. The person may choose to sit facing the priest or to sit behind a screen and remain anonymous.

The liturgy begins with a greeting followed by words of encouragement from the priest. After short reading from scripture, the person reflects on his/her circumstances and confesses his/her sins and seeks reconciliation. The priest offers advice and gives a penance that is meant to help in starting a new life and to remedy any weakness. The priest pronounces absolution and the rite concludes with a short thanksgiving.

Second Rite

Most dioceses note the 'Second Rite of Reconciliation' (that is, participation as part of the community) best meets the needs and abilities of the young child. This Rite places emphasis upon the communal dimension of the Sacrament and this, coupled with the fact the Church law does not require a child to offer a detailed list of their 'errors', provides a more relaxed mode of seeking forgiveness.

The second form of the sacrament of penance is a communal liturgical celebration from beginning to end.

It begins with the community listening to the word of God.

The homily emphasizes our need for repentance and the infinite mercy of God. During the examination of conscience, the assembly reflects together on where and how they have fallen short of their baptismal commitment to follow Christ.



The individual confession and absolution that follows is communal too in that the penitents approach the confessors in full view of all present. The priests stand at appropriate points around the worship space in such a way that penitents can be seen but not heard by others. This is easily arranged in most churches. Those who wish to confess their sins approach one of the priests. While no restriction is placed on the individual's confession, good manners and common sense dictate that people limit the time they spend with confessors. More time for integral confession and spiritual guidance is available at the first rite.

Third Rite

The 'Third Rite of Reconciliation' follows the same pattern as the Second Rite but does not include individual confession and reconciliation. Instead there is a communal prayer of confession and general absolution. The use of this form is restricted to emergencies and other special circumstances.

7.8 Parish based or school based sacramental program

Some dioceses have a parish school-based approach to preparation for the sacrament of reconciliation, with the priests and the school religious education coordinator, volunteers and parents involved. Others opt for a parish-based approach supported by the school.

The Diocese of Armidale notes the preparation for children who attend non Catholic schools is parish based. Receipt of Reconciliation is parish-based, regardless of the school attended.

The Diocese of Broken Bay notes that preparation is largely parish-based and that schools are involved to varying degrees in individual parishes. Parish schools actively promote and cooperate in the program of preparation, though responsibility for the program belongs to the parish rather than the school.

Other dioceses which take a parish-based approach assisted by the school, include Toowoomba, Rockhampton, Hobart, Ballarat, Lismore, Wollongong and Perth.

The Archdiocese of Sydney notes that both systems are used, and increasingly, parishes are encouraged to make the preparation and celebrating of the sacrament parish based, hence involving the parents in the preparation program.

The Diocese of Darwin notes that each parish is free to decide whether the preparation is conducted mainly in the school with the help of the parish priest and staff, or whether the preparation might be conducted in the parish facility with the help and presence of the school staff.

In the dioceses of Sandhurst, Armidale, Wagga Wagga and Port Pirie preparation is usually school-based.

7.9 Policies or protocols that govern the participation of children in reconciliation

Many but not all dioceses have specific policies in place regarding the participation of children in reconciliation. These are either stand-alone policies, or policies which exist in the diocese's



broader child protection policies. Some are quite detailed and provide direct advice. Some are broad and provide overarching principles.

Other dioceses have local procedures which operate without formal policy. The policy of a number of dioceses notes that it is an option for children to approach the priest in the confessional or in the open.

The Archbishop of Melbourne recently issued an instruction to parish priests and principals of primary and secondary schools in the Archdiocese that, in light of the special circumstances arising from the implementation of the Child Safe Standards in Victoria, the sacrament in schools is to be celebrated in a church in an open setting and in full view of all participants, who are supervised by staff. The parish priest and school staff are to ensure that there is a direct line of sight to the individual penitent.¹⁸⁸

7.10 Extent to which participation in reconciliation is voluntary or compulsory

Almost all dioceses and archdioceses note that participation in reconciliation is voluntary, in line with church teaching, specifically the Catechism:

‘160 To be human man’s response to God by faith must be free, and therefore nobody is to be forced to embrace the faith against his will. The act of faith is of its very nature a free act. God calls men to serve him in spirit and in truth. Consequently, they are bound to him in conscience, but not coerced. This fact received its fullest manifestation in Christ Jesus. Indeed, Christ invited people to faith and conversion, but never coerced them. For he bore witness to the truth but refused to use force to impose it on those who spoke against it. His kingdom grows by the love with which Christ, lifted up on the cross, draws men to himself.’

One diocese noted that First Confession it is a Catholic ‘rite of passage’ and not to participate would be part of a more general non-participation of the child’s family in the sacramental life of the Church. That diocese also noted that ongoing participation is entirely up to the child and the practice of the child’s family at scheduled times in a church.

Another diocese observed it would be uncommon for primary students to refuse to participate. Indeed they may not even know the voluntary nature of participating. It may be something they just do. Preparation is usually done at whole class level.

Only one diocese talked in terms of participation in the sacrament being generally compulsory for Catholic students, unless the child or the parents indicated they did not want to participate.

7.11 The extent to which permission is sought from parents or guardians before children participate in reconciliation

Some dioceses note that when parents enrol their children in a Catholic school parents or guardians are advised of the school and parish liturgical program and that newsletters during the year provide information on the liturgies and that therefore permission is implied.

A couple of dioceses note that participation is the child’s choice and it is therefore inappropriate to seek parental permission.

¹⁸⁸ CTJH.221.900001.0497, CTJH.221.90001.0498



Many dioceses note they have a specific enrolment process for the participation of children in the Sacrament, but there appears to be opt-out rather than an opt-in approach to parental permission in other dioceses. Most schools place notices in newsletters, parent information nights and so on.

One diocese notes that individual parishes deal with parental/guardian permission including enrolment in the catechesis process, but that there is currently no diocesan standard in this regard.

Another diocese notes that, for the preparation and participation of all the Sacraments of Initiation and including the Sacrament of Penance, the Bishop has directed that written permission is received from parents or guardian.

Yet another diocese notes that parents who are not of the Catholic faith, or parents who have reservations, are assured that their child will not be required to involve themselves in anything that is specifically Catholic, unless they approve.

7.12 The requirements or guidelines that apply to children attending individual reconciliation

Most dioceses note that children's reconciliation is held in an open place, with clear visibility, under the supervision of a teacher or parent/guardian. Some refer back to the policy that emphasises the importance of this practice.

Other dioceses note that the confessional, with the door open or closed, is an option.

The Diocese of Toowoomba notes that while the guiding principles recommend that it is 'desirable that children be introduced to the Sacrament of Reconciliation through the communal rite ('second rite'), there is currently no diocesan policy or guideline that specifies the location or supervision of children during individual reconciliation.

Bishop of Ballarat, Paul Bird wrote in a letter to clergy and parishes on 21 March 2016 that 'the sacrament should be celebrated in an open setting. Where there is a distinct confessional or reconciliation room, this should only be used if it is open to view from the outside, for example, through a glass door. Otherwise, the confession should be heard in an open area.'

As mentioned above, a similar instruction was issued by Archbishop Hart on 10 November 2016.

Another Victorian bishop, the Bishop of Sale, says that he has instructed all priests in the diocese to ensure that the Sacrament of Penance (Reconciliation) in Primary and Secondary Schools is celebrated in a Church in a setting that is open and in full view of all participants. His instruction says that it is expected that all participants are under the supervision and full view of school staff and that when the sacrament is celebrated in each parish of the Diocese, usually at the regularly advertised time, the same practice is to be adhered to. The instruction further states that it is expected that children are supervised by a parent or guardian.

One diocese observed that most clergy would prefer to hear confessions in sight of the gathering (eg, in a quiet space on the sanctuary of the church) but that other clergy would prefer to hear confessions in the privacy of the confessional because of their particular sacramental viewpoint. That diocese notes further that if the Sacrament is celebrated as First Rite, it would be most commonly heard in the confessional where the priest and the penitent would be alone, usually separated by a sliding window. The door would by tradition (and in recognition of the private



nature of the confession) be closed. By the nature of the sacrament, no one else could or would be present. Supervision by the teacher usually occurs in the body of the church where the class is assembled and the responsibility for such supervision lies with the teacher and school, given that every setting could be different.

The Archdiocese of Perth notes that priests in the Archdiocese are all aware of the requirements as outlined in *Integrity in Ministry*, which states that they are required to celebrate the Sacrament of Reconciliation in ways that respect a penitent's right to privacy and to a safe environment. They are encouraged to provide options for openness and visibility as far as possible whilst respecting the rights to privacy and anonymity.

7.13 The extent to which priests are required to have a working with children check

All dioceses and archdioceses report that they require priests to have a current working with children check or its equivalent (such as the Ochre Card in the Northern Territory).

7.14 Summary

In summary, the Council submits that a religious confession should remain a privileged communication under the law in Australia.

The Church leaders, indeed all in positions of responsibility in Church authorities, are acutely aware of their obligations to be vigilant in the protection of children and vulnerable people in all areas of the life and work of the Church, including the provision of opportunities for children to engage in the Sacrament of Reconciliation.



8 Policies for dealing with convicted perpetrators

The purpose of this chapter is to outline the policies, protocols or procedures that Church authorities use for dealing with convicted perpetrators and others against whom claims of child sexual abuse have been substantiated. The chapter covers those Church authorities who were asked by the Royal Commission to address in their statements prepared for the purpose of Case Study 50 their approach to the management of any member:

- who had been convicted of child sexual abuse,
- against whom an allegation of child sexual abuse had otherwise been substantiated, or
- who had admitted to a complaint of child sexual abuse.

8.1 Church Documents

Generally perpetrators are managed under the following Church documents:

Towards Healing

26. All persons are presumed innocent unless and until guilt is either admitted or determined in accordance with the requirements of the law governing their position. Proper consideration should be given to the importance of confidentiality in the handling of the complaint, particularly prior to the conclusion of an assessment. If Church personnel accused of abuse are asked to step aside from the office they hold while the matter is pending, it is to be clearly understood that they are on leave and that no admissions or guilt are implied by this fact. Every effort should be made to conclude inquiries as quickly as possible in relation to a person who has been asked to step aside from a position. Unless and until guilt has been admitted or proved, those accused should not be referred to as offenders or in any way treated as offenders.

27. If guilt has been admitted or proved, the response must be appropriate to the gravity of what has happened, while being consistent with the civil law or canon law which governs that person's position. Account will be taken of how serious was the violation of the integrity of the pastoral relationship and whether there is a likelihood that such behaviour could be repeated. Serious offenders, in particular those who have been found responsible for sexually abusing a child or young person, or whose record of abuse of adult pastoral relationships indicates that they could well engage in further sexual exploitation of vulnerable adults, will not be given back the power they have abused. Those who have made the best response to treatment recognise this themselves and realise that they can no longer return to ministry.

28. We accept that the Church and the community expect of us a serious and ongoing role in seeking to ensure that offenders are held accountable for what they have done, come to a true appreciation of the enduring harm they have caused, seek professional help, and do whatever is in their power to make amends.

29. In order to carry out this responsibility, Church Authorities need to have some contact with offenders and some form of influence over their conduct. In order to achieve change,



they need to be able to tell them that there can be forgiveness, by human beings as well as by God, and that change is possible.

42.3 If abuse is admitted, or an assessment under these procedures reaches the conclusion that on the basis of the findings of the assessment there are concerns about the person's suitability to be in a position of pastoral care, the Church Authority, in consultation with the Director of Professional Standards and the Consultative Panel, shall consider what action needs to be taken concerning the future ministry of the person, taking account of the degree of risk of further abuse and the seriousness of the violation of the integrity of the pastoral relationship. The Church Authority may commission such other professional reports or make other inquiries as are necessary to determine what action should be taken.

42.4 Where the offender is a current employee of the Church other than a cleric or religious, the offender's future must be determined in accordance with the applicable procedures of employment law.

42.5 If a cleric or religious has admitted to or been found guilty of abuse, the Church Authority shall, in person or through a delegate, meet with the offender to discuss honestly and openly the offender's future options. The offender may be accompanied by a support person and/or legal adviser. The discussion shall take into account the seriousness of the offence and all relevant circumstances. It is unfair to hold out to a serious offender any hope of a return to ministry when it is clear that this will not be possible. The decisions of the Church Authority as to future ministry of a cleric or religious are to be made in a manner that is not inconsistent with the provisions of Church law.

