



FAMILY AND COMMUNITY DEVELOPMENT COMMITTEE

BETRAYAL OF TRUST

INQUIRY INTO THE HANDLING OF
CHILD ABUSE BY RELIGIOUS AND OTHER
NON-GOVERNMENT ORGANISATIONS

VOLUME 2 OF 2

ORDERED TO BE PRINTED

November 2013

PP No.275. Session 2010–13

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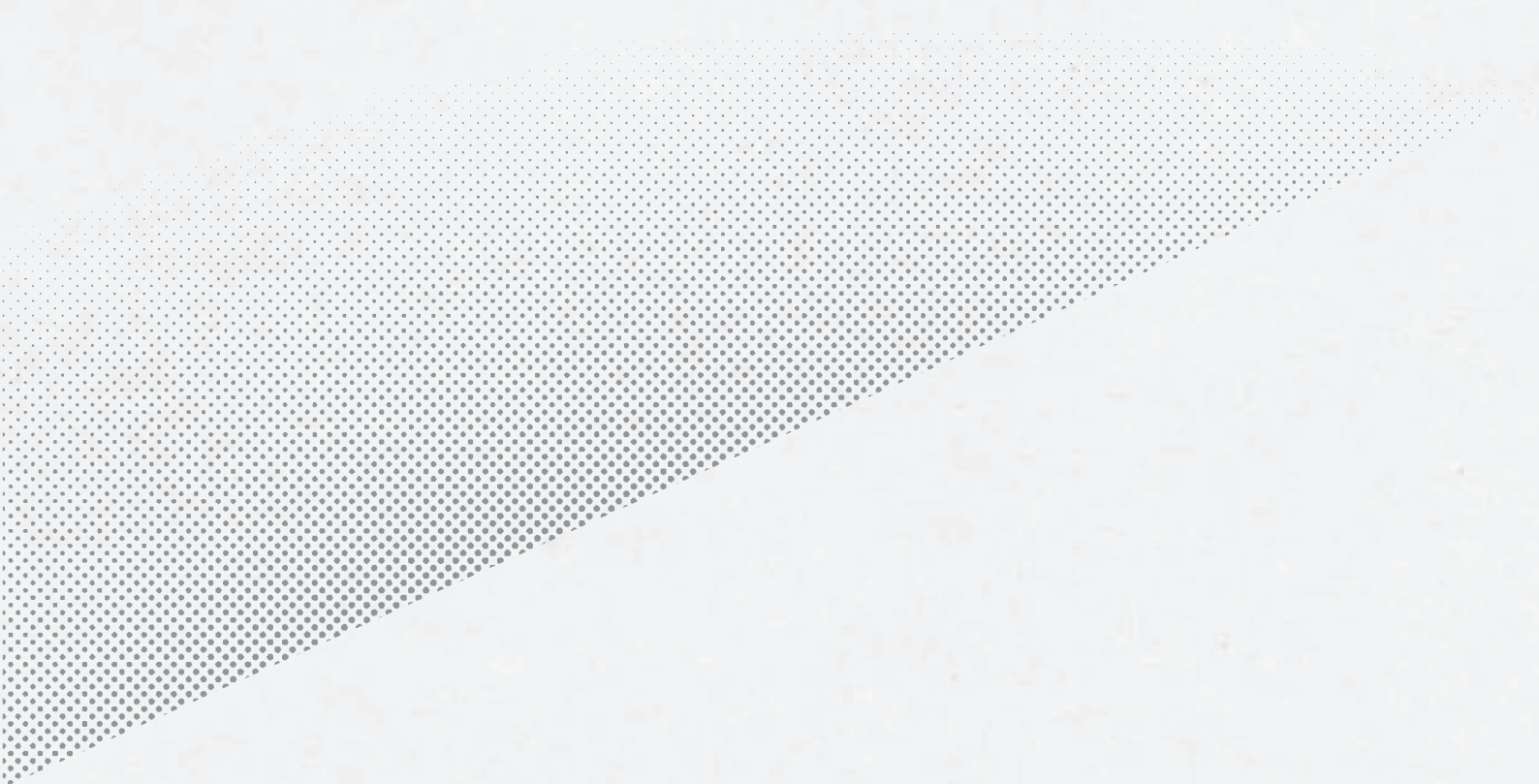
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PART D

PREVENTION—DUTY OF CARE TO CREATE CHILD-SAFE ORGANISATIONS



Victims of criminal child abuse conveyed a strong message to the Inquiry that they should never have experienced abuse while in the care of personnel from a non-government organisation.

The Committee determined that prevention of criminal child abuse in organisations is critical. Non-government organisations have both a moral and a legal responsibility to protect children from the harm of abuse while in their care.

Children have a right to be safe from criminal abuse in organisations. Parents, caregivers and the community trust organisations to protect children while in their care. Children are vulnerable and dependent on adults and organisations have a responsibility to ensure their safety.

In this Report, the Committee recommends changes to legislation to strengthen the accountability of organisations and their legal duty to take reasonable care to prevent criminal child abuse occurring in their organisation.

This part of the Report considers the systems and processes that non-government organisations should have in place to meet this duty of care.

While prevention is essential, the Committee also considered it is important to counterbalance messages of prevention with a measured approach that does not create unnecessary fear in the community at large.

Victims, justice and the importance of prevention

Many victims told the Inquiry that achieving justice meant seeing non-government organisations commit more firmly to the prevention of criminal child abuse. In response to a question from the Committee regarding what he would like to see come out of the Inquiry, one victim stated:

... that further children are not at risk of paedophiles. This inquiry is specifically about religious and other organisations, but I think fundamentally that no further child is ever put at risk is what I would like to see come out of this ...¹

Mr Lincoln McMahon emphasised the duty of care of non-government organisations, explaining in his submission that ‘What is important in my view, is how such organisations manage their affairs, to limit the opportunity for their employees to stray into inappropriate activity.’²

Many victims had views on what strategies need to be adopted to prevent criminal child abuse from occurring in non-government organisations. These included:

- screening checks and balances to prevent offenders accessing non-government organisations
- policies for preventing abuse by existing staff in non-government organisations
- measures that aim to improve organisational culture and assist with prevention.

In regard to screening and recruitment processes, the mother of a victim, Mrs Helen Watson, said that she wanted the ‘church ... to develop a system [to] assess suitability of all new applicants to the church.’³ Similarly, Mr Hugh McGowan stated

1 *Transcript of evidence*, Mr Jim Commadeur, Melbourne, 23 November 2012, p. 5.

2 *Submission S432*, Mr Lincoln McMahon, p. 1.

3 *Transcript of evidence*, Mr Tim Watson, Ballarat, 7 December 2012, p. 5.

that organisations need to ‘thoroughly check prospective employees who may be responsible for the care of children.’⁴

He also suggested that personnel in non-government organisations need to ‘hold suitable academic qualifications’ and that there need to be ‘proper standards and operating procedures for the facilities.’⁵ Mr McGowan recommended to the Inquiry that non-government organisations need to ‘be properly monitored to ensure the set standards are maintained from within the controlling body and by an external auditor.’⁶

Others emphasised the importance of organisational culture in creating child-safe environments, with one suggestion that those who work with children should ‘have the right attitude and aspirations towards the care of children and ensure the children can trust them.’⁷

Victims and victim advocate groups also highlighted the role of effective policies and training for personnel. For example, In Good Faith and Associates stressed that ‘We need ongoing training of staff, volunteers, families, children and parishioners.’⁸ Mr James Boyle emphasised the importance of training and education in the context of grooming behaviour:

Just as a plumber has to have education on safety, on first aid, every teacher, every priest, every person working in the diocese or archdiocese should be having prevention training that says, ‘Here are the things that police have told us you can recognise as grooming. Here are the things that are dangerous’. And this education has to be continuous.⁹

In Good Faith and Associates also recommended that:

We need child protection policies, programs and procedures. We need standardised, state-approved policies, programs and procedures.¹⁰

A number of Inquiry participants highlighted the need to raise awareness in the broader community. For example, Mr Anthony Foster stated that ‘There should be a continuing public education campaign to ensure a high level of awareness of the danger, symptoms, causes and effects and the prevention of child sexual assaults.’¹¹

Organisations’ duty of care to prevent criminal child abuse

Many Inquiry participants were strongly of the view that non-government organisations have a duty of care to protect children from the harm of criminal child abuse. The following sentiment was typical:

Organisations have a moral and legal responsibility to ensure children are safe in their care. Child abuse is preventable.¹²

4 *Transcript of evidence*, Mr Hugh McGowan, Melbourne, 4 February 2013, p. 5.

5 *Transcript of evidence*, Mr Hugh McGowan, p. 5.

6 *Transcript of evidence*, Mr Hugh McGowan, p. 5.

7 *Transcript of evidence*, Mr Hugh McGowan, p. 5.

8 *Transcript of evidence*, In Good Faith and Associates, Melbourne, 12 November 2012, p. 7.

9 *Transcript of evidence*, Mr Jim Boyle, Melbourne, 15 March 2013, p. 3.

10 *Transcript of evidence*, In Good Faith and Associates, p. 7.

11 *Transcript of evidence*, Mr Anthony & Mrs Chrissie Foster, Melbourne, 23 November 2012, p. 8.

12 *Submission S388*, Child Wise.

The Committee determined that prevention of criminal child abuse in organisational contexts is complex and multilayered, with responsibilities resting at several layers within the community.

In this part of the Report the Committee highlights the need for ensuring organisations have established prevention processes that include:

- effective selection of suitable personnel
- managing situational or environmental risk within the organisation
- creating a child-safe organisational culture.

It considered that to achieve these goals it is essential to have written policies and processes in place that demonstrate the commitment of non-government organisation to protecting children from the harm of abuse and that provide guidance to personnel within the organisation.

The implementation of these systems and processes rely on:

- knowledge and awareness of the systems and processes required and how to implement them
- checks and balances to ensure organisation have minimum standards in place for child-safe environments
- awareness of criminal child abuse in organisations, its impacts and how to report it within the broader community.