42.6 In making decisions on the future of a person found guilty of abuse, the Church Authority shall take such action as the situation and the seriousness of the offence demand. In relation to child abuse, the Church Authority shall be guided by the principle that no-one should be permitted to exercise a public ministry if doing so presents an unacceptable risk of abuse to children and young people. 42.7 As far as it is within its power to do so, the Church Authority shall require the offender to address the issue of reparation to the victim and to the Church community.

42.8 The Church Authority shall promptly communicate the outcomes in relation to an offender to the Director of Professional Standards.

*Normae De Gravioribus*¹⁸⁹ (Norms concerning the most serious crimes)

This 31-article document, promulgated by the Holy See on 15 July 2010, streamlines the process for dealing with priests who sexually abuse minors, as well as clarifying and updating other procedures and crimes handled by the Congregation for the Doctrine of the Faith. The document, much of whose content was already in force, was approved by Benedict XVI on 21 May 2010. It is a reform of the *Motu Proprio, Sacramentorum Sanctitatis Tutela*, promulgated 30 April 2001.

¹⁸⁹ Substantive Norms (2010), http://www.vatican.va/resources/resources_norme_en.html



8.2 Archdioceses and Dioceses

Archdiocese of Adelaide

Wherever a complaint of child sexual abuse is made against a cleric or member of the staff of the Archdiocese, the matter is reported to police (where the complainant consents). This either occurs through the South Australian Professional Standards Office or, where it is a teacher or staff of Catholic Education SA, by that office. In a case where a priest or other employee is accused of child sexual abuse, their faculties will be suspended or they will otherwise be asked to agree voluntarily to remain out of ministry until a final resolution of the matter is known, or if they are an employee they will be asked to absent themselves from contact with children or be suspended as required or in an appropriate case be subject to supervision.

Where a priest has been convicted of child sexual abuse, in accordance with the normal procedures, the Archdiocese would refer the matter to the Holy See for disposition in accordance with Canon Law and its exclusive competence to do so. The same applies in respect of persons who have either had a charge substantiated or who have admitted to the complaint. In all such cases the priest is asked to agree to stand aside from ministry or where they refuse they are compelled to do so.

The Archdiocese reports to the Congregation for the Doctrine of the Faith substantiated claims against current priests involving sexual abuse allegations.

Diocese of Ballarat

The Diocese reports to the police all complaints of alleged crimes by Church personnel.

The Diocese applies the procedures set out in *Towards Healing*. The accused may be required to stand down from the office they hold while an investigation is taking place. They may be excluded from all ministry or be limited to restricted and supervised ministry.

The Diocese applies paragraphs 42.5 to 42.8 of *Towards Healing* to any member who has been convicted of child sexual abuse. Anyone convicted will not be permitted to exercise public ministry. The same paragraphs apply to any member against whom an allegation of child sexual abuse has otherwise been substantiated, and also to any member who has admitted to a complaint of child sexual abuse.

Under canon law the faculties of a priest to exercise ministry will be revoked. Where a priest is convicted of an offence the Bishop will refer the case to the Congregation for the Doctrine of the Faith in Rome. The Bishop may ask the priest to apply for laicisation or he may request the Pope to impose laicisation.

Archdiocese of Brisbane

In line with *Towards Healing* 42.3, the Church authority, Director of Professional Standards and Consultative Panel consider what action needs to be taken concerning the future ministry of a person who has admitted abuse, taking into account the degree of risk of further abuse and seriousness of the violation of the integrity of the pastoral relationship.



Where there is a finding that a cleric is responsible for the sexual abuse of a child, he will be excluded from ministry. The process outlined in paragraph 42.3 of *Towards Healing* is at odds with canon law, but the Archbishop ensures the provisions of that paragraph are complied with.

Under Archdiocesan human resources processes a lay person employed by the Church who is charged with a criminal offence will be suspended from duty until the matter is dealt with through the criminal process. If the person is convicted, he or she will be dismissed from employment. The same process applies to lay persons who have not been convicted but in respect of whom findings have been made through the *Towards Healing* assessment process.

Convicted perpetrators who are priests are dealt with under canon law. Convicted clerics are dealt with in line with Vatican documents: *Sacramentorum sanctitatis tutela*, and *Normae De Gravioribus*.

Archbishop Coleridge forwarded to the Congregation for the Doctrine of the Faith eight petitions, regarding clerics convicted in a civil court on a criminal charge. One cleric died and the CDF responded in relation to six matters. In five of those matters the CDF considered that the clerics should continue living their life of prayer and penance and that there should be no judicial process relating to any of them. Only in the *Derriman* matter was the Archbishop's petition successful in having the cleric dismissed from the clerical state.

Clerics who have not been convicted in the criminal courts but have findings made against them of child sexual abuse are dealt with mostly through the assessment process in *Towards Healing*. The Archbishop has invariably cancelled the faculties of the cleric and removed him from active ministry.

Where there has been no clear result or finding under *Towards Healing*, the outcome varies.

Diocese of Broome

The only allegation made regarding a complaint of child sexual abuse was dealt with by immediate referral to the police while the alleged perpetrator remained out of the country on leave in his home nation and elected not to return. His superiors in that country were informed immediately of the allegation and the matter remains under their jurisdiction. No member of the Diocese has been convicted of child sexual abuse and therefore no management of a member in those circumstances has ever happened and no action has ever been taken under canon law.

Diocese of Cairns

Supervision, or more likely restrictions or a prohibition on active ministry, is considered at a very early point in any conduct complaint and standing aside from active ministry would certainly take effect very quickly in any complaint of child sexual abuse, or sexual abuse generally.

Where a complaint or allegation of sexual abuse is received in relation to clergy belonging to a particular religious order or congregation, the order or congregation is contacted, either by the Church authority directly or by way of reference to the Queensland Professional Standards Office and sometimes both, for certainty.



Currently an operational draft of a safeguarding policy and safeguarding agreement is being considered. This will deal with perpetrators seeking to return to parish participation, whether they are former clergy, or lay persons.

Any member or former member convicted of child sexual abuse will after serving their sentence be expected to be a signatory to such an agreement, or will be unable to celebrate services. Similarly, whether convicted of such offences or whether allegations have been received, a risk assessment determines risks to all parties including considerations of access to children and supervision. Clause 26 of *Towards Healing* makes clear that anyone accused will be asked and will be expected to step aside from ministry.

Members of the clergy against whom allegations are substantiated will be dealt with pursuant to *Integrity in Ministry*, Part 8. Part 8.1 sets out that the Church authority will consult the Consultative Panel under *Towards Healing* to determine the options for investigation, including for example reporting to police, referral of the matter for investigation under *Towards Healing* and investigation in accordance with Canon Law.

Steps towards laicisation will be undertaken in accordance with canon law where it is appropriate to do so and consultation will be had with the relevant sections of the Roman Curia in such cases.

Archdiocese of Canberra Goulburn

No person with a conviction, finding or admission of child sexual abuse is permitted to exercise public ministry. Each case is assessed individually and appropriate arrangements are made for supervision and support.

In each case a full report is provided to the Archbishop by the Institute for Professional Standards and Safeguarding and the Archbishop's canon law advisors. In a number of cases, the Archbishop has removed the faculties of priests. In those cases in which the Archbishop is required to do so, he has notified the Holy See of the matter and his decision for advice and direction.

Diocese of Darwin

Any complaint against Church personnel results in them being removed from ministry. When accused are from religious orders they are removed from the Northern Territory and returned to their province to be managed by their provincial. Similarly, members of another diocese are returned to their own diocese. There are no clergy or religious engaged in ministry now or in the past, in the diocese who have been convicted of child sexual abuse or against whom an allegation of child sexual abuse has been substantiated or who have admitted to a complaint of child sexual abuse.

Archdiocese of Hobart

A person is removed from ministry if convicted of child sexual abuse, The Archdiocese meets obligations under civil and canon law.



A person against whom an allegation of child sexual abuse is otherwise substantiated is removed from ministry. Canonical procedures are also adhered to.

A person who has admitted to a complaint of child sexual abuse is removed from ministry.

The Vatican is informed of the actions taken according to requirements outlined in the canonical document *Sacramentorum Sanctitatis Tutela* (2001 and 2010). In the event of restrictions being imposed, the Congregation for the Doctrine of the Faith is informed.

Maronite Diocese of St Maroun

As soon as a complaint of child sexual abuse is made against a cleric he is placed on leave. He ceases both to practice ministry and to reside at a presbytery. Further, the Apostolic See is informed. The cleric is from that time paid only a subsistence. He is not allowed to practice as a priest or to participate at any church function at which children may be present. Should the court make further directions, for example by way of bail conditions, the diocese does all it can to facilitate compliance and ensure observance of them, and, if necessary would report a breach of bail to the police.

If a priest is convicted or a complaint is otherwise substantiated, the diocese refers the matter to the appropriate Congregation of the Holy See and follows their directives.

Archdiocese of Melbourne

When a complaint of child sexual abuse has been upheld by an Independent Commissioner under the *Melbourne Response*, the Independent Commissioner will make recommendations to the Archbishop in respect of any steps the Archbishop should take to remove an accused from ministry. The recommendation may be that the person be permanently removed from ministry.

For priests placed on administrative leave or whose faculties have been withdrawn, their compliance with the terms of their withdrawal are monitored on behalf of the archdiocese by a monitoring officer who is a retired police officer.

For priests who are convicted of criminal offences involving child sexual abuse, the Archbishop makes a report to the Holy See with a formal recommendation that the priest be dismissed from the priesthood.

Diocese of Parramatta

Clergy who have been convicted of child sexual abuse will be the subject of a management plan that is referred to the Diocese's Professional Standards Consultative Committee for their advice. In such cases, the matter of laicisation is considered and addressed.

For cases where an allegation of child sexual abuse has been substantiated, a detailed risk assessment plan as well as a supervision plan would be prepared.

For cases where a priest has admitted to a complaint of child sexual abuse the police would be notified in accordance with the standard operating procedure.



Canonical precepts have been applied for a period to limit the scope of ministry of some clergy who have been the subject of investigation where adverse findings have been made against them.

The Diocese has prepared petitions for laicisation of offending clergy. To date such petitions have been considered favourably and laicisation has been achieved.

Archdiocese of Perth

Clerics under the Archbishop's canonical authority who have been convicted of child sexual abuse will already have been suspended from public ministry because of the allegations against them. They will not be permitted to exercise any ministry once they have completed any sentence imposed on them by the courts and, once their conviction is determined, their case will be submitted to Rome with a recommendation they be laicised. No cleric who has been convicted will be permitted to exercise public ministry in the Archdiocese, even if they are under the canonical authority of a religious superior and living in the geographical boundaries of the Archdiocese. The same procedures apply to clerics who have been found guilty of sexual abuse of a minor through an internal process, such as *Towards Healing*, and to clerics who have freely admitted to being guilty of child sexual abuse.

The following actions apply under canon law. Any member accused of sexual abuse would be initially dealt with according to the protocols of *Towards Healing*. Should the decision be taken to stand the accused person aside the Archbishop would exercise his canonical authority to restrict the accused's exercise of ministry, remove permission to exercise any public ministry, or formally suspend his faculties to validly exercise ministry.

The Archbishop's understanding of canon law is to the effect that he does not need the permission of the Vatican to remove a person (priest or deacon) temporarily from the exercise of public ministry or to revoke his priestly faculties and that he can refuse to restore faculties to a priest or deacon he believes to be a danger to children or young people. Effectively the Archbishop can permanently remove a priest or deacon from the public exercise of ministry. The Archbishop notes he does not have the authority to laicise a deacon or priest but under the provisions of canon law he is required to refer the case of a priest or deacon convicted of child sexual abuse to the Congregation for the Doctrine of the Faith which has the authority to laicise a cleric in such circumstances.

Archdiocese of Sydney

Any member of the clergy who is convicted of child sexual abuse will be prohibited from all future public ministry. Lay persons convicted of child sexual abuse will be denied future employment with the Archdiocese irrespective of whether the employment involves or does not involve working with children.

Any person, lay or cleric, against whom allegations of child sexual abuse have been made, but who has not been convicted of the crime, will be subject to a risk assessment as to whether he or she should be engaged in any future work with the Archdiocese. This risk assessment is carried out either by the Safeguarding Office or an independent assessor.



Any person, lay or cleric, who has admitted to a complaint of child sexual abuse, but who has not been convicted of the crime, will also be subject to a risk assessment as to whether he or she should be engaged in any future work with the Archdiocese.

A convicted clerical perpetrator will have his faculties removed. He will not be allowed to reside in designated parish premises, nor in proximity to a school or other facility for young people. In addition the perpetrator is not permitted to have any other public role in the life of the church.

A convicted priest will be asked to voluntarily seek a dispensation from the rights and obligations of the priesthood from the Pope. If he refuses, the Archbishop will petition the CDF in Rome for the priest's dismissal, except in rare circumstances where the priest is in a nursing home, for example.

Diocese of Wagga Wagga

The person who is the subject of a child sexual abuse complaint is stood down from duties. Decisions regarding this are made by the Bishop in consultation with the *Towards Healing* Consultative Committee. Supervised or restricted duties are not seen as an appropriate option. The decision to stand down is subject to review following an outcome to the complaint.

Convicted clergy have their faculties removed. Once the sentence has been served the member is not returned to any form of ministry and in most cases the process to formally dismiss the perpetrator is undertaken with the Vatican.

The employment of other diocesan, Catholic Schools Office and Centacare personnel who have been convicted of child sexual abuse is terminated.

8.3 Religious Congregations and Orders

Australian Province of the Society of Jesus (Jesuits)

The Province has adopted the policy that where a Jesuit is convicted of child sexual abuse or there is clear and substantiated evidence that he has committed a crime against children or he has admitted to such an offence, he will be asked to seek his own dismissal from priesthood and the Society. If he does not seek his own dismissal then such a dismissal will still be sought from the Congregation for the Doctrine of the Faith. While his case remains in process, he would remain removed from ministry involving children. Once the man has been dismissed, the Province has funded modest accommodation and health care for the individual who has signed a memorandum of understanding in relation to his transitional support and continuing behaviour.

Christian Brothers Oceania Province

The Brothers review each situation on a case by case basis. In doing so, they follow the *Protocol for the Management of Christian Brothers who have Sexually Abused Children*.¹⁹⁰

¹⁹⁰ CTJH.0031.001.0014



Hospitaller Order of St John of God

The Order follows the *Towards Healing* and *Integrity in Ministry* protocols.

Convicted perpetrators and those with substantiated claims:

- remain within the supervisory parameters of the Province. Generally such Brothers are advanced in years,
- are reviewed periodically by the Province Professional Standards Committee,
- do not engage in any form of ministry,
- are required to have an annual psychiatric assessment under a suitably qualified forensic psychiatrist,
- are required to participate in monthly external supervision and spiritual direction,
- are required to participate in the formation programs of the Province,
- are supported in place by Clergy and Congregational Care, Catholic Healthcare and receive intermittent, unannounced visits, and
- are a member of a religious community, whose members interact on a daily basis with the individual.

Institute of the Sisters of Mercy Australia and Papua New Guinea

The Institute does not have any member or former member who has been convicted of a criminal charge. However, the Institute has in place practices for managing allegations relating to its members or staff. If an allegation of any form of abuse of children were substantiated, appropriate limitations would be placed on the sister's ministry.

Marist Brothers

A brother may be designated by the Provincial as restricted by virtue of being the subject of a conviction or charge, an investigative process, a risk assessment process, or as a result of having made an admission in respect of children or young persons. A Restricted Brother is not permitted to engage in ministry with children and is subject to a range of further restrictions and conditions. A Safety and Wellbeing Plan¹⁹¹ is prepared for the brother which is signed by the brother and the Provincial. Compliance with the plan is supervised by the Safety and Wellbeing Officer.

Various actions may also be taken under canon law. The relevant policy is *Dismissal of a Brother who has Sexually Abused a Young Person*¹⁹².

¹⁹¹ Template at CTJH.053.90001.0434

¹⁹² CTJH.053.90001.0106



Salesians of Don Bosco

The policy of the Congregation in dealing with Salesians whose sexual abuse against children has been substantiated has been suspension from active public ministry, withdrawal from schools, parishes, youth centres, and other apostolates dealing with minors, and regular supervision and monitoring by the Provincial and those whom he has entrusted with this duty.

A criminal conviction requires that the Salesian be dismissed from the Congregation and from the priesthood.

In the case of a Lay partner, the substantiation of a complaint or an admission of child sexual abuse will involve standing down, resignation or dismissal.

De La Salle Brothers

The De La Salle Brothers response to allegations of child sexual abuse is set out in writing.¹⁹³ Substantiated allegations may result in a Safety Plan being implemented for the individual concerned.

Vincentians

The Vincentian Fathers manage members convicted of child sexual abuse offences, those with substantiated claims made against them and those who have made admissions of in broadly the same way. Matters are referred to the police and the person concerned is withdrawn from ministry. If the complaint is substantiated, the faculty of priesthood is removed and the process of laicisation may be commenced.

8.4 Conclusion

- (i) The above snapshot of responses indicates that the approach of Church authorities to the management of perpetrators ranges from on-going internal supervision to expulsion.
- (ii) The Council considers that consideration for the safety of children and the welfare of the community should be the guiding determinant of the approach taken.
- (iii) The Council submits that consideration should be given to the development of a structured standard for how the future of a perpetrator is determined by Church authorities.

¹⁹³ CTJH.050.90001.0014

9 Assisting Litigants

9.1 Introduction

The Catholic Church in Australia is deeply ashamed that some of its priests, religious and other personnel have sexually abused children. The church acknowledges that many of those abused have been terribly damaged and that many carry the impact of the abuse throughout their lives. They deserve to be compensated for the damage they have suffered and may require ongoing support and assistance. Some may choose to have recourse to the church's pastoral response programs, *Towards Healing* and the *Melbourne Response*, to obtain some measure of redress and assistance. Others may prefer to take civil action to obtain redress.

This chapter of the submission deals briefly with the topic of civil redress. The Council is conscious that the topic of civil redress has been comprehensively addressed in the Royal Commission's final report on Redress and Civil Litigation, which was tabled in the Commonwealth Parliament on 14 September 2015. To the extent that the recommendations made in that report are taken up by governments, church institutions, together with all other institutions in society, will become subject to new laws relating to liability for child sexual abuse.

This chapter mentions the particular steps the church has taken to date to assist those who wish to pursue claims against church institutions or those whose claims have been subject to past settlements, whether the claims were brought under the church's pastoral response programs or at law.

The Council acknowledges that the structure of the church often involves difficulties for potential litigants over and above the general difficulties for litigants in this area that were described in the Council's submission on the Commission's Issues Paper No.2, *Towards Healing*.¹⁹⁴ One of the difficulties can be identification of the correct defendant against which to bring proceedings. This matter is further discussed below.

9.2 Guidelines for responding to requests to review settlements

In November 2014 the Council published a set of guidelines, endorsed by all church authorities, to assist dioceses and religious orders to respond to any requests by individuals to review settlements previously made with them.¹⁹⁵ The guidelines are entitled *Guidelines for responding to requests from survivors of child sexual abuse whose claims have been subject to settlements*. A copy is annexed to this submission as **Annexure A**.

The central principle under the guidelines is that a claim under *Towards Healing* or at common law that was determined or settled may be reopened if:

- the church authority considers that the process in which the determination was made or the settlement was reached was inadequate or unfair, or

¹⁹⁴ TJHC Op cit., at section 7.2.

¹⁹⁵ The guidelines expressly did not cover settlements under the *Melbourne Response*, which were being addressed in a review being conducted by the Hon Donnell Ryan QC. A copy of his report has since been supplied to the Royal Commission (CTJH.221.90001.0317).



- the church authority considers that the amount paid was not fair and reasonable having regard to the severity of the abuse and its effects on the claimant.

9.3 Guidelines for responding to civil claims for child sexual abuse

In its Redress and Civil Litigation Report the Royal Commission recommended the adoption by all government and non-government institutions of model litigant guidelines for responding to civil claims for child sexual abuse.¹⁹⁶ The recommendations included that the guidelines should oblige institutions to provide assistance to claimants in identifying the proper defendant to a claim.

In November 2015 the Council published a set of guidelines, endorsed by all church authorities, on how church authorities should respond when claims of child sexual abuse are brought against them. The guidelines are entitled *Guidelines for church authorities in responding to civil claims for child sexual abuse*. A copy is annexed to this submission as **Annexure B**.

The guidelines cover issues such as:

- providing records, making an early assessment of claims, keeping costs down and paying legitimate claims without litigation,
- being mindful of the traumatic experience for claimants during litigation and trying to avoid legal proceedings wherever possible,
- apologising if the church authority is aware that it or its representatives have acted improperly.

The guidelines include a requirement for church authorities to assist a claimant identify the correct defendant to respond to legal proceedings.

9.4 Entity to sue

The Catholic Church is not a legal entity. It is made up of groupings of people who have a common religious belief founded on Jesus Christ. Subject to some exceptions, its archdioceses, dioceses, parishes and religious institutes are, at law, voluntary unincorporated associations. An unincorporated association cannot sue or be sued in its own name because it does not exist as a juridical entity.¹⁹⁷

So against whom might a potential child sexual abuse claimant bring proceedings? Several factors need to be considered in seeking to answer that question:

- 1 The priest or religious who committed the abuse might still be alive. Civil proceedings might be brought against him or her but he or she will often have limited means available to satisfy a judgment.
- 2 If a present day church leader can be shown to have had knowledge of the propensity of the offender to offend and can be shown to have been negligent in discharging his or her supervisory duties, a claim against the church leader may succeed.

¹⁹⁶ Recommendations 96-98

¹⁹⁷ *Trustees of the Roman Catholic Church v Ellis* (2007) 70 NSWLR 565 at [47]



- 3 However, if the present day leader was not the leader at the relevant time, he or she cannot be held responsible for the abuse.¹⁹⁸
- 4 Under the law of vicarious liability, liability can be imposed on employers for wrongs committed in the course of their employment by their employees. The fact that the employee was engaged in a criminal act in committing the abuse does not preclude the employer from being found vicariously liable but it is not enough that employment merely provided an opportunity for the criminal act. The relevant approach is to assess the nature of the role the employer assigned to the offender and whether that role placed the offender in a position of power and intimacy with the victim of abuse.¹⁹⁹
- 5 However, there is generally no employer-employee relationship between a bishop and priest or between a congregational leader and a religious, such as is necessary to attract vicarious liability.

As indicated above, the problem of identifying an entity to sue does not exist in all dioceses, nor in all religious institutes. To the extent that it is a problem, steps are being taken to seek to ameliorate it. Thus, as mentioned above, all church authorities have committed under the *Guidelines for church authorities in responding to civil claims for child sexual abuse* to assisting claimants to identify a proper defendant against which to bring their claim. However, as the civil law existence of church authorities is generally covered by State or Territory laws, it is not possible to prescribe a single solution to the problem.

Examples of responses by particular church authorities are as follows:

- In relation to the Archdiocese of Sydney, Archbishop Fisher in his statement provided to the Royal Commission²⁰⁰ says that the archdiocese is considering various options, including establishing the office of archbishop as a corporation sole,
- In relation to the Archdiocese of Melbourne, Archbishop Hart in his statement²⁰¹ says that he makes himself available as the defendant in civil proceedings proposed against the archdiocese and agrees to meet any liability for breach of duty established against a former archbishop of Melbourne in respect of alleged sexual abuse,
- Bishop Bird of Ballarat issued a press release on 5 April 2016 in which he reiterated his commitment to meet any order for damages for liability established against a former bishop of the diocese and stated that he agreed to be named as a defendant in any such proceedings.

¹⁹⁸ *Trustees of the Roman Catholic Church v Ellis* (2007) 70 NSWLR 565

¹⁹⁹ *Prince Alfred College Incorporated v ADC* [2016] HCA 37

²⁰⁰ Statement dated 25 November 2016 at [72]

²⁰¹ Statement dated 8 December 2016 at [7c]



10 Catholic Professional Standards Limited

Throughout the Royal Commission case studies and consistent with the Council's submission on *Towards Healing* dated 30 September 2013, it has been acknowledged that the Church's professional standards in relation to child protection and dealing with allegations of child sexual abuse have not been consistently and adequately applied by all Church Authorities.