Chapter 9

Effective prevention of criminal child abuse in non-government organisations

AT A GLANCE

Background

Non-government organisations have a responsibility to protect children from criminal child abuse while in their care. The Committee has recommended that organisations are held accountable and have a legal duty to take reasonable care to prevent criminal child abuse. The establishment of effective systems and processes for ensuring child-safe environments is an increasing priority for non-government organisations.

Key findings

- There are a number of focus areas for preventing criminal child abuse in organisations, including preventing offending, raising children’s awareness, ensuring child-safe environments in organisations and empowering the broader community to respond to criminal child abuse.
- Situational crime prevention has considerable potential as a model for prevention of criminal child abuse in non-government organisations through its focus on social and physical environments that reduce opportunity for crime and increase the risks to perpetrators associated with criminal behaviour.
- There are three core elements that are central to the prevention of criminal child abuse in organisations:
 - ♦ effective selection of suitable personnel—including paid, voluntary, ministers of religion and contractors
 - ♦ managing situational and environmental risks
 - ♦ creating child-safe organisational cultures.
- Commitment to prevention of criminal child abuse is crucial, but equally essential is the effective implementation of systems and processes through adequate knowledge, skills and awareness and appropriate oversight.

Prevention of criminal child abuse rests on the principle that all children should have safe, stable, nurturing relationships and environments.

To date, the focus of governments in the prevention of child abuse has focused on abuse perpetrated by parents or a primary carer. The recent Cummins Inquiry¹³ and research attention in this area has contributed to new policy directions in early intervention and prevention of child abuse in families.

The Committee is conscious that preventing criminal child abuse in non-government organisations requires a different focus. When parents and the community put their trust in an organisation to care for children for any period of time, they have a moral and legal duty to protect them from the harm of criminal child abuse.

The Committee identified three core elements for preventing criminal child abuse in non-government organisations:

- effective selection of suitable personnel
- managing environmental risk
- promoting child-safe cultures in organisations.

It determined that internal systems and processes are critical to creating and maintaining child-safe organisations. While non-government organisations have a responsibility to establish these processes, the Committee considered oversight is important to ensure the processes are in place and are being adequately implemented.

9.1. Prevention and duty of care to protect children

Many Inquiry participants made reference to the duty of care that organisations have to protect children in their care from harm and highlighted that organisations should:

- recognise the right of children to be protected from criminal child abuse
- ensure reasonable steps are taken to prevent children from the harm of criminal child abuse.

The Committee heard examples where organisations failed in this duty of care. Many instances related specifically to the Catholic Church in Victoria. For example, the father of a victim, Mr Ian Lawther explained:

I was forced to bring my children up as Catholic, so my wife could marry in the Church of her faith. I took this promise seriously, only to find that the Catholic Church feels it has absolutely no duty of care or sense of protection towards my children ...

With one fraction of the effort ... you could announce a zero tolerance policy for child molesters; you could prevent pedophile men from signing up to train for the priesthood.¹⁴

Former priest in the Catholic Church, Mr Phil O'Donnell, expressed his views to the Inquiry, stating that:

¹³ P. Cummins, D. Scott, OAM, & Bill Scales, AO (2012) *Report of the Protecting Victoria's Vulnerable Children Inquiry*. Melbourne, Department of Premier and Cabinet.

¹⁴ *Submission S057A*, Mr Ian Lawther, pp. 1–2.

... it is utterly bewildering how those in authority in our Church—throughout the world, and here in Melbourne—failed so spectacularly in their responsibility and duty of care.¹⁵

Others referred to the responsibility of the State in protecting children in their care from the harm of criminal child abuse within non-government organisations. They were particularly concerned with the level of government monitoring of those organisations in the past. For example, Mr Frank Golding stated that:

A very large number of children were assigned to these institutions by the state which then failed to monitor what happened to them. In this respect, there is a shared liability and an obligation in respect of accountability. The state had an overarching duty of care no matter what agency had the day-to-day responsibility of running the institution.¹⁶

Ms Helen Dawson made the similar point regarding responsibilities to protect children from criminal abuse while in the care of the State and residing in facilities operated by non-government organisations:

The Institutions were charged with a Duty of Care of each Child.

The Government was charged with a Duty of Care of each Child.¹⁷

The Committee determined that non-government organisations have a legal duty of care which needs to be reflected in Victorian law, as recommended in Part H. It also acknowledges the duty of care of the State in monitoring the operations of non-government organisations it contracts and funds to provide services. Part E makes recommendations for improved monitoring and oversight of all non-government organisations in their handling of criminal child abuse. Chapter 12 outlines the current systems the Government has put in place for community services that manage out-of-home care placements for children in the care of the State.

9.2. Non-government organisations and child-safe environments

In reviewing material from both the Australian Childhood Foundation (ACF) and Child Wise, the Committee noted that a child-safe organisation has the following features:

- Children—The organisation recognises vulnerability factors for children and the harms of all forms of child abuse and encourages children to report behaviours that make them feel unsafe.
- Offending behaviour—The organisation is aware of concerning behaviours of adults towards children and establishes clear boundaries and guidelines regarding behaviour.
- Organisational culture—The organisation has a clear understanding of moral and legal obligations and commits to a culture that is child-focused, transparent and respectful, with active staff supervision and training.

Child-safe

organisation—

acknowledges that safety does not just happen. A child-safe organisation takes action to protect children from physical, sexual, emotional, psychological and cultural abuse and from neglect. In a child-safe organisation, this commitment to protecting children is embedded in the organisation's culture and responsibility for taking action is understood and accepted at all levels of the organisation.¹⁸

15 Submission S104 part 1, Mr Phil O'Donnell, p. 14.

16 Submission S105, Mr Frank Golding, p. 3.

17 Submission S248, Ms Helen Dawson, p. 7.

18 Child Safety Commissioner (2006) *A guide for creating a child-safe organisation*. Melbourne, Child Safety Commissioner, p. 1.

- Involves community—The organisation is open to people outside the organisation raising questions, comments and concerns.¹⁹

The Committee considered that organisations need to adopt an integrated approach to preventing criminal child abuse by any personnel in their organisation. There is also a role for government in supporting the prevention of criminal child abuse in non-government organisations, particularly relating to awareness raising. Table 9.1 outlines the focus areas in this approach.

Table 9.1: Focus areas for preventing criminal child abuse in non-government organisations

Focus area	Description
Preventing offending	<ul style="list-style-type: none"> • Sexual offending—developmental approaches focused on promoting emotional attachment in early childhood. • Other offending—training to raise awareness of non-abusive disciplinary practices.
Raising children’s awareness	<ul style="list-style-type: none"> • Recognise that children are not responsible for protecting themselves from the harms of criminal child abuse. • Understanding that the community has a responsibility to raise children’s awareness of inappropriate behaviour and understand the importance of disclosure when they feel unsafe or uncomfortable.
Ensuring child-safe environments in non-government organisations	<ul style="list-style-type: none"> • Using situational crime prevention approaches to reduce opportunity and increase risks to perpetrators of criminal behaviour. • Targeting social and physical environments to make them safe.
Empowering the broader community to respond to child abuse	<ul style="list-style-type: none"> • Building awareness in the broader community of criminal child abuse and targeting specific groups, such as parents. • Increasing people’s understanding of impacts of child abuse and how to respond to suspected child abuse without creating unnecessary fear in the community.

Source: Adapted from Smallbone et al (2008) *Preventing child sexual abuse*. Willan Publishing.

Finding 9.1

There are a number of focus areas for preventing criminal child abuse in organisations, including preventing offending, raising children’s awareness, ensuring child-safe environments in organisations and empowering the broader community to respond to criminal child abuse.

19 Australian Childhood Foundation *Safeguarding Children: A program resourcing organisations to protect children and young people, Information booklet*. Ringwood, ACF, p. 17; Childwise (Undated) *Choose with care: 12 steps to child safe organisation*. South Melbourne, Childwise; Childwise (2008) *Keeping your children safe: Choosing safe organisations and activities for your children*. Melbourne, Childwise, p. 7.

9.2.1. Situational crime prevention

Several expert witnesses who appeared before the Inquiry informed the Committee that situational crime prevention shows considerable potential for use in organisational contexts.²⁰

The Deputy Director of the Australian Institute for Family Studies (AIFS), Dr Darryl Higgins, explained to the Inquiry that:

To manage the situational risk of that kind of crime occurring ... means ... focusing on ... opportunity reduction—making crime more risky, making crime more effortful, reducing the rewards, reducing the excuses and preventing and not tolerating what could be potential grooming behaviour.²²

In research conducted by the John Jay College of Criminal Justice of the City University of New York, the researchers noted that ‘because potential offenders use the environment to their advantage in the commission of a crime, situational modifications may result in the reduction of criminal activity.’²³

Chapter 6 of Part C outlined the nature of offending and noted that while some is predatory and pre-meditated, other potential perpetrators may have never offended or been caught and could possibly respond to an ‘opportunity’ to offend.

Similarly, Professor Stephen Smallbone from Griffith University told the Inquiry that:

There is very significant scope for the application of situational crime prevention principles to make places safe for children. I think it is too often overlooked because the influence of the environment is underestimated, and I think the reason it is underestimated is because of the attachment to the stereotype of the predatory offender.²⁴

In their 2006 article, Wortley and Smallbone describe situational crime prevention in the context of preventing child sexual abuse in organisations.²⁵ They outline a number of strategies important in the social and physical environment of organisations. These include:

- increasing effort—to make it more difficult for potential offenders
- increasing risk—by making it more likely that the offender’s behaviour will be observed and reported.

Situational crime prevention—tackles specific crimes in specific locations where the crime event and not the offender is the object of interest.²¹ A primary objective of situational crime prevention is to reduce opportunities to offend by making the social and physical environment high risk for offending behaviour.

20 *Transcript of evidence*, Professor Stephen Smallbone, Griffith University, Melbourne, 9 November 2012, p. 6.

21 S. Smallbone, W. L. Marshall, & R. Wortley (2008) *Preventing child sexual abuse: Evidence, policy and practice*. Devon, Willan Publishing, p. 157.

22 *Transcript of evidence*, Australian Institute of Family Studies, Melbourne, 19 October 2012, p. 6.