In that submission the Council stated:

Each Church authority acts autonomously in relation to outcomes under *Towards Healing*, as outlined in section 2. The flexibility of the process and its implementation by the Church Authority most closely connected to the abuse enables it to respond in an appropriately tailored way to a wide range of different needs and circumstances. In many ways this is a strength. But it is acknowledged that the consequential differences and variations could also be seen as inconsistency, and thus a weakness. (p. 141)

In addition the Council noted:

A related criticism of *Towards Healing* is that the 'in-house' nature of the process is such that it is not sufficiently independent from the Church, nor sufficiently transparent or subject to scrutiny. (p. 141)

Moreover, the Council has suggested:

Another criticism that has been made, also related to the issue of inconsistency of implementation, is that *Towards Healing* does not include any mechanism for supervision and enforcement of the process.

and:

Sometimes the criticism is made that individuals involved in dealing with a particular case have been poorly chosen, or are insufficiently skilled or trained. (p. 143).

As a consequence the Council recommended to the Australian Catholic Bishops Conference and Catholic Religious Australia that a new independently structured company be established to set professional standards and to monitor and report on their implementation within the Catholic Church.

That company, Catholic Professional Standards Limited (**CPS**), was formally launched on 23 November 2016. A copy of its constitution is appended as **Annexure C** to this submission.

The primary object of the company is to promote the safety of children and vulnerable people and to prevent abuse and (or) misconduct towards them by persons associated with entities identifying themselves as Catholic and being accepted by competent authorities as being so. The focus of attention will be on setting, and auditing compliance with professional standards. It is not envisaged that the company will investigate or deal with individual complaints of, for example, sexual abuse.

The company will be managed and administered by a board of directors consisting largely of lay persons appointed by, and removable by, the members. Even though (by reason of the membership) the company will not be structurally independent of the institutional Church the



board will be functionally independent, subject to the reserve powers mentioned in the next paragraph.

The company has the power to establish standards to promote safety, prevent abuse and misconduct towards any person who has a professional or pastoral relationship with Church entities.

This wide ranging power has been deliberately cast to address the organisational deficiencies recognised in the Council's submission on Issues paper No. 2 *Towards Healing*²⁰² and the cultural elements that have contributed to the way the Catholic Church has managed child sexual abuse cases.

In a particular attempt to address the criticisms of transparency and accountability, all Church authorities will be required to enter into a contract with the company whereby they agree to ensure that the Church entities subject to their authority meet the professional standards. They will also agree to have that compliance audited by the company and the results to be made public.

Importantly Church authorities will retain responsibility for what occurs in their jurisdiction and under their competency in the carrying out of ministries and the management of personnel by Catholic entities in the same way as happens now. This process will enable bishops to insist that if an organisation purports to be Catholic it must follow the standards and submit to the compliance measures imposed by CPS. These arrangements do not involve any delegation of responsibilities to the company, rather those responsibilities remain with the relevant Church authority.

There is no intention that CPS should set standards that duplicate or derogate from standards mandated by government authorities, for example, in schools.

The company will be at liberty to establish standards in areas where standards are currently absent. For example, the proper protocols that should apply to seminary training, candidate selection and dismissal would be an area for standards development and consequent reporting on compliance. So might requirements for clergy formation, supervision and on-going support.

In time, and in a staged and orderly manner, the company will assume all of the tasks presently carried out by the NCPS, including matters related to *Integrity in Ministry*. The system is flexible and the scope of activities to be undertaken by the company can evolve over the ensuing years.

The NCPS has been developing a national framework of indicators to assist with the measurement of safeguarding practice in church organisational services. This type of work may well be adopted and built on by CPS.

²⁰² TJHC op. cit.



10.1 Conclusion

Now that CPS has been established, the Council submits that:

- i. Compliance with the national professional standards it develops will improve risk management for child safety and safeguarding across the Church.
- ii. The publication of audit reports will enhance transparency and accountability of Church authorities in the provision of child safe environments.



Annexures

Annexure A

Guidelines for responding to requests from survivors of child sexual abuse whose claims have been subject to settlements – November 2014

Annexure B

Guidelines for Church authorities in responding to civil claims for child sexual abuse – November 2015

Annexure C

Constitution – Catholic Professional Standards Limited ACN 616 062 714 – 23 November 2016

Annexure A



GUIDELINES FOR RESPONDING TO REQUESTS FROM SURVIVORS OF CHILD SEXUAL ABUSE WHOSE CLAIMS HAVE BEEN SUBJECT TO SETTLEMENTS

Background

The Catholic Church in Australia is deeply ashamed that some of its priests, religious and other personnel have sexually abused children. The Church acknowledges that many of those abused carry the impact throughout their lives and, as a result, require ongoing support and assistance. Some have had recourse to the Church's pastoral response programs, *Towards Healing* and the *Melbourne Response*, to obtain some measure of redress. Others have taken civil action to obtain redress.

However, several in both categories say that the redress provided to them has been insufficient having regard to the severity of the abuse they suffered and the effect it has had upon them. They have requested Church authorities to review the settlements arrived at in their cases.

Purpose of the guidelines

The guidelines set out below have been prepared by the Truth Justice and Healing Council (**the Council**) and endorsed by the Supervisory Group to assist dioceses and religious orders respond to any requests by individuals to review settlements previously made with them.

The guidelines do not cover cases where compensation has been paid under the *Melbourne Response*. The issue of how those cases should be reviewed is under consideration in the review of the *Melbourne Response* presently being undertaken by the Hon Donnell Ryan QC.

Context in which the guidelines have been prepared

In submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse, the Church has, through the Council, publicly supported the establishment of an independent national redress scheme funded by both government and non-government institutions to deliver redress to survivors of child sexual abuse. The Council has recommended that the scheme make provision for the amount of any prior settlement to be set off against the amount of any redress which the applicant receives under the scheme.

However, it may be some years before any recommendation by the Royal Commission for the establishment of a redress scheme is implemented.

The Council recognises that the needs of some individuals who were abused are such that their requests for review of settlements require a more immediate response by Church authorities. The guidelines set out below are intended to assist that response.

Guidelines

- 1 A claimant who made a previous claim under *Towards Healing* that was not accepted should be directed to the relevant Professional Standards Office for the claim to be considered again under *Towards Healing*.

- 2 A previous claim under *Towards Healing* or at common law that was determined or settled, whether or not a deed of release was entered into, may be re-opened if:
 - (a) the Church authority considers that the process in which the determination was made or the settlement was reached was inadequate or unfair, whether because of the process followed at the assessment or determination stage or the lack of opportunity given to the claimant to obtain advice before the claim was determined or settled or for any other reason; or
 - (b) the Church authority considers that the amount or amounts paid to, or on behalf of, the claimant was not, or were not, fair and reasonable having regard to the severity of the abuse and its effects on the claimant.
- 3 Matters which the Church authority may take into account in making an assessment pursuant to guideline 2(b) include:
 - (a) the value of any support and assistance which, in addition to any lump sum payment or payments, the Church authority provided or funded for the claimant or members of his or her family; and
 - (b) the amount of any reasonable legal costs incurred by the claimant in pursuing the claim for which the claimant was not reimbursed.

Note: Monetary amounts considered under these guidelines should be adjusted to their present-day value using the inflation calculator of the Reserve Bank of Australia at www.rba.gov.au/calculator.

Exclusions

The guidelines are not intended to operate if the claimant's previous claim was determined by a court or if the settlement of the claim was approved by a court.

The guidelines are not intended to operate if the claimant's previous claim was dealt with under *Towards Healing* and the Church authority is satisfied that the claimant had available to him or her a relevant process for seeking review under that protocol but did not do so.¹

Insurance

In applying the guidelines, a Church authority should be aware that indemnity may not be available from its insurer to cover any further payment to a claimant and therefore the payment would be at the expense of the Church authority. The insurer is likely to take the view that, if there has been a prior settlement and a deed of release has been signed, the Church authority has no right to further indemnity.

November 2014

¹ A review of process, not subject to any time limitation, was available under *Towards Healing* 1996. A review of process, subject to a 3-month time limitation, was available under *Towards Healing* 2000. Since 2007, a review of process and findings, subject to a 3-month time limitation, has been available under *Towards Healing*.

Annexure B

GUIDELINES FOR CHURCH AUTHORITIES IN RESPONDING TO CIVIL CLAIMS FOR CHILD SEXUAL ABUSE



Background and purpose

The community expects Church authorities to pursue a compassionate and consistent approach towards victims of child sexual abuse within their institutions.

These guidelines have been prepared by the Truth Justice and Healing Council and endorsed by the Supervisory Group to promote justice and consistency in the way Church authorities handle claims and conduct litigation in relation to child sexual abuse. The guidelines are similar to the models adopted by many governments in Australia. They apply to current and future cases.

Church authorities aim to be fair, reasonable and honest in their dealings with victims of child sexual abuse. Respect and dignity will be afforded to victims, their families and other third parties affected by the abuse. Every effort will be made to ensure victims feel safe and secure, both in the telling of their stories and in the pursuit of justice. The guidelines apply flexibly and respond to the circumstances of each claim. However, they are not intended to prevent Church authorities from acting properly to defend claims that they consider should be defended.

Church authorities recognise that they cannot remove the pain and suffering of victims of abuse but they will strive, through kindness, understanding and hope, to support victims emotionally, spiritually and financially in their rightful quest to live a full life.

The guidelines commence on 1 January 2016.

Guidelines

When dealing with civil claims related to child sexual abuse, Church authorities should at all times act honestly, fairly and compassionately by:

- (a) dealing with claims promptly and not causing unnecessary delay in the handling of claims and litigation
- (b) assisting the claimant to identify the correct defendant to respond to the legal proceedings
- (c) facilitating access to records relating to the claimant, subject to considering the privacy entitlements of third parties and documents that are legally professionally privileged
- (d) making an early assessment of:
 - (i) the Church authority's prospects of success in defending the proceedings, and
 - (ii) the Church authority's potential liability in the claim made against it
- (e) acting consistently in the handling of claims and litigation
- (f) mindful of the potential for litigation to be a traumatic experience for claimants who have suffered sexual abuse, endeavouring to avoid legal proceedings wherever possible or to confine the scope of the proceedings
- (g) paying legitimate claims without litigation

- (h) considering resolving matters without the need for a claimant to take the formal step of filing a statement of claim
- (i) providing information about services and supports available to claimants and considering requests from claimants for counselling, pastoral and psychological care assistance, and other kinds of acknowledgement or redress, including meetings with the Church leader, site visits, etc
- (j) offering, and participating fully and effectively in, alternative dispute resolution processes wherever possible
- (k) if it is not possible to avoid litigation, keeping the costs of litigation to a minimum, including by:
 - (i) not requiring the claimant to prove a matter which the Church authority knows to be true or has accepted as true
 - (ii) not contesting liability if the Church authority knows that the dispute is only about the amount of compensation
 - (iii) monitoring the progress of the litigation and using appropriate methods to resolve the litigation, including alternative dispute resolution, settlement offers and payments into court, and
 - (iv) ensuring that arrangements are made so that a person participating in any alternative dispute resolution process or settlement negotiations on behalf of the Church authority can enter into a settlement of the claim or legal proceedings in the course of the process or the negotiations
- (l) not taking advantage of a claimant who lacks the resources to litigate a legitimate claim
- (m) if a statutory limitation period is available as a defence, not relying on that defence unless:
 - (i) the claim involves other defendants that are not Church defendants and there is a risk that the Church authority might bear a disproportionate share of the whole liability to the claimant, or
 - (ii) the lapse of time has a burdensome effect on the Church authority that is so serious that the Church authority considers that a fair trial would not be possible
- (n) if there is a need for expert evidence, co-operating with claimants about choice of expert, to facilitate agreement on the use of a single expert if practicable
- (o) not undertaking and pursuing appeals unless the Church authority believes that it has reasonable prospects for success
- (p) apologising if the Church authority is aware that it or its representatives or lawyers have acted wrongfully, improperly or in breach of these guidelines.

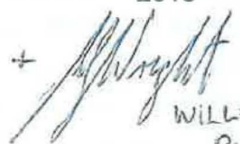
Consistent approaches

Any Church entity which has adopted guiding principles dealing with the same subject matters as the guidelines should ensure that there is no inconsistency between those guiding principles and the guidelines and should not act inconsistently with the guidelines.

Annexure C

MAKINSON d'APICE
LAWYERS

DATED: 23 NOVEMBER 2016

+ 

WILLIAM JOSEPH WRIGHT
BISHOP OF MAITLAND-NEWCASTLE
MEMBERS' CHAIR

Constitution

CATHOLIC PROFESSIONAL STANDARDS LIMITED

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PREAMBLE

This Company has been established by the leadership of the Catholic Church in Australia. Its mission is to promote the dignity and welfare of all persons who come into contact with the Church and its works, especially the young and vulnerable.

It is a pastoral response that reflects the respect for human life that is central in the call of the Gospel and the life of the Church. The Company will endeavour to ensure that all persons within and those who engage with the Church, in liturgical, ministerial, social or pastoral spheres will be treated respectfully, professionally and in accordance with Gospel values. Through the establishment of and compliance with national professional standards the Church leadership seeks to promote accountability, transparency and trust in the life of the Church and its contribution to society.

1. NAME OF COMPANY

- 1.1 The name of the Company is Catholic Professional Standards Limited ACN: 616 062 714

2. TYPE OF COMPANY

- 2.1 The Company is a not-for-profit public company limited by guarantee which is established to be, and to continue as, a charity.

3. LIMITED LIABILITY OF MEMBERS

- 3.1 Each Member must contribute an amount not more than \$10.00 (the guarantee) to the property of the Company if the Company is wound up while the Member is a Member, or within 12 months after they stop being a Member, and this contribution is required to pay for the:
- (a) payment of debts and liabilities of the Company;
 - (b) payment of the costs, charges and expenses of winding up; and
 - (c) any adjustment of the rights of the contributories among Members.

4. INTERPRETATIONS

- 4.1 In this Constitution, unless there is something in the subject or context which is inconsistent:

ACBC means the Australian Catholic Bishops Conference.

ACNC Act means the *Australian Charities and Not-for-profits Commission Act 2012*.

Act means the *Corporations Act 2001*.

Australian Major Superior means the person acting in that canonical role (by whatever name) from time to time.

Board means the Board of Directors.

Board Chair means the person holding that office under **clause 52** of this Constitution and includes any assistant or acting board chair.

Business Day means a day on which banks are open for business in Sydney.

Canon Law means the revised code of canon law promulgated by His Holiness Pope John Paul II in 1983 and the Code of Canons of the Eastern Churches as promulgated in 1990 and any other universal or particular legislation promulgated by the competent ecclesiastical authority.

Canonical Steward means the person(s) or other entity canonically responsible for that Catholic Entity.

Catholic Entity means an entity that has been identified as Catholic by a competent authority within the Catholic Church.

Church Authority means:

- a) the Diocesan Bishop (or Archbishop, as appropriate) of a Diocese or his administrator from time to time;
- b) the Australian Major Superior in respect of religious institutes; or
- c) the Canonical Steward in relation to a particular Catholic Entity in respect of other Catholic Entities not referred to in a) or b) above.

Church Contacts means Vulnerable Persons and other persons who have a professional or pastoral relationship, with Catholic Entities, including any cleric, member of a religious institute or other person who is an employee or volunteer of a Catholic Entity.

Committee means a committee established in accordance with **clause 55**.

Company means Catholic Professional Standards Limited.

Constitution means this constitution as amended or supplemented from time to time by a Special Resolution of the Member Representatives in a general meeting.

Deputy Board Chair means the person elected as Deputy Board Chair under **clause 52**.

Deputy Members' Chair means the person elected as Deputy Members' Chair under **clause 22**.

Director means any person holding the position of a director of the Company and Directors means the directors for the time being of the Company or as the context permits such number of them as have authority to act for the Company.

Financial Year means the financial year of the Company ending on 30 June.

Member means a Member of the Company.

Members' Chair means the person holding that office under **clause 22** of this Constitution and includes any assistant or acting members' chair.

Member Representative means each representative appointed from time to time under **clause 14**.

Nomination Committee means the committee established under **clause 40**.

Office means the registered office for the time being of the Company which must always be located in Australia.

Officer has the same meaning as given to that term in section 9 of the Act.

Professional Standards means the national standards established in accordance with **clause 5.1(a)** as amended from time to time and Towards Healing, Integrity in Ministry and Integrity in the Service of the Church (by whatever name).

Register means the register of Members to be kept pursuant to the Act.

Replaceable Rules means the replaceable rules applicable to a public company limited by guarantee set out in the Act.

Secretary means the person appointed as the secretary of the Company and includes any assistant or acting secretary.

Special Resolution means a resolution:

- (a) of which notice has been given in accordance with the Act; and
- (b) that has been passed by at least 75% of the votes cast by Member Representatives present and entitled to vote on the resolution.

Vulnerable Person means a child, an elderly person or person who has recently suffered bereavement, marriage breakdown or other such adversity making them in particular need of pastoral support, or a person with an intellectual disability, mental illness or other impairment that makes it difficult for that person to protect themselves from abuse or exploitation.

4.2 In this Constitution, unless there is something in the subject or context which is inconsistent:

- (a) the singular includes the plural and vice versa;
- (b) each gender includes the other 2 genders;
- (c) the word "person" means a natural person and any partnership, association, body or entity whether incorporated or not;
- (d) the words "writing" and "written" include any other mode of representing or reproducing words, figures, drawings or symbols in a visible form;
- (e) where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a cognate meaning;

- (f) the words 'including', 'for example', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression, and a reference to any clause or schedule is to a clause or schedule of this Constitution;
 - (g) a reference to any statute, proclamation, rule, code, regulation or ordinance includes any amendment, consolidation, modification, re-enactment or reprint of it or any statute, proclamation, rule, code, regulation or ordinance replacing it.
- 4.3 An expression used in a particular Part or Division of the Act that is given by that Part or Division a special meaning for the purposes of that Part or Division has, unless the contrary intention appears, in any clause that deals with a matter dealt with by that Part or Division the same meaning as in that Part or Division.
- 4.4 The provisions of this Constitution displace the Replaceable Rules (but not Replaceable Rules which mandatorily apply to a public company) contained in the Act.
- 4.5 Headings do not form part of or affect the construction or interpretation of this Constitution.

5. OBJECTS & POWERS

- 5.1 The charitable objects for which the Company is established are to care for, protect and support Church Contacts by:
- (a) Establishing standards to:
 - (i) promote the safety of,
 - (ii) prevent abuse and/or misconduct towards, and
 - (iii) respond to allegations of abuse and/or misconduct concerning,
 Church Contacts who are involved with Catholic Entities;
 - (b) Entering into contractual arrangements with Church Authorities to ensure that all Catholic Entities subject to their authority meet the Professional Standards;
 - (c) Providing education and training directly or indirectly in respect of the Professional Standards and in doing so, fostering a culture of safety and care;
 - (d) Auditing compliance with the contractual arrangements in **subclause (b)** to ensure ongoing compliance with the Professional Standards and reporting on the results of the audits;
 - (e) Carrying out such part or parts of the functions of the National Committee for Professional Standards and/or any State Professional Standards Office as are entrusted to the Company from time to time; and
 - (f) Undertaking any other activities in furtherance of the above.

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- 5.2 The Company can only exercise the powers in section 124(1) of the Act to:
- (a) carry out the objects of the Company set out in **clause 5.1**; and
 - (b) do all things incidental or convenient in relation to the attainment of an object under **clause 5.2(a)**.
- 5.3 Reports prepared for the purpose of **clause 5.1(d)** will be made public, unless the Board resolves that the information:
- (a) has the potential to cause harm to Church Contacts;
 - (b) is inaccurate;
 - (c) is likely to cause confusion or to mislead the public; or
 - (d) could endanger public safety.
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6. NOT-FOR-PROFIT

- 6.1 The income and property of the Company will only be applied towards the promotion of the objects of the Company set out in **clause 5.1**.
- 6.2 No income or assets of the Company will be paid, transferred or distributed, directly or indirectly, by way of dividend, bonus or otherwise to any Member or Member Representative of the Company. However nothing in this Constitution will prevent payment in good faith to a Member or Member Representative:
- (a) in return for any services rendered or goods supplied in the ordinary and usual course of business to the Company;
 - (b) of interest at a rate not exceeding current bank overdraft rates of interest for moneys lent to the Company; or
 - (c) of reasonable and proper rent for premises leased by any Member or Member Representative to the Company.
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7. AMENDING THE CONSTITUTION

- 7.1 The Constitution may be amended by passing a Special Resolution.
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8. MEMBERSHIP

- 8.1 The Members of the Company are:
- (a) Australian Episcopal Conference of the Roman Catholic Church (ABN 76 000 665 958);
 - (b) Catholic Religious Australia (ABN 92 291 126 804);

and

- (c) any other entity that is admitted as a Member, in accordance with this Constitution.

9. APPLICATION FOR MEMBERSHIP

- 9.1 Every application for Membership of the Company must:
- (a) be lodged with the Secretary and must set forth the name and address of the applicant and the name and contact details of the contact person for the applicant;
 - (b) state that the applicant agrees to comply with the terms of the Company's Constitution; and
 - (c) be provided to every Member by the Secretary.
- 9.2 Applications for Membership of the Company must be made in writing on a form approved by the Board for that purpose and signed by the contact person for the applicant named at **clause 9.1(a)**.
- 9.3 At the first general meeting of the Company after an application for Membership has been received the Member Representatives will in their absolute discretion:
- (a) determine the admission or rejection of the applicant; or
 - (b) decide to call on the applicant to supply any evidence of eligibility that they consider reasonably necessary.
- 9.4 An applicant will be admitted to Membership of the Company if the Member Representatives unanimously vote to admit the applicant.
- 9.5 If an application for Membership is approved, the Secretary must, as soon as practicable, notify the applicant in writing of their approval for Membership and notify the Board.

10. REGISTER OF MEMBERS

- 10.1 The Company must establish and maintain a Register of Members. The Register of Members must be kept by the Secretary and must contain:
- (a) for each current Member:
 - (i) name;
 - (ii) address (which may also include an electronic address such as email);
 - (iii) any alternative address nominated by the Member for the service of notices (which may also include an electronic address such as email);

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- (iv) the name and contact details (which may include address, email and phone number) for the authorised contact person nominated by the Member from time to time;
 - (v) date the Member was entered on to the Register; and
 - (vi) the above details in respect of each current and past Member Representative nominated by that Member.
- (b) for each person who stopped being a Member in the last 7 years:
- (i) name;
 - (ii) address (which may also include an electronic address such as email);
 - (iii) any alternative address nominated by the Member for the service of notices (which may also include an electronic address such as email); and
 - (iv) dates the Membership started and ended.
- 10.2 The Company must give current Members reasonable access to the Register of Members.
- 10.3 Information that is accessed from the Register of Members must only be used in a manner relevant to the interests or rights of Members.

11. WHEN A PERSON STOPS BEING A MEMBER

- 11.1 A person immediately stops being a Member if:
- (a) they are wound up or otherwise dissolved or deregistered;
 - (b) they resign, by writing to the Secretary;
 - (c) the Company in general meeting resolves by a resolution with a 75% majority of Member Representatives, to terminate the Membership of a Member whose conduct or circumstances in the opinion of the Company renders it undesirable that that Member continue to be a Member of the Company. The Member must be given at least 21 days' notice of the proposed resolution and must be given the opportunity to be heard at the meeting at which the resolution is proposed; or
 - (d) they have not responded within 3 months to a written request from the Secretary that they confirm in writing that they want to remain a Member.