23 K. J. Terry, M. Leland Smith, K. Schuth et al. (2011) ‘Sexual Victimization of Minors: Analyzing the Onset, Persistence, and Desistance from Abuse Incidents by Priests’. *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, p. 99 (Chapter 5).

24 *Transcript of evidence*, Professor S. Smallbone, p. 6.

25 R. Wortley & S. Smallbone (2006) ‘Applying situational principles to sexual offences against children’. In R. Wortley & S. Smallbone (Eds.), *Crime prevention studies: Vol. 19. Situational prevention of child sexual abuse*. Monsey, NY, Criminal Justice Press, pp. 23–30.

Although the types, structures and business of organisations vary greatly, the principles that underpin situational prevention are common. As Professor Smallbone explained to the Inquiry:

I think one of the important aspects of situational prevention is that while the same principles can be applied almost universally, what you would actually do becomes completely contingent upon the specific setting that you are concerned about. So what one might do, for example, to prevent the abuse of 12 to 14-year-old boys in a religious school might be very different from what might be needed to prevent the abuse of 8 to 10-year-old girls in a care setting of some kind, but the principles are the same.²⁶

Finding 9.2

Situational crime prevention has considerable potential as a model for prevention of criminal child abuse in non-government organisations through its focus on social and physical environments that reduce opportunity for crime and increase the risks to perpetrators associated with criminal behaviour.

9.3. Core elements of prevention in non-government organisations

In considering evidence to the Inquiry, the Committee identified three core elements that form the basis for creating child-safe environments and preventing criminal child abuse in non-government organisations:

Element 1—Effective selection of suitable personnel, which involves:

- actively reducing opportunities for potential offenders to join organisations to cause harm to children
- establishing recruitment practices and assessments of suitability for employment that emphasise child safety
- undertaking criminal checks (such as police checks and Working with Children Checks).

Element 2—Managing situational and environmental risks, which involves:

- establishing appropriate policies and practices to ensure personnel in the organisation understand behavioural expectations when interacting with children, are given opportunities to learn about protecting children's safety, and are subject to ongoing performance reviews
- ensuring environmental and geographical risks are minimised—for example, by minimising opportunities for staff to be alone with children, and by considering the physical design of the environment.

Element 3—Creating child-safe organisational cultures, which involves:

- ensuring that children are heard and can disclose situations where they feel unsafe
- effective handling of reports of abuse by personnel
- self-reflective practices and promoting good leadership across the organisation
- creating child-safe environments.

²⁶ *Transcript of evidence*, Professor Stephen Smallbone, p. 9.

Written policies in organisations that demonstrate a commitment to protecting children from criminal child abuse are essential. The Committee reviewed evidence to the Inquiry by non-government organisations and considered the extent to which they have adopted and sought to implement policies that contain these three core elements. It identified that leadership and cultural change are critical elements in creating child-safe organisations.

Finding 9.3

There are three core elements that are central to the prevention of criminal child abuse in organisations:

- effective selection of suitable personnel—including paid, voluntary, ministers of religion and contractors
- managing situational and environmental risks
- creating child-safe organisational cultures.

9.4. Prevention in practice—implementing policies and processes

While it is important to ensure a prevention policy is in place, it is well known that producing a document is not a guarantee that it will be implemented. Non-government organisations also need the knowledge, skills and capability to create and implement these systems and processes. Organisations have a responsibility to ensure they build these skills and promote awareness amongst personnel in their organisation. Organisations need to be aware of criminal child abuse, the risks of it occurring and the importance of having measures in place to ensure the appointment of suitable personnel and manage risk internally.

Ensuring policies are effectively put into practice is critical, and there are many ways that non-government organisations can be assessed to ensure their policies have been effectively implemented. These include requirements to meet minimum standards, participation in registration systems and undertake accreditation.

Finding 9.4

Commitment to prevention of criminal child abuse is crucial, but equally essential is the effective implementation of systems and processes through adequate knowledge, skills and awareness and appropriate oversight.

Chapter 10

Effective selection of suitable personnel

AT A GLANCE

Background

As part of a broader strategy to take reasonable care to prevent criminal child abuse occurring in their organisation, non-government organisations need to actively reduce opportunities for potential offenders to be appointed to roles where they might have direct contact with children. A critical element in preventing criminal child abuse in organisations is the effective selection of suitable personnel (including staff, volunteers, contractors and ministers of religion).

Key findings

- To ensure the appointment of suitable personnel, organisations need to adopt a combination of recruitment and selection, screening and checking processes.
- The value in background checking—such as referee checks and Working with Children Checks (WWCC)—is that past behaviour can provide an indication of possible future behaviour.
- The Victorian WWCC is an effective screening tool but has some limitations—including a reliance on individuals to update their WWCC card, a lack of monitoring to ensure compliance and a lack of clarity regarding whether ministers of religion need to undergo checks before their appointment.
- The majority of organisations have WWCC processes in place, but can unknowingly over-rely on them as a tool for preventing the appointment of unsuitable personnel.
- Registration systems for professionals and offender registers provide an additional checking process to ensure suitable personnel are appointed to specific professions or organisations.

Recommendation

- In regard to the operations of the *Working with Children Act 2005* (Vic) (WWC Act), that the Victorian Government:
 - ♦ clarify the requirements for religious organisations to ensure ministers of religion have a current WWCC
 - ♦ institute a system of compliance monitoring and investigation of the operation of the WWC Act similar to the equivalent system in New South Wales
 - ♦ ensure that all relevant non-government organisations are required to report any allegations of misconduct relating to children to the Victorian Department of Justice WWC Unit
 - ♦ raise the awareness of organisations about the importance of regularly reviewing the status of WWCC by personnel, the need to adopt a range of screening tools, and to not over-rely on the WWCC.

Having effective systems in place to ensure the selection of suitable personnel is essential for organisations to demonstrate reasonable steps have been taken to meet their duty of care.

Over the past decade there has been an increasing focus on criminal checks as a strategy for screening unsuitable applicants for paid and voluntary positions in organisations. This included the introduction of working with children legislation in Victoria in 2005.

Pre-employment checks need to be complemented by other processes that can assist in the effective selection of suitable personnel, such as recruitment and interviewing processes and, in some instances, registers for offenders or professional registration.

The Committee considered the extent to which organisations aim to prevent opportunities for offenders of criminal child abuse to access their agency. It reviewed the processes outlined in Table 10.1.

Table 10.1: Effective selection of suitable personnel

Component	Description
Selection criteria and interviewing strategies	<ul style="list-style-type: none"> • Selection criteria—developing selection criteria that have clear messages regarding expectations, aim to attract positive role models and give reliable information about the position. • Interviews—use behavioural and situational questions in interviews, ask the difficult questions, check job knowledge and watch for red flags and warning signs in interviews. • Checks—conduct reference checks and police checks.²⁷
Criminal checks	<p>Undertaking appropriate criminal checks, such as:</p> <ul style="list-style-type: none"> • Working with Children Checks • police checks.
Registers	<p>Where relevant, checking professional and offender registers to ensure there are no concerning issues relating to inappropriate behaviour in the context of working with children. These include:</p> <ul style="list-style-type: none"> • register for teachers in Victoria—operated by the Victorian Institute of Teaching • carer register for carers in out-of-home care—operated by the Department of Human Services • offender registers—operated by the Anglican Church in Australia and the Seventh Day Adventist Church.

Source: Compiled by the Family and Community Development Committee.

Finding 10.1

To ensure the appointment of suitable personnel, organisations need to adopt a combination of recruitment and selection, screening and checking processes.

27 Childwise (Undated) *Choose with care: 12 steps to child safe organisation*.

10.1. Selection criteria and interviewing strategies

The Committee heard that inadequate or inappropriate recruitment procedures are one of the most common gaps or oversights that prevent child-safe environments in non-government organisations.²⁸ The Inquiry did not specifically seek information about recruitment practices and can only make preliminary observations about the processes in place.

In its guide for creating child-safe organisations, the Commission for Children and Young People highlighted the importance of choosing suitable staff and volunteers. It emphasises the value of:

- job descriptions and duty statements—ensuring role clarity and responsibilities (unsuitable personnel can be attracted to less ‘professional’ organisations)
- promoting child safety in advertisements, duty statements and organisational material
- interviewing approaches that assess motivation to work with children, experience, professional boundaries and values.²⁹

Some organisations indicated a focus on interviewing prospective personnel to determine their suitability to work with children or young people. Scouts Victoria informed the Inquiry that in its organisation anyone who wants to join the association is required to undertake a ‘suitability interview’.³⁰ Its *Inappropriate conduct or behaviour policy* outlines that:

To assist in ensuring that appropriate Leaders are recruited, a rigorous selection process is undertaken. Prospective Leaders are interviewed by a Group Leader and/or District Commissioner and by the local Personnel Committee to ascertain their general suitability for the role for which they are being recruited.

Referee, Police Criminal Records and Working with Children checks are conducted as part of the selection process for Leaders and Lay persons.³¹

In its *Child protection—reporting policy* updated on 4 March 2013, Scouts Victoria acknowledged that ‘As part of its duty of care to young people, parents and guardians, the Association shall satisfy itself that applicants are suitable role models for young people and not likely to expose them to physical or emotional harm.’³²

The Uniting Church in Australia Synod of Tasmania and Victoria outlined its use of recruitment processes to screen for suitable personnel to work with children, explaining that selection criteria and interviewing are important in this process:

The suitability of people to work with children is ... assessed through specific questions that are asked during the interview for employment and through reference checks. UCC [Uniting Church Camping] also emphasised the attention it pays to the language used in how it advertises positions.

Expert professional assessment of whether a person is fit for their role applies to whether a person is an employee, a Minister or lay person in a position of leadership.³³

28 *Submission S388*, Child Wise, p. 17.

29 Formerly the Office of the Child Safety Commissioner. See Child Safety Commissioner (2006) *A guide for creating a child-safe organisation*, p. 16.

30 *Submission S200A*, Scouts Australia (Victoria), p. 6.

31 *Submission S200*, Scouts Australia (Victoria), p. 1 (Appendix 1).

32 *Submission S200*, Scouts Australia (Victoria), p. 36 (Appendix 4).