12. MEMBERSHIP ENTITLEMENTS NOT TRANSFERABLE

- 12.1 A right, privilege or obligation which a person has by reason of being a Member of the Company:
- (a) is not capable of being transferred or transmitted to another person; and

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- (b) terminates on cessation of the person's Membership.
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13. ENTRANCE FEE AND SUBSCRIPTIONS

- 13.1 The Company by Special Resolution may choose to charge any Member of the Company an entrance fee, annual fee and/or subscription as it deems appropriate for the Company to carry out its objects.
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14. MEMBER REPRESENTATIVE

- 14.1 Each Member must appoint 2 individuals to act on its behalf and they shall be known as Member Representatives.
- 14.2 An appointing Member must be satisfied that each Member Representative will promote the objects of the Company as set out in **clause 5.1**.
- 14.3 Each Member has 2 votes, both on a show of hands and a poll, exercised in the manner set out in **clause 14.4**.
- 14.4 Each Member Representative shall be entitled to attend any general meeting (including an annual general meeting), exercise 1 vote on behalf of that person's appointing Member each and shall otherwise be entitled to exercise all the powers on behalf of that Member which s/he represents.
- 14.5 Each Member shall inform the Secretary in writing of the name, phone number, postal address and email address of its Member Representative(s) as soon as possible after the appointment of the Member Representative(s).
- 14.6 Each Member Representative has a responsibility both to the Company and to their appointing Member. Within the Company they are responsible for representing the views of their appointing Member and for contributing to the life and work of the Company, and to their nominating Member to represent the life and work of the Company.
- 14.7 A Member may revoke the appointment of a Member Representative and appoint a replacement at any time and must notify the Secretary of the revocation and replacement as soon as possible.
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15. MEMBERS' RIGHTS

- 15.1 Each Member and each Members Representative will be entitled to:
- (a) receive notice of and, for each Member Representative, attend and vote at general meetings of the Company; and
 - (b) receive annual reports of the Company including financial reports in relation to each Financial Year.
- 15.2 All other rights, privileges and obligations of Members are in accordance with the Act.

16. DISPUTE RESOLUTION

- 16.1 The dispute resolution procedure in this clause applies to disputes (disagreements) under this Constitution between a Member, Member Representative or Director and:
- (a) one or more Members;
 - (b) one or more Member Representatives;
 - (c) one or more Directors; or
 - (d) the Company.
- 16.2 Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.
- 16.3 If those involved in the dispute do not resolve it under **clause 16.2**, they must within 10 days:
- (a) tell the Directors about the dispute in writing;
 - (b) agree or request that a mediator be appointed; and
 - (c) attempt in good faith to settle the dispute by mediation.
- 16.4 The mediator must:
- (a) be chosen by agreement of those involved; or
 - (b) where those involved do not agree:
 - (i) for disputes between Members, a person chosen by the President of the ACBC; or
 - (ii) for other disputes, a person chosen by the president of the law institute or society in the state or territory in which the Company has its registered office.
- 16.5 A mediator chosen under **clause 16.4**:
- (a) may be a Member or former Member of the Company or Director or former Director of the Company;
 - (b) must not have a personal interest in the dispute; and
 - (c) must not be biased towards or against anyone involved in the dispute.
- 16.6 When conducting the mediation, the mediator must:
- (a) allow those involved a reasonable chance to be heard;
 - (b) allow those involved a reasonable chance to review any written statements;

- (c) ensure that those involved are given natural justice; and
- (d) not make a decision on the dispute.

17. CONVENING OF GENERAL MEETINGS

- 17.1 Not less than 50% of Directors may whenever those Directors think fit convene a general meeting of the Company in accordance with the provisions of the Act.
- 17.2 Any 3 Member Representatives or any 2 Members shall be entitled to require a general meeting to be convened in accordance with the provisions of the Act.
- 17.3 A general meeting of the Company may be convened at 2 or more venues using any technology that gives the Member Representatives a reasonable opportunity to participate in the meeting, including to hear and be heard.

18. ANNUAL GENERAL MEETING

- 18.1 A general meeting, called the annual general meeting, must be held:
 - (a) within 18 months after registration of the Company; and
 - (b) after the first annual general meeting, at least once in every calendar year.
- 18.2 Even if these items are not set out in the notice of meeting, the business of an annual general meeting may include:
 - (a) a review of the Company's activities;
 - (b) a review of the Company's finances;
 - (c) any auditor's report;
 - (d) the election of Directors; and
 - (e) the appointment and payment of auditors, if any.
- 18.3 Before or at the annual general meeting, the Directors must give information to the Member Representatives on the Company's activities and finances during the period since the last annual general meeting.
- 18.4 The Members' Chair must give Member Representatives a reasonable opportunity at the annual general meeting to ask questions or make comments about the management of the Company.

19. NOTICE OF GENERAL MEETINGS

- 19.1 Notice of a general meeting must be given to:
 - (a) each Member through its nominated contact person;

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- (b) each Member Representative;
 - (c) each Director; and
 - (d) the auditor (if any).
- 19.2 Notice of a general meeting must be provided in writing at least 21 days before the meeting.
- 19.3 Subject to **clause 19.4**, notice of a meeting may be provided less than 21 days before the meeting if:
- (a) for an annual general meeting, all the Member Representatives entitled to attend and vote at the annual general meeting agree beforehand; or
 - (b) for any other general meeting, Member Representatives with at least 95% of the votes that may be cast at the meeting agree beforehand.
- 19.4 Notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:
- (a) remove a Director;
 - (b) appoint a Director in order to replace a Director who was removed; or
 - (c) remove an auditor.
- 19.5 Notice of a general meeting must include:
- (a) the place, date and time for the meeting (and if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this);
 - (b) the general nature of the meeting's business;
 - (c) if applicable, that a Special Resolution is to be proposed and the words of the proposed resolution; and
 - (d) any other information required under the Act.
- 19.6 The accidental omission to give notice of any general meeting to or the non-receipt of notice of a meeting by any person entitled to receive notice will not invalidate the proceedings at or any resolution passed at the meeting.
- 19.7 Where any general meeting is cancelled or postponed or the venue for the same is changed:
- (a) the Board must endeavour to notify in writing each person entitled to receive notice of the meeting of the cancellation, the change of venue or the postponement of the meeting by any means permitted by this Constitution and in the case of the postponement of a meeting, the new place, date and time for the meeting; and
 - (b) any failure to notify in writing any person entitled to receive notice of the meeting or failure of a person to receive a written notice shall not affect the

validity of the cancellation, the change of venue or the postponement of the meeting.

20. RIGHT OF NON-MEMBERS TO ATTEND GENERAL MEETING

- 20.1 The Members' Chair may invite any person who is not a Member Representative to attend and/or address a meeting.
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21. QUORUM

- 21.1 No business may be transacted at any general meeting unless a quorum of Member Representatives is present at all times during the meeting.
- 21.2 When determining whether a quorum is present, a person may only be counted once (even if that person is a Member Representative or proxy of more than one Member).
- 21.3 A majority of Member Representatives with no less than one Member Representative of each Member entitled to vote constitute a quorum for all general meetings.
- 21.4 If within 30 minutes after the time appointed for holding a general meeting a quorum is not present:
- (a) the meeting if convened upon the requisition of Member Representatives shall be dissolved;
 - (b) in any other case:
 - (i) the meeting will stand adjourned to the same day in the next week at the same time and place or to such other day time and place as the Board may by notice to the Members appoint; and
 - (ii) if at such adjourned meeting a quorum is not present within 30 minutes after the time appointed for the holding of the meeting the meeting shall be dissolved.
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22. MEMBERS' CHAIR AND DEPUTY MEMBERS' CHAIR

- 22.1 The Member Representatives shall elect a Members' Chair and Deputy Members' Chair from amongst their number annually by majority vote at the annual general meeting of the Company.
- 22.2 The Members' Chair shall be entitled to preside as chairperson at every general meeting.
- 22.3 Where a general meeting is held and:
- (a) there is no Members' Chair; or
 - (b) the Members' Chair is not present within 15 minutes after the time appointed for the holding of the meeting or if present is unwilling to act as chairperson of

the meeting, the Deputy Members' Chair shall preside as chairperson of the meeting or, if there is no Deputy Members' Chair or the Deputy Members' Chair is not present or is unwilling to act then the Member Representatives present may choose another Member Representative as chairperson of the meeting by majority.

- 22.4 The rulings of the chairperson of a general meeting on all matters relating to the order of business, procedure and conduct of the meeting shall be final and no motion of dissent from such rulings shall be accepted.
- 22.5 No one shall serve more than 4 consecutive year terms as Members' Chair or Deputy Members' Chair and where that person has served 4 consecutive year terms that person shall not be eligible for re-election until a period of 12 months has elapsed.

23. CHAIRPERSON'S CASTING VOTE

- 23.1 In the case of an equality of votes whether on a show of hands or on a poll the chairperson of the general meeting at which the show of hands is taken or at which the poll is demanded is entitled to a casting vote.

24. ADJOURNMENT OF MEETINGS

- 24.1 The chairperson of a general meeting at which a quorum is present:
- (a) may adjourn a meeting with the consent of the meeting; and
 - (b) must adjourn the meeting if the meeting so directs,
- to a time and place as determined by the Members' Chair.
- 24.2 No business may be transacted at any adjourned general meeting other than the business left unfinished at the meeting from which the adjournment took place.
- 24.3 A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.
- 24.4 It is not necessary to give any notice of an adjournment of a general meeting or of the business to be transacted at the adjourned meeting except if the meeting is adjourned for 30 days or more in which case notice of the adjourned meeting must be given as in the case of an original meeting.

25. CIRCULATING RESOLUTION OF MEMBER REPRESENTATIVES

- 25.1 Subject to **clause 25.3**, the Directors may put a resolution to the Member Representatives to pass a resolution without a general meeting being held.
- 25.2 The Directors must notify the auditor (if any) and each Member as soon as possible that a circular resolution has or will be put to Member Representatives, and set out the wording of the resolution.

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- 25.3 Circular resolutions cannot be used:
- (a) for a resolution to remove an auditor, appoint a Director or remove a Director;
 - (b) for passing a Special Resolution; or
 - (c) where the Act or this Constitution requires a meeting to be held.
- 25.4 A circular resolution is passed if all the Member Representatives entitled to vote on the resolution sign or agree to the circular resolution, in the manner set out in **clause 25.5 or clause 25.6**.
- 25.5 Member Representatives may sign:
- (a) a single document setting out the circular resolution and containing a statement that they agree to the resolution; or
 - (b) separate copies of that document, as long as the wording is the same in each copy.
- 25.6 The circular resolution may be sent by email to Member Representatives and Member Representatives may agree by sending a reply email to that effect, including the text of the resolution in their reply.
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26. HOW VOTING IS CARRIED OUT

- 26.1 At any general meeting a resolution to be considered at the meeting shall be decided on a show of hands unless a poll is demanded by:
- (a) the Members' Chair of the meeting; or
 - (b) at least 2 Member Representatives entitled to vote on the resolution.
- 26.2 Before a vote is taken, the Members' Chair must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.
- 26.3 On a show of hands, the Members' Chair decision is conclusive evidence of the result of the vote.
- 26.4 The Members' Chair and the meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.
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27. POLLS

- 27.1 A poll may be demanded:
- (a) before a vote on a resolution is taken;
 - (b) before the voting results on a show of hands are declared; or
 - (c) immediately after the voting results on a show of hands are declared.

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- 27.2 If a poll is demanded it must be taken in such manner and at such time and place as the Members' Chair of the meeting directs subject to **clause 27.5**.
 - 27.3 The result of the poll shall be taken to be the resolution of the meeting at which the poll was demanded.
 - 27.4 The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.
 - 27.5 A poll demanded on the election of a Members' Chair or any question of adjournment of the meeting must be taken immediately.
 - 27.6 The demand for a poll may be withdrawn.
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28. VOTING RIGHTS

- 28.1 A Member Representative entitled to vote has one vote.
 - 28.2 No person other than a Member Representative shall be entitled to vote at a general meeting.
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29. CHALLENGE TO A MEMBER REPRESENTATIVE'S RIGHT TO VOTE

- 29.1 A Member Representative or the Members' Chair may only challenge a person's right to vote at a general meeting at that meeting.
 - 29.2 If a challenge is made under **clause 29.1**, the Members' Chair must decide whether or not the person may vote. The decision of the Members' Chair is final.
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30. RIGHT TO APPOINT PROXIES

- 30.1 A Member Representative may not appoint a proxy.
 - 30.2 A Member may appoint a person to attend and vote as a proxy for a Member Representative at the meeting and such person need not be a Member Representative.
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31. APPOINTING A PROXY

- 31.1 The instrument appointing a proxy must be in writing signed by the appointor or the appointor's attorney duly authorised in writing or if the appointor is a corporation signed by an authorised Officer or attorney of the corporation.
- 31.2 The instrument of proxy is valid if it contains the information required by the Act which at the date of this Constitution is the following information:
 - (a) the name and address of the Member and the Member Representative who will be replaced by the proxy in accordance with **clause 30.2**;

- (b) the name of the Company;
 - (c) the proxy's name or the name of the office of the proxy; and
 - (d) the meetings at which the instrument of proxy may be used.
- 31.3 An instrument of proxy may be expressed to be a standing appointment. An instrument of proxy for a specified meeting is only valid for that meeting and any postponement or adjournment of that meeting.
- 31.4 An instrument of proxy shall not be treated as invalid merely because it does not specify all of the information required by **clause 31.2**.
- 31.5 An instrument of proxy may be revoked at any time by notice in writing to the Company.