33 *Submission S164*, Uniting Church in Australia, p. 25.

Berry Street Victoria explained that from its perspective ‘the recruitment, selection and screening of all people engaged in child-related activities are a critical dimension in the development and maintenance of a child-safe organisation.’³⁴ Its child protection policy states that it has a:

... comprehensive approach to screening staff, carers, mentors and volunteers which includes motivational interviewing, Criminal Records Checking, Working with Children Checking, professional and/or personal reference checks, proof of identity and qualifications and pre-employment injury/disease declarations. For paid staff, this pre-employment checking is accompanied by an intensive first 3 months’ orientation and supervision, including a formal probationary review.³⁵

The Committee considered that such a comprehensive approach is particularly important in non-government organisations that work with children who are in the care of the State and have a role in managing their out-of-home care placements.

In its submission, the Catholic Church in Victoria stated that in 2007 it introduced a more comprehensive approach to screening for admission to priesthood with the introduction of the *Programme for priestly formation Australia*. The Catholic Church informed the Inquiry that:

... this screening includes a form of accompaniment prior to entry, testimony of others regarding their suitability, and a comprehensive psychological assessment by a competent practitioner.³⁶

Some organisations that participated in the Inquiry have introduced psychological assessment as a method for determining the suitability of personnel entering their organisations. In addition to the Catholic Church, the Baptist Union of Victoria explained to the Inquiry that ‘All applicants undergo a rigorous Psych Test, which addresses issues of dominance, sociability and relationships, as well as other stress factors and indicators of personality type.’³⁷

Psychological tests approach selection of personnel through a risk assessment model. This approach seeks to ‘predict the likelihood of a particular adverse event occurring in the future.’³⁸ The Committee notes, however, that there is no firm evidence base to suggest that such an approach is effective in isolation. In 2005, research findings reviewed by the National Child Protection Clearinghouse led it to conclude that:

Despite significant recent developments in risk prediction methods in the child protection field ... there is still no accurate and reliable method of predicting risks for individuals.³⁹

The Committee concluded that risk assessments can be a tool used in screening and recruitment processes, but it is important to ensure they are not used in isolation from other prevention processes.

34 *Submission S262*, Berry Street, p. 7 (Appendix 1).

35 *Submission S262*, Berry Street, p. 7 (Appendix 1).

36 *Submission S185*, Catholic Church in Victoria, p. 92.

37 *Submission S210*, Baptist Union of Victoria, p. 13.

38 L.R. Beyer, D.J. Higgins, & L.M. Bromfield (2005) *Understanding organisational risk factors for child maltreatment: A review of literature. A report to the Community Services Ministers’ Advisory Council (CSMAC) Child Safe Organisations Working Group*. Australian Institute of Family Studies, p. 80.

39 L.R. Beyer, D.J. Higgins, & L.M. Bromfield (2005) *Understanding organisational risk factors for child maltreatment: A review of literature.*, p. 80.

While the evidence demonstrated that organisations have recently used their recruitment and selection processes to prevent potential offenders gaining access to their organisation, the Committee noted that these approaches were referred to less frequently than the use of criminal checks in prevention.

10.2. Pre-employment checks

The basic premise of background or pre-employment checking is the understanding that the past behaviour of an individual provides an indication of the possible future behaviour of that individual. Research has determined that a significant proportion of first time child abuse offenders carried a previous criminal conviction. In a study regarding offender histories, researchers found that:

Almost two thirds (62.9%) of the offenders had at least one previous conviction, and this was almost twice as likely to have been for non-sexual offences (40.6%) than for sexual offences (22.2%).⁴⁰

For this reason, pre-employment checking is a vital first step in minimising risk to children. Examples or patterns of abusive or inappropriate behaviour can be evident in information available to organisations, such as an individual's employment history and criminal record. Pre-employment checks include reference checks, police checks and Working with Children Checks (WWCC).

Following the interview and selection of a preferred candidate for a position in an organisation, reference checking is essential. In its guide for creating a child-safe organisation, the Commission for Children and Young People in Victoria outlines critical questions organisations should ask. These include any concerns a previous employer may have about the person working directly with children, including working alone with children.⁴¹

The Committee noted that the most common methods for screening staff or volunteers applying for child-related work in Victoria are the WWCC and Police check.

Police checks generally identify and release relevant national criminal history information relating to convictions, findings of guilt or pending court proceedings.

The general purpose of a WWCC is more extensive and targeted than a police check and aims to make an assessment of the level of risk an individual poses to children's safety. The WWCC draws information from a range of sources, including:

- convictions—whether or not they are considered spent or were committed by a juvenile
- apprehended violence orders and other orders, prohibitions or reporting obligations
- charges (i.e. where a conviction has not been recorded because, for example, a proceeding has not been heard or finalised by a court, or where charges have been dismissed or withdrawn)

Child-related work—
paid or unpaid work involving regular direct and unsupervised contact with a child when working with or caring for children in any of the occupational categories listed in the Act.

40 S. Smallbone & R. Wortley (2001) 'Child Sexual Abuse: Offender characteristics and modus operandi'. *Australian Institute of Criminology: Trends & issues in crime and criminal justice*, Vol. 193.

41 Child Safety Commissioner (2006) *A guide for creating a child-safe organisation*, p. 17.

- any relevant allegations or police investigations involving the individual
- relevant employment proceedings and disciplinary information from professional organisations (e.g. organisations associated with teachers, childcare service providers, foster carers, and health practitioners).⁴²

Table 10.2 outlines the differences between a WWCC and a police check in Victoria.

Table 10.2: Victorian Working with Children Check and national police check

	Working with Children Check	Police check
Does it allow a person to work or volunteer with children?	Passing a WWCC allows a person to engage in child-related work for 5 years and their criminal record continues to be monitored.	No
How does it work?	The WWCC is an assessment of a person's suitability to work or volunteer with children. It involves an examination of relevant criminal offences and disciplinary findings across a person's lifetime.	A police check is only a list of those offences from a person's national criminal history which can be released. There is no assessment or investigation made.
Can a person fail a WWCC?	A person either passes or fails the WWCC after their suitability to work with children is examined	You cannot 'pass' or 'fail' a police check; it is simply a list of some offences.
What is checked?	<ul style="list-style-type: none"> • National criminal history. • Findings of professional bodies including the Victorian Institute of Teaching and the out-of-home care Suitability Panel. • Relevant determinations of the Victorian Civil and Administrative Tribunal (VCAT) under the <i>Health Professions Registration Act 2005</i>. 	National criminal history.
What kind of offences are considered?	Offences relevant to the safety of children, such as serious sexual, violent or drug-related crimes.	All offences.
How far back does the check go?	All relevant offences across a person's lifetime are examined.	Some offences cannot be disclosed, depending on when they were committed. This relies on Victoria Police's Information Release Policy.
How long is it valid?	Valid for 5 years unless suspended or revoked.	<ul style="list-style-type: none"> • Only current at the time of issue. • Employers may require employees to undergo subsequent police checks.

⁴² Australian Institute of Family Studies *Pre-employment screening: Working with Children Checks and police checks*. Accessed on 8 October 2013 from <http://www.aifs.gov.au>.

	Working with Children Check	Police check
Does it monitor criminal records?	Criminal records continue to be checked for the life of the card. Victoria Police automatically notify the department of new relevant offences so suitability to work with children can be re-assessed.	A new police check is needed to show any new offences.
What happens when a person changes employer?	The WWCC card is portable between organisations. However, if someone moves from voluntary to paid work they must apply for an Employee card and pay the fee.	<ul style="list-style-type: none"> • Employers and organisations have their own policies around requiring police checks • Employees may require a new police check when they start a new job.

Source: Adapted from Working with Children Check Unit, Department of Justice, *Working with Children Check*, Accessed on 30 September 2013 from <http://www.workingwithchildren.vic.gov.au>.

Finding 10.2

The value in background checking—such as referee checks and Working with Children Checks (WWCC)—is that past behaviour can provide an indication of possible future behaviour.

10.2.1. Victoria and the Working with Children Checks

If the Department of Justice (DOJ) considers the person applying for a WWCC is a risk to the safety of children, a negative notice is issued.

Since the WWCC commenced in 2006, at 30 June 2013, 1,480 applicants have received negative notices,⁴³ removing their capacity to work with children in the occupational fields covered by the WWC Act.

Negative notice—means an individual cannot engage in child-related work, even if they are directly supervised.

Child-related work and occupational categories listed in the WWC Act include a broad range of services and activities that involve working with children such as child care, education, religious organisations, clubs and recreational activities. These are outlined in Appendix 4.

10.2.2. Other jurisdictions

Although there are variations across Australian jurisdictions in how background checking is mandated and conducted, there is some consistency in the type of criminal offences identified as posing a potential risk of harm to children. These offences are not restricted only to those which occasion harm to children, but may also consider offences that may indicate a pattern of antisocial behaviour that raises concern when considering the safety of children (e.g. drug offences).

By way of comparison, table 10.3 reflects the key features of WWCC legislation across the country.

⁴³ Working with Children Check Unit, Department of Justice, *Statistics*. Accessed on 9 October 2013 from <http://www.workingwithchildren.vic.gov.au/home/about+the+check/statistics/>.

Table 10.3: WWCC in Australian state jurisdictions

State or territory	Legislation	Nature of WWCC	Level of screening
Vic	<i>Working with Children Act 2005</i> (Vic)	<ul style="list-style-type: none"> individuals apply for WWCC prohibited persons excluded from child-related occupations/volunteering people holding checks are monitored for serious sexual or violence related offences valid for 5 years. 	<ul style="list-style-type: none"> review of national police record consideration of findings of professional bodies findings of VCAT under <i>Health Professionals Regulations Act</i> information relating to any spent convictions, juvenile convictions and findings of guilt, pending charges the circumstances surrounding any charges or convictions weekly ongoing monitoring by VicPol.
NSW	<i>Child Protection (Working with Children) Act 2012</i> (NSW) <i>Commission for Children and Young People Act 1998</i> (NSW)	<ul style="list-style-type: none"> employers apply for WWCC—online system conviction of disqualifying offences result in an exclusion from child-related occupations/volunteering valid for 5 years exclusion of prohibited persons from child-related occupations Office of Children’s Guardian administer checks ongoing monitoring for relevant new records some records will trigger a risk assessment by the Office of Children’s Guardian which may lead to the clearance being revoked. 	<ul style="list-style-type: none"> convictions (spent or unspent) charges (whether heard, unheard or dismissed) juvenile records findings of misconduct and notifications made by the NSW Ombudsman are considered records include convictions for certain offences and charges for these same offences that have not yet been heard. Section 5 of the Act states that a conviction includes a finding that an offence is proven, or the person is guilty, even though the court does not record a conviction circumstances surrounding any charges or convictions access to full national criminal history continuous monitoring of NSW criminal record and disciplinary action.
QLD	<i>Commission for Children and Young People and Child Guardian Act 2000</i> (QLD)	<ul style="list-style-type: none"> individuals apply for a WWCC, known as a ‘Blue Card’ valid for 3 years organisations providing child-related services must have policies and procedures in place to identify and minimise risk of harm to children, which are monitored by the Commission for Children and Young People and Child Guardian. 	<ul style="list-style-type: none"> national criminal history check any charge or conviction whether recorded or not child protection prohibition orders whether a person is a respondent or subject to an application disqualification orders whether subject to legal reporting obligations⁴⁴ disciplinary information held by organisations such as teachers, foster carers, child care licensees and health practitioners information relating to police investigations into serious child related sexual offences even where no charges were laid circumstances surrounding any charges or convictions.

44 Legal reporting obligations refer to provisions under either the *Child Protection (Offender Reporting) Act 2004* (Qld) or *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld).

State or territory	Legislation	Nature of WWCC	Level of screening
NT	<i>Care and Protection of Children Act 2007</i> (NT)	<ul style="list-style-type: none"> individuals apply for a WWCC, known as a Clearance Notice⁴⁵ the Clearance Notice is valid for 2 years applies to employees and volunteers in child-related employment settings applications made to a screening authority appointed by Minister for Child Protection. 	<ul style="list-style-type: none"> national criminal record check in particular sexual offences involving children, violent offences involving children and drugs offences involving children an analysis of employment history, including an assessment of references and/or disciplinary proceedings other material which may include assessing whether an individual has attempted to change behaviours or address triggers to behaviours if they have a criminal history circumstances surrounding any charges or convictions.
WA	<i>Working with Children (Criminal Record Checking) Act 2004</i> (WA)	<ul style="list-style-type: none"> individuals apply for WWCC valid for 3 years entitles individuals to engage in child-related occupations/volunteering a review of the WWCC Act 2004 has been undertaken the Working with Children Screening Unit undertakes the checks. 	<ul style="list-style-type: none"> national criminal record check including charges or convictions as an adult or a juvenile; any spent convictions; any pending or finalised charge for a Class 1 or Class 2 offence⁴⁶ whether or not it resulted in a conviction information obtained from authorised bodies in WA and similar authorities in other states and territories such as Police, Department of Public Prosecutions, the Department of Corrective Services, the Department of the Attorney General and courts circumstances surrounding any charges or convictions.
SA	<i>Children's Protection Act 1993</i> (section 8b) (SA)	<ul style="list-style-type: none"> employer driven 'point-in-time' system requiring employers and responsible authorities to obtain criminal history checks for those engaging in child-related occupations/volunteering Act requires all government organisations and certain non-government organisations to develop appropriate policies and procedures to establish and maintain child safe environments. 	<ul style="list-style-type: none"> criminal history check including circumstances surrounding any charges or convictions development of workplace policies and procedures to establish and maintain child safe environments.

⁴⁵ In addition to the Clearance Notice, people are provided with an 'Ochre Card' which can be carried as proof that a person may legally work with children and carries a unique clearance number.

⁴⁶ Class 1 and 2 offences include various sexual offences against a child as well as offences such as murder, manslaughter, grievous bodily harm, indecent assault, making/viewing child pornography and involvement in child prostitution.

State or territory	Legislation	Nature of WWCC	Level of screening
Tas	No legislation	<ul style="list-style-type: none"> the Good Character Check screening program came into force on 1 January 2012, requiring that staff members, volunteers and students on placement obtain a security screen clearance in order to engage in work with regulated education and care services only employers in other child-related work may require police checks at their discretion. 	<ul style="list-style-type: none"> the Good Character Check includes consideration of crimes of violence; sex-related offences; serious drug offences; crimes involving dishonesty; and serious traffic offences as the Good Character Check is only applicable to government employees the Tasmanian Department of Health and Human Services is proposing to form a Working with Children and Vulnerable People Screening Unit once established, people wanting to work with vulnerable people in Tasmania will need to apply for registration with the Screening Unit prior to commencing work.
ACT	<i>Working with Vulnerable People (Background Checking) Act 2011</i> (ACT)	<ul style="list-style-type: none"> individuals apply for registration with the screening unit, the Office of Regulatory Services, which will complete a risk assessment on the applicant in accordance with the Risk Assessment Guidelines a Commissioner for Fair Trading conducts background checks and risk assessment relates to contact with children or vulnerable people in the course of regulated activities or services registration valid for 3 years registration may be general,⁴⁷ conditional⁴⁸ and position based.⁴⁹ 	<ul style="list-style-type: none"> national criminal history check review of non-conviction information consideration of relevant offences employment history past WWC registration history any other information which may include information from: an employer, a counsellor, a psychotherapist, a treatment program, a Care and Protection agency or a professional referee advice from independent advisors appointed by the Commissioner under the Act.

Source: Compiled by the Family and Community Development Committee.

47 General registration relates to low risk applicants who will be free to move between all regulated activities without the need to be re-checked.

48 Conditional registration allows the Commissioner to register higher risk applicants by imposing specific conditions on the registration which address any specific risks posed by a particular applicant.

49 Position based registration will restrict a person to engaging only in a specified regulated activity with a specified employer.

New South Wales

In New South Wales, there is an additional system set up to safeguard children in an organisational setting. This is known as the ‘reportable conduct’ scheme, administered by the NSW Ombudsman. The NSW reportable conduct system is outlined in greater detail in Chapter 18 of Part E, though there are some important aspects of that system that relate directly to information provided regarding the granting and administration of NSW WWCC. Recent amendments to the *Child Protection (Working with Children) Act 2012* (NSW) came into effect in June 2013. The principal effect of the amendment was to transfer several functions, including responsibility for the WWCC from the NSW Commission for Children and Young People to the NSW Office of Children’s Guardian.

Under this scheme, an employer with NSW WWCC requirements is expected to report any allegation of reportable conduct to the Office of Children’s Guardian. This includes all allegations other than those found to be vexatious, misconceived, or where it was determined that the reportable conduct did not occur.

This provision places a positive onus on the employer to report relevant employment proceedings to the Office of Children’s Guardian. This Office then maintains a database of all relevant employment proceedings which can be factored into future risk assessments associated with either new applications or renewals.

Further, s.25C of the *Ombudsman Act 1974* (NSW) requires designated government and non-government organisations to notify the Ombudsman of any reportable allegation, whether or not a conviction ensues and whether or not the organisation intends taking any disciplinary action. Adverse findings in relevant employment proceedings and/or the substantiation of reportable conduct against employees are then considered by the NSW Children’s Guardian in granting, suspending, or cancelling a WWCC for an employee.

Information received by the Ombudsman in the course of exercising any of its functions which reveals a risk to the safety of children can also be referred to the Children’s Guardian. Additionally the Children’s Guardian and the Ombudsman are both prescribed bodies and are able to exchange information pursuant to the NSW legislation.⁵⁰

On receipt of information from the Ombudsman, a ‘risk assessment’ is triggered and undertaken by the Children’s Guardian in relation to whether a person poses a risk to children.

Other recent amendments to the NSW WWCC regime include:

- a requirement that any adult who resides at the home of an authorised carer obtain a WWCC⁵¹
- the establishment of a carers register.⁵²

50 *Children and Young Persons (Care and Protection) Act 1998* s.16A.

51 *Child Protection (Working with Children) Act 2013* s.10.

52 *Child Protection (Working with Children) Act 2013* s.18(1)(d).

10.2.3. Strengthening the Working with Children Check in Victoria

The Committee reviewed the WWCC in Victoria in comparison with those systems in operation in other jurisdictions. It identified that while the WWCC scheme in Victoria is beneficial and has effectively screened out many unsuitable people for child-related work, there is room for strengthening the legislation. In particular:

- clarifying the expectations for ministers of religion to hold a current WWCC card
- placing a stronger onus on employers to report relevant misconduct and employment proceedings relating to children
- strengthening the monitoring and compliance of organisations in ensuring personnel have up-to-date WWCC cards.

Ministers of religion—clarifying requirements

In religious organisations, a WWCC is required for ministers of religion that engage with children. Contact with children is not always easily defined in religious contexts. The Committee noted that some organisations have taken a broad view of their obligations under the WWC Act, while others only comply with the specified requirements.

While religious organisations are not exempted from ensuring ministers of religion hold a current WWCC card, the Principal Commissioner for Children and Young People in Victoria, Mr Bernie Geary, told the Inquiry that the focus of the legislation in this context is too narrow. He stated:

Religious organisations are special places of trust. They work with vulnerable people in their most vulnerable moments. This highlights the need for a special emphasis on religious organisations. For example, all religious personnel should be required to have a working with children check. Currently only religious personnel who have regular, direct and unsupervised contact with children are required to have a check.

I think this classification is ridiculous and too narrow for religious organisations.⁵³

The Committee noted there is uncertainty among some religious organisations about the application of the WWCC requirements for religious personnel. For example, the Buddhist Council of Victoria advised the Inquiry that ‘some Temples with non-English speaking backgrounds are unaware that their overseas Monks and Nuns need a working with children check.’⁵⁴ Similarly, the Islamic Council of Victoria said ‘we suspect few Imams would have a Working with Children Check’.⁵⁵

Table 10.4 outlines the manner in which some religious organisations comply with their requirements under the WWC Act. The table demonstrates that some religious organisations in Victoria recognise the unique position of trust they hold within the community and have implemented policies that require ministers of religion, employees and volunteers to hold a current WWCC card.