32. LODGMENT OF PROXIES

- 32.1 An instrument appointing:
- (a) a proxy and the power of attorney or other authority (if any) under which it is signed or executed or a certified copy of that power or authority; or
 - (b) an attorney to exercise a Member Representative's voting rights at a general meeting or a certified copy of that power of attorney,
- must be deposited at the Office or at such other place as is specified for that purpose in the notice convening the general meeting not less than 48 hours (or such shorter period as the Board may allow) before the time appointed for the holding of the meeting or adjourned meeting as the case may be at which the person named in the instrument proposes to vote and in default the instrument of proxy or the power of attorney will not be treated as valid.
- 32.2 For the purposes of this clause it will be sufficient that any document required to be lodged by a Member Representative be received in legible form by email if the notice of meeting so permits at the address and in the form specified in the notice and the proxy shall be regarded as received at the time of the receipt of the email transmission by the Company.

33. VALIDITY OF PROXIES

- 33.1 A vote exercised pursuant to an instrument of proxy, a power of attorney or other instrument of appointment is valid notwithstanding:
- (a) the death or unsoundness of mind of the Member Representative;
 - (b) the bankruptcy or liquidation of the Member Representative; or
 - (c) the revocation of the instrument of proxy or the power of attorney or any instrument under which the instrument or the power was granted,

unless the Company has received at its Office written notice of the death, unsoundness of mind, bankruptcy, liquidation or revocation at least 48 hours (or such shorter period as the Board may allow) prior to the time appointed for the holding of the general meeting or adjourned meeting, as the case may be, at which the instrument of proxy or the power of attorney is exercised.

- 33.2 A proxy who is not entitled to vote on a resolution as a Member Representative may vote as a proxy for another Member Representative who can vote if the appointment specifies the way the proxy is to vote on the resolution and the proxy votes that way.

34. VOTING BY PROXY

- 34.1 When a vote in writing is held, a proxy:
- (a) does not need to vote, unless the proxy appointment specifies the way they must vote;
 - (b) if the way they must vote is specified on the proxy form, must vote that way; and
 - (c) if the proxy is also a Member Representative or holds more than one proxy, may cast the votes held in different ways.

35. NUMBER OF DIRECTORS

- 35.1 The Company must have at least 3 and no more than 9 Directors.
- 35.2 The appointment of persons as Directors shall take place as follows:
- (a) the Nomination Committee shall, taking into account the considerations in **clause 39**, identify candidates for directorship and, subject to a majority decision of the Nomination Committee in favour of a candidate, propose the candidate to the Member Representatives; and
 - (b) the Member Representatives shall by resolution determine whether a candidate proposed by the Nomination Committee shall become a Director.

36. ELECTION AND APPOINTMENT OF DIRECTORS

- 36.1 The initial Directors are the people who have agreed to act as Directors and who are named in the application for registration of the Company.
- 36.2 The Member Representatives shall elect a Director by a resolution passed in a general meeting in accordance with **clause 35.2(b)** (excepting initial directors).
- 36.3 A person is eligible for election as a Director of the Company if they:
- (a) are nominated by the Nomination Committee in accordance with **clause 35.2(a)** (except for initial directors);

- (b) give the Company their signed consent to act as a Director of the Company; and
 - (c) are not ineligible to be a Director under the Act or the ACNC Act.
- 36.4 When electing a Director, Member Representatives should consider whether the Board is comprised of an appropriate range of skills.
- 36.5 If the number of Directors is reduced to fewer than 3 or is less than the number required for a quorum, the continuing Directors may act for the purpose of calling a general meeting to increase the number of Directors to 3, but for no other purpose.

37. TERM OF OFFICE

- 37.1 Except in the case of a casual vacancy and subject to **clause 37.2**, a Director will serve a term of 3 years from the effective date of election and may be eligible for re-election by Member Representatives as a Director for a maximum of 3 terms of no more than 3 years each.
- 37.2 At each annual general meeting:
- (a) any Director appointed to fill a casual vacancy must retire; and
 - (b) at least one-third of the remaining Directors must retire.
- 37.3 The Directors who must retire at each annual general meeting under **clause 37.2** will be the Directors who have been longest in office since last being elected. Where Directors were elected on the same day, the Director(s) to retire will be decided by lot unless they agree otherwise.
- 37.4 A Director's term of office starts at the end of the annual general meeting at which they are elected and ends at the end of the annual general meeting at which they retire.
- 37.5 A Director who retires under **clause 37.2** may be nominated for re-election, subject to **clause 37.6**.
- 37.6 A Director who has held office or would (if reappointed) hold office for a continuous period of 9 years (or more) may only be re-elected by a Special Resolution.

38. WHEN A DIRECTOR STOPS BEING A DIRECTOR

- 38.1 A Director stops being a Director if they:
- (a) give written notice of resignation as a Director to the Office of Company and the vacancy shall take effect at the time expressed in the notice (provided the time is not earlier than the date of delivery of the written notice to the Company);
 - (b) die;
 - (c) are removed as a Director by a resolution of the Member Representatives;

- (d) are absent for 3 consecutive Board meetings without approval from the Directors;
- (e) have served a maximum of 3 terms in accordance with **clause 37.1** and have not been re-elected in accordance with **clause 37.6**;
- (f) become ineligible to be a Director of the Company under the Act or the ACNC Act; or
- (g) become of unsound mind or a person whose personal estate is liable to be dealt with in any way under the law relating to mental health.

39. CONSIDERATIONS BY NOMINATION COMMITTEE

- 39.1 The Nomination Committee shall in considering a person for nomination as a Director have regard to such matters as the Nomination Committee shall consider relevant from time to time including whether the person:
- (a) demonstrates a commitment to and understanding of the philosophy and work of the Company;
 - (b) exemplifies the Company's vision, mission and core values in their life;
 - (c) demonstrates a commitment to and understanding of the philosophy and works of the Church;
 - (d) is committed to using their role as Director to assist the Company to advance the objects of the Company as set out in **clause 5.1**;
 - (e) has sufficient expertise to advance the objects of the Company at any given time; and
 - (f) where possible, adds to the mix of gender, ethnographic, religious and geographical diversity on the Board.

40. NOMINATION COMMITTEE

- 40.1 The Nomination Committee shall comprise the following members:
- (a) 1 of whom shall be the ex-officio Board Chair who shall be the chairperson of the Nomination Committee; and
 - (b) 1 of whom shall be a Director of the Company (other than the Board Chair); and
 - (c) 1 Member Representative appointed by each Member.
- 40.2 In the event that a Member Representative appointed to the Nomination Committee under **clause 40.1(c)** ceases to be a Member Representative, that Member Representative shall be deemed to have resigned from the Nomination Committee and the appointing Member shall appoint a new member of the Nomination

Committee to replace that Member Representative as soon as possible after the vacancy occurs. The person so appointed must be a Member Representative.

41. NEGOTIABLE INSTRUMENTS

- 41.1 All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for money paid to the Company must be signed, drawn, accepted, endorsed or otherwise executed as the case may be by at least 2 Directors if the Company has 2 or more Directors. The Directors may determine that a negotiable instrument may be signed, accepted, drawn, endorsed or otherwise executed in a different way.
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42. POWER OF DIRECTORS

- 42.1 All day to day control, management and conduct of the Company shall be vested in the Board who shall exercise all such powers of the Company as are not by the Act or by this Constitution required to be exercised in any other manner.
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43. RESERVE POWERS AND REVIEW

- 43.1 In accordance with **clause 43.2**, the approval of the Member Representatives shall be required as a pre-requisite to any decision of the Board becoming effective in respect of the following reserve powers:

- (a) Adoption or amendment of any Professional Standard;
- (b) Approval of the strategic plan, business plan and annual budget and any variation to them;
- (c) A decision to terminate membership;
- (d) Taking any disciplinary action against a Catholic Entity concerning non-compliance with Professional Standards;
- (e) Borrowing in excess of the amount set by the Member Representatives from time to time;
- (f) Acquisitions or purchases in excess of the amount set by the Member Representatives, from time to time;
- (g) Acceptance of any types of gifts which fall within any category of gifts as determined by the Member Representatives from time to time;
- (h) The sale, lease, mortgage or encumbrance disposition, or other form of alienation of the stable patrimony of the Company, and

a decision, action or event in respect of the above reserve powers may not be made public until it has been approved by the Member Representatives in accordance with this clause.

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- 43.2 All powers vested in the Member Representatives by **clause 43.1** must be exercised only by way of resolution passed by at least 75% of all Member Representatives; and other powers vested in the Member Representatives shall, unless otherwise specified in this Constitution or the Act, be by way of majority resolution of all Member Representatives.
- 43.3 Corporate Review
- (a) On the 5th anniversary of the incorporation of the Company (and at any other time upon unanimous request of the Members), the Board shall carry out or cause to be carried out, a review of the Company.
 - (b) The purpose of any review is to assess the effectiveness, sustainability, ongoing viability and relevance of the Company in light of its objects.
 - (c) Copies of the review shall be provided to Members and shall be considered by the Member Representatives at a general meeting. The Member Representatives may vote to take any action in relation to the review. This may include amending the Constitution (in accordance with **clause 7.1**) or winding up the Company (in accordance with **clause 64**).
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44. DELEGATION OF DIRECTORS' POWERS

- 44.1 The Directors may delegate any of their powers and functions to a Committee, a Director, an employee of the Company (such as a chief executive officer) or any other person, as they consider appropriate, on such terms and conditions and with such restrictions as it may think expedient.
- 44.2 Powers conferred under this clause may be exercised concurrently with the powers of the Board in that regard and the Board may from time to time withdraw, revoke or vary all or any of such powers.
- 44.3 The delegation must be recorded in the Company's minute book.
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45. REMUNERATION OF DIRECTORS

- 45.1 The Directors may, if the Member Representatives decide, be paid as remuneration for their services the aggregate annual sum that is fixed by the Member Representatives from time to time. If any sum is voted by the Member Representatives, it will be divided amongst the Directors as the Member Representatives decide.
- 45.2 The Directors will be reimbursed for all travelling and other out-of-pocket expenses properly incurred by them in relation to their role as a director.
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46. CONFLICTS OF INTEREST

- 46.1 A Director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of Directors (or that is proposed in a circular resolution):

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- (a) to the other Directors; or
 - (b) if all of the Directors have the same conflict of interest, to the Member Representatives at the next general meeting, or at an earlier time if reasonable to do so.
- 46.2 The disclosure of a conflict of interest by a Director must be recorded in the minutes of the meeting.
- 46.3 A general notice given to the Board by a Director that the Director is an Officer, a Member Representative of or otherwise interested in any specified corporation or firm stating the nature and the extent of the Director's interest in the corporation or firm shall, in relation to any matter involving the Company and that corporation or firm after the giving of the notice, be a sufficient disclosure of the Director's interest, provided that the extent of the interest is no greater at the time of first consideration of the relevant matter by the Board than was stated in the notice.
- 46.4 Each Director who has a material personal interest in a matter that is being considered at a meeting of Directors (or that is proposed in a circular resolution) must not, except as provided under **clause 46.5**:
- (a) be present at the meeting while the matter is being discussed; or
 - (b) vote on the matter.
- 46.5 A Director may still be present and vote if:
- (a) their interest arises because they are a Member Representative of the Company, and the other Directors have the same interest;
 - (b) their interest relates to an insurance contract that insures, or would insure, the Director against liabilities that the Director incurs as a Director of the Company (see **clause 65**);
 - (c) their interest relates to a payment by the Company under **clause 66** (indemnity), or any contract relating to an indemnity that is allowed under the Act;
 - (d) the Australian Securities and Investments Commission (**ASIC**) makes an order allowing the Director to vote on the matter; or
 - (e) the Directors who do not have a material personal interest in the matter pass a resolution that:
 - (i) identifies the Director, the nature and extent of the Director's interest in the matter and how it relates to the affairs of the Company; and
 - (ii) says that those Directors are satisfied that the interest should not stop the Director from voting or being present.