53 *Transcript of evidence*, Commission for Children and Young People, Melbourne, 5 April 2013, p. 4.

54 *Submission S155*, Buddhist Council of Victoria Inc., p. 1.

55 *Submission S398*, Islamic Council of Victoria, p. 7.

Table 10.4: Requirements by religious organisations for ministers of religion to hold a WWCC card

Religious organisation	WWCC requirements
Catholic Church in Victoria	The Archdiocese of Melbourne together with the Dioceses of Ballarat, Sale and Sandhurst all require WWCC for: <ul style="list-style-type: none"> all clergy and other religious who are in active ministry involving children all persons over 18 years of age who are engaged as workers (whether contractors, volunteers or paid employees) associated with a parish, school or various other activities that bring them into contact with children.
Anglican Diocese of Melbourne	Regardless of the nature of their engagement with children, the Diocese requires police checks and WWCC for: <ul style="list-style-type: none"> candidates for ordination licensed clergy authorised lay ministers and lay readers stipendiary authorised lay ministers all with permission to officiate authorities any others who work with children in either an employed or voluntary capacity.
Baptist Union of Victoria	All ministers who have children or young people in their congregation are required to hold a WWCC. ⁵⁶
Uniting Church in Australia Synod of Tasmania and Victoria	The Synod requires a WWCC to be obtained by all Ministers and people employed to work with children including volunteers. ⁵⁷
The Salvation Army	In its submission, the Salvation Army states that it requires that all clergy (whether or not they work with children) together with every employee and volunteer who works with children have a WWCC. ⁵⁸ In its Child Protection Policy, the Salvation Army indicates that those who do not have ongoing contact with children do not require a WWCC (such as corporate volunteers or training college staff). ⁵⁹

Source: Compiled by the Family and Community Development Committee.

Other religious organisations maintain that not all ministers of religion need to hold a WWCC card because they are not engaged in regular direct and unsupervised contact with a child. The Committee determined that the Victorian Government needs to review the application of the WWC Act to religious organisations to clarify how it applies to ministers of religion in view of the broad and unspecified nature of their work which involves some contact with children in their communities. See Recommendation 10.1.

The Department of Justice (DOJ) advised the Inquiry that religious organisations were briefed when the system was introduced:

⁵⁶ *Submission S210*, Baptist Union of Victoria, p. 9.

⁵⁷ *Submission S164*, Uniting Church in Australia, p. 25.

⁵⁸ *Submission S241*, The Salvation Army, Australia Southern Territory, p. 6.

⁵⁹ *Supplementary evidence*, Child Protection Policy, The Salvation Army, 27 June 2013.

The working-with-children check unit conducted a number of information sessions, prior to it being applicable in July 2007, in which religious organisations were phased in. These had been attended by a number of appropriate religious organisations so that they can understand the operation of the scheme when it was being brought in. They specifically focused on compliance with the check scheme in those religious organisations, so there was an educative role before the scheme came in.⁶⁰

The Committee considers that further efforts are needed to ensure ministers of religions (including those within culturally and linguistically diverse communities) understand their obligations under the WWC Act.

Stronger onus on employers

In Victoria the WWCC assesses the suitability of an applicant to work in child-related employment. It does not assess the suitability of potential employees or volunteers against a specific position. Once an applicant is granted a WWCC it is the responsibility of the individual employer to undertake an assessment of the specific risks inherent in a particular position that involves working with children on some level. This system implies a degree of knowledge and expertise on the part of an employer to be able to perform this assessment effectively.

The requirement for an employer to undertake their own risk assessment presents a number of challenges to an employer who does not have access to information upon which to base a comprehensive risk assessment. In most cases, the employer is also unlikely to possess the specialised expertise to make the most appropriate judgment.

Implementing a system such as the reportable conduct scheme⁶¹ would put employers in a stronger position by creating an opportunity to gather relevant information they would otherwise not have had access to. See Recommendation 10.1.

Monitoring compliance with the WWCC

The CEO of vicsport, Mr Mark McAllion advised the Inquiry that one of the central difficulties that arises from inadequate monitoring and compliance of the WWCC:

The weaknesses are that you can get a check for one organisation and have not nominated that to another organisation, so you may be volunteering at a primary school, and if you get a working-with-children check and nominate the school on that and you then become a sports coach, something happens and you are convicted of something, then the school will be notified but the sports club may not be. There are certainly limitations, and that is recognised. There is also the time lag, so if something happens in a period, then the sporting clubs probably only ask, 'Have you got a working-with-children check; what is the number?', and they will record that, but they may not be going back to check.⁶²

Although there are provisions under the WWC Act that require notification of changes to personal or employment details within 21 days, these could be categorised as administrative matters.⁶³ As indicated by Mr McAllion, compliance with the notification of changes to working or volunteering arrangements can be poor and this represents a risk which needs to be addressed.

60 *Transcript of evidence*, Department of Justice, Melbourne, 19 October 2012, p. 4.

61 The NSW reportable conduct scheme was discussed earlier in this section.

62 *Transcript of evidence*, vicsport, Melbourne, 12 April 2013, p. 6.

63 *Working with Children Act 2005* (Vic) s.20A. Penalty 1 unit for failure to comply.

A further limitation associated with organisational compliance with WWCC was highlighted by a witness who told the Inquiry that:

The Working with Children Act has no provision for parents to ask an organisation if they are compliant with the laws. It has no provision to ask a minister of religion if he has a working with children check. The only provisions under the legislation—not in the legislation itself, it is in the guidelines—is that parents have responsibilities, and it uses the illustration: if you have a piano tutor come to you, check their credentials.⁶⁴

The Committee noted that there are a number of offences under the WWC Act. For an individual, these include:

- engaging in child-related work without an assessment notice
- holder of negative notice applying for child-related work
- engaging a worker in child-related work when that person does not have an assessment notice
- using a false or other person's assessment notice.

All offences carry a penalty of a maximum of two years imprisonment and/or a fine of up to \$34,646.40 (at 1 July 2013). In addition the following offence exists under the WWC Act:

- an agency offers the services of a person who does not have an assessment notice (maximum two years imprisonment or up to 1200 penalty points for body corporate, that is \$173,232.00 at 1 July 2013).⁶⁵

The Cummins Inquiry found that:

The collection and publication of data on the number of investigations and prosecutions for breaches of the Working with Children Act 2005 could be a valuable indicator of the effectiveness of this Act as part of the legal framework protecting vulnerable children.⁶⁶

In its explanation regarding how the Department of Justice monitors compliance with the legislation and identifies breaches of the WWC Act, the Acting Secretary, Dr Noone, stated that:

In relation to compliance with a working-with-children check, there is not specifically for the unit a compliance function with respect to enforcing the Act. If there are suspected breaches of the Act, they are referred to Victoria Police for investigation and possible prosecution, with the department providing assistance where that is required.⁶⁷

The Committee noted that in some other jurisdictions there are monitoring and compliance requirements under the working with children legislation.

The Office of Children's Guardian has this responsibility in NSW. Additionally the Office of Children's Guardian carries out a 'risk assessment' if a relevant trigger occurs, namely the commission of an offence, finding of misconduct, notification by

64 *Submission S483*, Name withheld.

65 *Working with Children Act 2005* (Vic) s.36.

66 P. Cummins, D. Scott, OAM, & B. Scales, AO (2012) *Report of the protecting Victoria's vulnerable children Inquiry*, p. 1xviii.

67 *Transcript of evidence*, Department of Justice, p. 4.

the Ombudsman or a pattern of behaviours are observed. This process is set out in the material available on the website of the Office of the Children’s Guardian.⁶⁸

Finding 10.3

The Victorian WWCC is an effective screening tool but has some limitations—including a reliance on individuals to update their WWCC card, a lack of monitoring to ensure compliance and a lack of clarity regarding whether ministers of religion need to undergo checks before their appointment.

10.2.4. Exemptions—parents

Under s.27 of the WWC Act, a ‘parent engaging in work as a volunteer in relation to an activity in which his or her child is participating or ordinarily participates is exempt from a Working with Children Check in respect of that activity’.⁶⁹ Some participants noted that being a parent does not make a person less likely to be an offender of criminal child abuse.

While the exemption exists, the Committee noted that a number of organisations require parents in specific roles or positions in child-related work to have a current WWCC card. For example, vicsport explained to the Inquiry that:

State Sporting Associations have proactively promoted the need for WCC by all relevant individuals within sport and anecdotally the concept has been fully embraced at the club level. Many clubs have taken the level of compliance within the club to higher levels than legislated. For example—if you are a coach with a child in your team you are not required to have a WCC however many clubs require all coaches to have WCC regardless.⁷⁰

Similarly Scouts Victoria advised that ‘By far the majority of our leaders would be parents of children in the organisation.’⁷¹ In response to the Committee’s questions regarding whether WWCC are required by all leaders, the Chairman of the Executive Branch Committee, Mr John de Wijn, explained that ‘it is our requirement’.⁷² He explained that:

Every Scout Leader who has anything to do with the youth program goes through this induction process.⁷³

Scouts Victoria also explained that for all its leaders ‘We do more than the current Working-With-Children Checks’.⁷⁴

After reviewing its evidence, the Committee determined there was no reason to conclude that the exemption for parents constitutes an imminent risk to children. It considered that the exemption for parents is a practical necessity to encourage and facilitate the important contribution that parents make by their involvement in their children’s activities.

68 NSW Office of the Children’s Guardian (September 2013) *The new working with children check: Risk assessment. Fact sheet 8*. Accessed on 16 October 2013 from <http://www.kids.nsw.gov.au/Working-with-children/New-Working-With-Children-Check/Publications-and-resources>.

69 *Working with Children Act 2005* (Vic) s.27.

70 *Submission S389*, vicsport, p. 4.

71 *Transcript of evidence*, Scouts Victoria, Melbourne, 11 April 2013, p. 4.

72 *Transcript of evidence*, Scouts Victoria, p. 4.

73 *Transcript of evidence*, Scouts Victoria, p. 4.

74 *Transcript of evidence*, Scouts Victoria, p. 4.

10.2.5. Over-reliance on Working with Children Checks

The Committee identified that organisations can potentially over-rely on WWCC in their processes for ensuring the appointment of suitable personnel. In its assessment of screening processes, the Committee identified that many organisations had referred to WWCC and police checks yet made no reference to other practices or preventive approaches. It acknowledges that the lack of reference to practices in evidence to the Inquiry may not always mean that they are non-existent. It appeared, however, that for a number of organisations the WWCC is the primary approach to screening and, at times, the only prevention tool used.

A number of Inquiry participants told the Committee that there are risks in relying solely on WWCC. For example, Mr Geary from the Commission for Children and Young People, told the Inquiry that on its own the WWCC is not sufficient:

Working with children checks are an important part of preventing such abuse, but they are not sufficient on their own. Organisations need to develop a culture of safety that includes screening, supervision, monitoring and importantly listening to children. Churches and community groups must develop child safe practices that hold the protection of children at their core. Policies and practices are required to guide senior staff on how to respond to any concerns raised about child safety. Central to these policies and practices is the development of a culture within an organisation that does not accept or tolerate concerning or criminal behaviour towards children.⁷⁵

The risk for employers relying solely on a WWCC is that offenders who seek access to children may have no traceable history through a police check or WWCC, as they have never been reported or prosecuted. Research reviewed by the Committee supported this assessment, finding that some high risk individuals do not have criminal convictions for child abuse.⁷⁶ In its submission, Child Wise stated that despite being a useful deterrent, the WWCC system may result in organisations becoming complacent in their recruitment and selection processes.⁷⁷

Some organisations indicated to the Inquiry that they recognised the limitations of WWCC when used in isolation. For example, the Presbyterian Church of Eastern Australia stated in its submission that the ‘Working with Children Check is useful in excluding convicted offenders but inadequate of itself and may even give false confidence to organisations.’⁷⁸ Similarly, Anglicare explained that:

... whilst screening processes must be a part of any effective set of protections designed to prevent abuse in institutional contexts, it is important not to be overly reliant on these processes, and to thereby consider them sufficient alone in minimising the likelihood of abuse occurring.⁷⁹

Evidence before the Committee suggests a degree of over-reliance on WWCC in some organisations. The Committee considers that some organisations may believe that simply requiring employees and volunteers to have WWCC creates safety in an organisation. This false sense of security may prevent organisations from developing

⁷⁵ *Transcript of evidence*, Commission for Children and Young People, p. 3.

⁷⁶ M. Erooga (2009) *Towards safer organisations: Adults who pose a risk to children in the workplace and implications for recruitment and selection*. London, National Society for the Prevention of Cruelty to Children (NSPCC), pp. 36–37.

⁷⁷ *Submission S388*, Child Wise, pp. 11–12.

⁷⁸ *Submission S072*, Presbyterian Church of Eastern Australia, Law & Advisory Committee, p. 4.

⁷⁹ *Submission S146*, Anglicare Victoria, p. 6.

other complimentary measures to enhance child safety such as those policies and practices discussed in Chapter 11.

Finding 10.4

The majority of organisations have WWCC processes in place, but can unknowingly over-rely on them as a tool for preventing the appointment of unsuitable personnel.

→ Recommendation 10.1

In regard to the operations of the *Working with Children Act 2005 (Vic)* (WWC Act), that the Victorian Government:

- clarify the requirements for religious organisations to ensure ministers of religion have a current Working with Children Check (WWCC)
- institute a system of compliance monitoring and investigation of the operation of the WWC Act similar to the equivalent system in New South Wales
- ensure that all relevant non-government organisations are required to report any allegations of misconduct relating to children to the Victorian Department of Justice WWC Unit
- raise the awareness of organisations about the importance of regularly reviewing the status of WWCC by personnel, the need to adopt a range of screening tools, and to not over rely on the WWCC.

10.3. Registration

The Committee considered the use of offender registers and professional registration in the context of pre-employment checking processes. These registers have been established by specific professions or within large national organisations as a way to monitor movement of employees. For example:

- Professional registration—used in professions such as carers in out-of-home care and teaching.
- Offender registers—used by religious organisations such as the Anglican Church and the Seventh Day Adventist Church to monitor cross-jurisdictional personnel movement.

While they provide an additional means of pre-employment checking, the Committee determined that like other checking processes these registers and registration systems are not without their limits.

10.3.1. Offender registers and databases

In evidence to the Inquiry, some religious organisations advised that they have established national offender registers or databases and others were considering their establishment. Their key purpose for establishing such databases was to enable the identification of movement within the organisation of any individuals who have been subject to an allegation of sexual misconduct or a child sexual abuse offence in another Australian state jurisdiction.

The Committee determined that the registration of individuals suspected of misconduct on internal organisational registers should not replace the reporting of known child sex offenders to police.

In 2007, the national Anglican Church passed the National Register Canon. The role of the Register is to:

- provide a national repository for information on clergy and laity about whom a complaint of sexual misconduct or child abuse has been alleged
- provide a national repository for information on clergy and laity about whom adverse information has been received relative to a WWCC, a criminal history or a safe ministry check
- establish a duty of care obligation on diocesan bishops to reference the Register in appropriate circumstances (appointment to a position, for example) and where practicable to have regard to it
- provide a useful reference point (among others) in respect to the process regarding the suitability of clergy seeking appointment within a diocese where there may be limited prior knowledge of their ministry.⁸⁰

Archbishop Philip Freier of the Anglican Diocese of Melbourne explained to the Committee that:

The National Register gives us a lot more confidence now. Any professional standards matter is recorded, however resolved, even if a complaint has been resolved in favour of a person who is the respondent, and is available to us as we are looking at appointments and people coming from other areas.⁸¹

The Committee was advised that information has been shared with Victoria Police on request. In its review of the files of the Anglican Church, however, the Committee did note that since the introduction of the Register in 2007, in 2009 there was an instance when a minister of religion on the Register was appointed to another diocese. This was due to a failure of the diocese to check the register.⁸²

The Seventh Day Adventist Church has also established a system for monitoring individuals who may be a risk to children and young people. It developed a database, which facilitates an auditing process of the WWCC to enable the Church to check across state jurisdictions:

Every record on the Membership Database, whether pertaining to a Member or Non-Member, has the ability to store WWCC details.

The WWCC Stats Report is a simple statistical record which provides church administration with comparative totals of WWCC issued and any negative notices received.⁸³

The 'National Safe Place Register' includes people within the Church 'and its environments' who have:

- a) a conviction for a violent or sexually-related offense;
- b) a sustained finding against them of a Sexual Abuse or Sexual Misconduct

⁸⁰ *Submission S244*, Anglican Diocese of Melbourne, p. 16.

⁸¹ *Transcript of evidence*, Anglican Diocese of Melbourne, Melbourne, 22 April 2013, p. 4.

⁸² Anglican Diocese of Melbourne, files accessed by the Family and Community Development Committee.

⁸³ *Submission S258*, Victorian Conference of the Seventh-day Adventist Church, p. 25.

nature, against an adult or child; or

- c) have been involved in a Church-based investigation.⁸⁴

As discussed above, Scouts Victoria indicated its awareness of the risk of people accessing the organisation to move into positions in which they might offend. To manage this risk, the organisation has a policy of not appointing anyone to any position in the organisation with a history of offending against children or young people.

10.3.2. Professional registration

Another approach that assists in ensuring that only suitable personnel can work in positions involving direct contact with children is the registration of professionals through statutory bodies or government departments. This includes:

- The Victorian Institute of Teaching (VIT) registration of school teachers in Victoria.
- The registration of carers providing out-of-home care, such as foster carers.

Early education professionals in Victoria currently have no registration requirements. On this issue, the CEO of VIT, Ms Melanie Saba, provided the following evidence to the Inquiry:

It should be stated that the government is considering options for the registration of early childhood teachers. I think if that happens it would be a very useful adjunct because it increases the mandatory reporting to teachers for that full gamut.⁸⁵

Schools

Teachers working in Victorian government, Catholic and independent schools are required to be registered by VIT. Teachers' registration with VIT is subject to a national police check, which is repeated every five years when registration is renewed.

Up until early 2012, VIT relied solely on national criminal record checks every five years, whereas it can now check the database of teachers against the Victorian Law Enforcement Assistance Program (LEAP) database weekly. Legislative amendments in 2011 to the *Education Training & Reform Act 2008* (Vic) have enabled greater scrutiny of the ongoing fitness of registered teachers through the implementation of systematic, routine, ongoing criminal record checking. Victoria Police monitor registered teachers through weekly police checks to establish if they have been charged with any relevant offences. Teachers are obliged to advise VIT when they have been charged with a relevant offence in any jurisdiction, and the weekly checks guard against a teacher's failure to do so. This registration and screening process for teachers is used instead of the WWCC, which teachers are not required to have.

The Committee noted that there are some limitations in this registration process. The weekly police checks only reveal whether a teacher has been charged with an offence or is subject to a police investigation in Victoria. They cannot identify a relevant investigation, charge or conviction in another state or territory.

Consequently, unless the teacher advises VIT of an interstate charge or conviction as required by the *Education Training and Reform Act 2008* (Vic), the matter will not be

⁸⁴ *Submission S258*, Victorian Conference of the Seventh-day Adventist Church, p. 25.

⁸⁵ *Transcript of evidence*, Victorian Institute of Teaching, Melbourne, 15 April 2013, p. 11.

identified until the national police check is undertaken at the five-year renewal point. In view of this, it is possible for a teacher who has been convicted of a serious sexual offence against a child in New South Wales to maintain VIT membership until he or she is required to undergo a national police history check at the five-year point.

The Committee sought and received evidence from VIT in regard to the systems and processes in place for registering teachers. Ms Saba, explained to the Inquiry that ‘information sharing’ across agencies that are involved in child protection is currently difficult. The Committee considers that there is room for improvement to enable more information to be shared across relevant authorities to provide the best protection possible to Victorian children.