47. DUTIES OF DIRECTORS

- 47.1 The Directors must comply with their duties as Directors under legislation and common law (judge-made law), and with the duties described in governance standard 5 of the regulations made under the ACNC Act which are:
- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a Director of the Company;
 - (b) to act in good faith in the best interests of the Company and to further the charitable purpose(s) of the Company set out in **clause 5.1**;
 - (c) not to misuse their position as a Director;
 - (d) not to misuse information they gain in their role as a Director;
 - (e) to disclose any perceived or actual material conflicts of interest in the manner set out in **clause 46**;
 - (f) to ensure that the financial affairs of the Company are managed responsibly; and
 - (g) not to allow the Company to operate while it is insolvent.

48. WHEN THE DIRECTORS MEET

- 48.1 The Directors may decide how often, where and when they meet, provided that they shall meet together not less than 4 times each calendar year.

49. CALLING DIRECTORS MEETINGS

- 49.1 The Board Chair or 3 Directors or the Secretary upon the request of 3 Directors, shall convene a meeting of the Board by giving at least 48 hours' notice of the meeting to all Directors.
- 49.2 Notice of a meeting of the Board need not be in writing.

50. USING TECHNOLOGY TO HOLD DIRECTORS' MEETINGS

- 50.1 The Directors may hold their meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the Directors.
- 50.2 The Directors' agreement may be a standing one.
- 50.3 A Director may only withdraw their consent within a reasonable period before the meeting.

51. QUORUM AT DIRECTORS' MEETINGS

- 51.1 Unless the Directors determine otherwise, the quorum for a Board meeting is a majority (more than 50%) of Directors.
- 51.2 No business may be transacted at any Board meeting unless a quorum of Directors is present at all times during the meeting.
- 51.3 Directors who are personally present (or in conference in accordance with **clause 50**) form a quorum. A Director who is disqualified from voting on a matter pursuant to **clause 46** shall be counted in the quorum despite that disqualification.
- 51.4 All resolutions of the Directors passed at a Board meeting where a quorum is present but where notice of the meeting has not been given as required to each Director, or any act carried out pursuant to such resolution, shall, provided each Director to whom notice was not given subsequently agrees to waive the same, be valid as if notice of the meeting had been duly given to all Directors.

52. BOARD CHAIR AND DEPUTY BOARD CHAIR

- 52.1 The Board shall elect a Board Chair and a Deputy Board Chair from amongst their number at the first meeting of Directors after each annual general meeting by a resolution of not less than 75% of Directors present and entitled to vote.
- 52.2 The Board Chair shall, if present, preside as chairperson of every meeting of the Board.
- 52.3 If a meeting of Board is held and the Board Chair is not present within 15 minutes after the time appointed for the holding of the meeting or, if present, does not wish to chair the meeting, then the Deputy Board Chair shall preside as chairperson of the meeting, or if there is no Deputy Board Chair or the Deputy Board Chair is not present or is unwilling to act then the other Directors present must elect one of their number to be chairperson of the meeting.

53. VOTING

- 53.1 A resolution of the Board must be passed by a majority of votes of the Directors present at the meeting who vote on the resolution. A resolution passed by a majority of the votes cast by the Directors will for all purposes be taken to be a determination of the Board.
- 53.2 Each Director shall have one vote.
- 53.3 In case of an equality of votes at a meeting of the Board, the Board Chair has a casting vote in addition to a deliberative vote.

54. RESOLUTIONS BY DIRECTORS

- 54.1 The Board may pass a resolution by way of a circular resolution without a Board meeting being held if all the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. For this purpose, signatures can be contained in more than one document.
- 54.2 The resolution is passed when the last Director signs.
- 54.3 A transmission, via whatever technological means, which is received by the Company and which purports to have been signed by a Director shall for the purposes of this clause be taken to be in writing and signed by that Director at the time of the receipt of the transmission by the Company in legible form.
- 54.4 The Company may send a circular resolution by email to the Directors and the Directors may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.

55. COMMITTEE OF DIRECTORS

- 55.1 In accordance with **clause 44**, the Board may form and delegate any of its powers to a Committee consisting of such Directors and other persons as it thinks fit and may from time to time revoke such delegation. All such Committees must be chaired by a Director.
- 55.2 A Committee must in exercise of the powers delegated to it conform to any directions and restrictions that may be imposed on it by the Board. A power so exercised shall be taken to be exercised by the Board.
- 55.3 The meetings and proceedings of any Committee consisting of more than one person will be governed by the provisions for regulating the meetings and proceedings of the Board contained in this Constitution.
- 55.4 A minute of all the proceedings and decisions of every Committee shall be made, entered and signed in the same manner in all respects as minutes of proceedings of the Board are required by the Act and this Constitution to be made, entered and signed. A copy of these minutes shall be tabled at the next Board meeting.

56. VALIDATION OF ACTS OF DIRECTORS

- 56.1 All acts done:
- (a) at any meeting of the Board; or
 - (b) by any person acting as a Director,

shall, even if it is discovered afterwards that there was a defect in the appointment or continuance in office of any such Director or person or that they or any of them were disqualified or were not entitled to vote, be as valid as if every such person had been

duly appointed or had continued in office and was duly qualified to be a Director and had been entitled to vote.

57. MINUTES AND RECORDS

- 57.1 The Company must make and keep the following records:
- (a) minutes of proceedings and resolutions of general meetings;
 - (b) circular resolutions of Member Representatives;
 - (c) a copy of a notice of each general meeting.
- 57.2 The Company must make and keep the following records:
- (a) minutes of proceedings and resolutions of Directors' meetings (including meetings of any Committees); and
 - (b) circular resolutions of Directors.
- 57.3 To allow Members and Member Representatives to inspect the Company's records:
- (a) the Company must give a Member and/or a Member Representative reasonable access to the records set out in **clause 57.1**; and
 - (b) the Directors may authorise a Member and/or Member Representative to inspect other records of the Company, including records referred to in **clause 57.2** and **clause 60.1**.
- 57.4 The Member Representatives must ensure that minutes of a general meeting are signed within a reasonable time after the meeting by:
- (a) the Members' Chair of the meeting; or
 - (b) the Members' Chair of the next meeting.
- 57.5 The Directors must ensure that minutes of a Board meeting are signed within a reasonable time after the meeting by:
- (a) the Board Chair of the meeting; or
 - (b) the Board Chair of the next meeting.
- 57.6 The Directors must ensure that minutes of the passing of a circular resolution (of Member Representatives or Directors) are signed by the Board Chair within a reasonable time after the resolution is passed.

58. APPOINTMENT AND ROLE OF SECRETARY

- 58.1 The Company must have at least one Secretary, who may also be a Director.

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- 58.2 A Secretary must be appointed by the Directors (after giving the Company their signed consent to act as Secretary of the Company) and may be removed from that role by the Directors.
- 58.3 The Directors must decide the terms and conditions under which the Secretary is appointed, including any remuneration.
- 58.4 The role of the Secretary includes:
- (a) maintaining a Register of the Company's Members; and
 - (b) maintaining the minutes and other records of general meetings (including notices of meetings), Directors' meetings and circular resolutions.
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59. EXECUTION OF DOCUMENTS

- 59.1 Without limiting the manner in which the Company may execute any contract, including as permitted under section 126 of the Act, the Company may execute a document without using a common seal if the document is signed by:
- (a) 2 Directors of the Company, or
 - (b) a Director and the Secretary.
- 59.2 Nothing in this Constitution requires the Company to execute any agreement, deed or other document under common seal for the same to be effectively executed by the Company.
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60. FINANCIAL AND RELATED RECORDS

- 60.1 The Company must make and keep written financial records that:
- (a) correctly record and explain its transactions and financial position and performance; and
 - (b) enable true and fair financial statements to be prepared and to be audited.
- 60.2 The Company must also keep written records that correctly record its operations.
- 60.3 The Company must retain its records for at least 7 years.
- 60.4 The Directors must take reasonable steps to ensure that the Company's records are kept safe.
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61. DIRECTORS' ACCESS TO DOCUMENTS

- 61.1 A Director has a right of access to the financial records of the Company at all reasonable times.

61.2 If the Directors agree, the Company must give a Director or former Director access to:

- (a) certain documents, including documents provided for or available to the Directors; and
- (b) any other documents referred to in those documents.

62. BY-LAWS

- 62.1 The Directors may pass a resolution to make by-laws to give effect to this Constitution. By-laws may not be inconsistent with this Constitution and, in the event of any inconsistency, the provisions of the Constitution will prevail.
- 62.2 Member Representatives and Directors must comply with by-laws as if they were part of this Constitution.
- 62.3 Member Representatives may set aside any by-laws made under **clause 62.1** by ordinary resolution.

63. WHEN NOTICE IS TAKEN TO BE GIVEN

- 63.1 Written notice under this Constitution may be:
- (a) delivered in person, or left at a the recipient's address, and is taken to be given on the day it is delivered;
 - (b) sent by post, and is taken to be given on the third day after it is posted with the correct payment of postage costs;
 - (c) sent by email, fax or other electronic method as agreed to by the recipient, and is taken to be given on the Business Day after it is sent.

64. WINDING UP

- 64.1 The Company shall be wound up if the Member Representatives resolve by Special Resolution to that effect.
- 64.2 If any surplus remains following the winding up of the Company, the surplus will not be paid to or distributed amongst Members or Member Representatives, but will be given or transferred to one or more institutions or corporations which have:
- (a) charitable objects which are similar to the objects of the Company as set out in **clause 5.1**;
 - (b) a governing document which requires its income and property to be applied in promoting its objects; and

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- (c) a governing document which prohibits it from paying or distributing its income and property amongst its members to an extent at least as great as imposed on the Company by **clause 6.2**.
- 64.3 The identity of the corporation(s) or institution(s) is to be determined by a unanimous resolution of the Member Representatives at or before the time of dissolution and failing such determination being made, by application to the Supreme Court for determination.
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65. INDEMNITY

- 65.1 To the extent permitted by law every Officer (and former Officer) of the Company shall be indemnified out of the funds of the Company against all costs, expenses and liabilities incurred as such an Officer or employee (or former Officer or employee). However, no such Officer (or former Officer) shall be indemnified out of the funds of the Company under this clause unless:
- (a) it is in respect of a liability to another person (other than the Company or a related body corporate to the Company) where the liability to the other person does not arise out of conduct involving a lack of good faith; or
 - (b) it is in respect of a liability for costs and expenses incurred:
 - (i) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the Officer (or former Officer) or in which the Officer (or former Officer) is acquitted; or
 - (ii) in connection with an application, in relation to such proceedings, in which the court grants relief to the Officer (or former Officer) under the Act.
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66. PAYMENT OF INDEMNITY POLICY PREMIUM

- 66.1 To the extent permitted by law the Company may at the discretion of the Board enter into and pay a premium in respect of a policy of insurance insuring an Officer (or former Officer) of the Company against any liability incurred by such person in that capacity (whether in respect of acts or omissions prior to or after the date of the issue of the policy or both) except for:
- (a) a liability arising out of conduct involving a wilful breach of duty in relation to the Company; or
 - (b) a contravention of sections 182 or 183 of the Act.
- 66.2 The Board shall have the discretion to approve the terms and conditions of any such policy of insurance.
- 66.3 Where an Officer (or former Officer) has the benefit of an indemnity pursuant to an insurance policy in respect of his actions or omissions then the Company shall not be required to indemnify the Officer under **clause 65** except to the extent that the indemnity affected by the insurance policy does not fully cover the persons liability.

67. INDEMNITY TO CONTINUE

- 67.1 The indemnity granted by the Company contained in **clause 65** shall continue in full force and effect notwithstanding the deletion or modification of that clause, in respect of acts and omissions occurring prior to the date of the deletion or modification.