The Committee did note, however, while VIT is not affected, there have been recent improvements in the information exchange between the Commonwealth and all Australian states and territories in regard to WWCCs. Under the authority of the Council of Australian Governments (COAG), a memorandum of understanding was established to allow ‘participating screening units’ across all Australian jurisdictions to routinely access each other’s relevant information about WWCC applicants. This includes:

- spent convictions (convictions which, after a rehabilitation period, are otherwise no longer part of the person’s criminal history and which the person need not otherwise disclose)
- current charges not yet heard by a court
- prior charges; for example, charges withdrawn before being heard by a court
- further police information about the circumstances of convictions or charges; for example, whether a child was the victim of, or involved in, an alleged offence.

This agreement is known as the National Exchange of Criminal History Information for People Working with Children Memorandum of Understanding.

The Committee understands that VIT does not have access to this information given that teachers are exempt from the WWC Act and VIT is not a ‘participating screening unit’ under the agreement.

Out-of-home care services

The Department of Human Services (DHS) has a three-tier approach that aims to prevent harm to children and young people placed in out-of-home care. This approach is linked to the principle that children must ‘reside in a safe environment free from abuse and neglect’.⁸⁶ Table 10.5 outlines the three elements of this approach.

⁸⁶ Department of Human Services ‘Goals and principles for placement’ *Protecting Victoria’s Children—Child Protection Practice Manual*. Accessed on 22 August 2013 from <http://www.dhs.vic.gov.au/cpmanual/about-the-manual>.

Table 10.5: DHS approach to protecting children in out-of-home care

Tier	Description
Agency registration	<ul style="list-style-type: none"> • Before any agency can provide a service funded by the department it must be registered. • To be registered or to apply for renewal of registration, agencies need to demonstrate compliance with the relevant DHS standards through an independent review every three years. • Agencies must also enter into a service agreement with DHS which details obligations, objectives, rights and responsibilities of the agency.
Approval of carers	<ul style="list-style-type: none"> • Apart from kinship carers all carers are required to have a Working with Children Check. All carers are required to have a police check prior to commencing care. • Kinship carers undergo an assessment for suitability, including a child protection check prior to a child being placed. • Foster carers undertake mandatory training and a competency based assessment prior to being approved to provide care. • Residential carers are screened and assessed for suitability by employing agencies with a preferred qualification being a Certificate IV in Child, Youth and Family Intervention (out-of-home care).
Registration of carers	<ul style="list-style-type: none"> • Groups required to be registered on the carer register are foster carers; all rostered staff, including permanent, part-time, casual and temporary agency staff in residential care; and all labour hire firm personnel engaged by Community Service Organisations (CSOs). • DHS maintains the register for use by agencies. • CSOs have responsibility for removing carers from the Carer Register, which may be due to the carer no longer providing care for personal reasons or because the agency has removed their accreditation or ceased their employment.

Source: Compiled by the Family and Community Development Committee.

The Secretary of DHS, Ms Gill Callister, explained that carers can be deregistered for a range of reasons:

Carers can be removed from the register by Community Service Organisations for a range of reasons—either because carers decide to stop providing care or because agencies have removed their accreditation or have ceased to employ them. Carers who are disqualified are removed from the carer register by the department.⁸⁷

Ms Callister also outlined that:

The disqualified carer check is a legislative requirement, and it requires Community Service Organisations to check with the department if a carer is disqualified or under investigation. Once confirmation has been provided by the department that a carer is clear the agency can complete the registration of a carer on the register.⁸⁸

Anglicare Victoria explained how it has integrated the screening checks for carers into its processes in out-of-home care:

⁸⁷ *Transcript of evidence*, Department of Human Services, Melbourne, 22 October 2012, p. 4.

⁸⁸ *Transcript of evidence*, Department of Human Services, p. 4.

For carer registration to be successful, the carer must pass a complete criminal history check and Working With Children Check. Furthermore, before Anglicare Victoria places any child or young person with a carer, the agency requests what is known as a 'disqualification check' of that carer which is facilitated by DHS as part of their carer registration facility, and involves another criminal history check and WWCC being carried out. This ensures that both DHS and Anglicare possess the most up-to-date criminal records history about any carer who is being considered for a placement.⁸⁹

Finding 10.5

Registration systems for professionals and offender registers provide an additional checking process to ensure suitable personnel are appointed to specific professions or organisations.

⁸⁹ *Submission S146*, Anglicare Victoria, p. 5.

Chapter 11

Managing situational risk and ensuring a child-safe culture

AT A GLANCE

Background

While the effective selection of suitable personnel may prevent many potential offenders from gaining access to organisations, managing the internal risks of offending by existing personnel is equally important for non-government organisations.

Key findings

- Managing internal situational risks involves assessing risk to the organisation, establishing behavioural expectations of personnel, providing ongoing support, supervision and training and considering risks in the physical environment.
- Identifying high risk activities and children's varying needs is important, yet there is minimal guidance to assist organisations to assess and mitigate risks specific to criminal child abuse.
- Organisations need to establish clear behavioural expectations and boundaries for personnel interacting with children without creating an environment of undue suspicion.
- A number of organisations indicated that education and training are strategies they use to ensure their personnel are informed about child safety, yet there can be inconsistencies in the nature of the training provided by organisations.
- Non-government organisations that provide activities and services for children would benefit from greater awareness of how to use regular supervision and performance monitoring to identify concerns regarding the conduct of personnel interacting directly and regularly with children.
- There is a need to build the capacity of leaders and managers to increase their awareness of how to create an organisational culture that ensures children are reasonably protected from criminal child abuse.

The previous chapter identified that to ensure the appointment of suitable personnel most organisations have considered and put in place systems relating to pre-employment checks. The Committee identified that organisations have given less attention to other aspects of prevention that relate more specifically to managing situational and environmental risk within the organisation and creating child-safe cultures. This is about reducing the risk of existing personnel in organisations committing criminal child abuse.

In 2012, a study by researchers in the UK National Society for the Prevention of Cruelty to Children suggested that:

... whilst interview and pre-employment screening may serve to highlight dispositional factors e.g. by previous convictions or markedly inappropriate attitudes to children, situational factors are potentially easier to control and manage and have the potential to impact positively on the likelihood of an offence occurring.⁹⁰

As outlined in Chapter 10, pre-employment checks and other screening processes will not always prevent unsuitable personnel being appointed to an organisation. The Committee considered there is a need for a stronger focus by organisations to ensure they provide social and physical environments that are child-safe and that reduce opportunities for criminal child abuse.

11.1. Managing situational and environmental risks

Evidence to the Inquiry emphasised that there are a number of factors that non-government organisations need to put in place to ensure they are child-safe environments. These address both the social and physical aspects of the environment.

The Committee identified that these environmental factors relate to managing risk, setting behavioural expectations, ensuring support for staff and volunteers and considering the physical environment. Table 11.1 outlines these aspects of a child-safe organisation.

Table 11.1: Components for managing social and physical risks in organisational environments

Component	Description
Risk assessment	Identifying, assessing and mitigating risk by considering: <ul style="list-style-type: none"> • organisational structure and culture • types of abuse that occur—physical most common • children involved with the organisation—age, gender, disability • type of activities—youth groups, sport, travel, overnight camping • level of understanding of appropriate behaviours—disciplinary practices, physical boundaries, etc.

90 M. Erooga, D. Allnock, & P. Telford (2012) *Towards safer organisations II: Using the perspectives of convicted sex offenders to inform organisational safeguarding of children*. London, National Society for the Prevention of Cruelty to Children (NSPCC), p. 31.

Component	Description
Behavioural expectations	Establishing clear standards of behaviour and boundaries. Ensuring Code of Conduct states expectations regarding appropriate behaviour between children and adults and has guidelines on boundaries.
Education and training	Providing relevant education and training. Increasing awareness within the organisation regarding: <ul style="list-style-type: none"> • understanding children • understanding child abuse—what it is, the dynamics of child abuse, the signs and symptoms of all forms of abuse • policy to protect children—ensuring personnel in the organisation are familiar with the internal child protection policy • reporting procedures—who might report, how to respond to any reports and timelines for responding • accessible resources and support materials—for personnel in the organisation, for children and for parents.
Performance supervision and support	Recognising the preventive value of support and supervision. Using supervision by managers, external professionals, peers or teams to enable concerning behaviour to be more readily identified.
Physical environment	Reviewing and considering the safety aspects of the physical environment. Raising awareness of the preventive value in ensuring safe physical design of buildings and spaces in which children interact with adult personnel—including location, such as camps and other isolated events.

Source: Compiled by the Family and Community Development Committee.

Finding 11.1

Managing internal situational risks involves assessing risk to the organisation, establishing behavioural expectations of personnel, providing ongoing support, supervision and training and considering risks in the physical environment.

11.1.1. Organisational risk assessment

The Committee found that few organisations that submitted to the Inquiry put a strong emphasis on assessing and mitigating risks within their organisation. There is minimal guidance for organisations on how to conduct a risk assessment specific to the risk of criminal child abuse.

The Commission for Children and Young People's *Guide for creating a child-safe organisation* encourages organisations to review how child-safe they are. It suggests organisations consider:

- the activities they provide and those that pose higher risk to children's safety than others

- the needs of children, which vary depending on their age, abilities and developmental needs.⁹¹

The Committee noted that Save the Children Australia referred to a process for undertaking a risk assessment when designing a program or activity. Box 11.1 provides an overview of this risk assessment process. Other organisations that made reference to conducting risk assessments included Wesley Mission Victoria, Anglicare Victoria and the Uniting Church in Australia Synod of Tasmania and Victoria.

Box 11.1: Save the Children Australia risk assessment matrix

All activities within Save the Children Australia (whether humanitarian or emergency responses, programmatic/policy/campaigning work or other work involving child participation) are assessed to make sure that any child protection risks are identified and adequate controls developed.

Each State and Country office must conduct a Child Protection Risk Assessment when designing a program or activity or review each program from a child protection perspective and identify risk interventions appropriate to the level and nature of risk. To support this process, a Child Protection Risk Management Matrix is completed. The Matrix complies with AusAID recommended Risk Management Guidelines and summarises the context, risk analysis, rating and risk responses as they relate to each program's current operations and projects. The Risk Assessment and Risk Management Matrix is reviewed annually at the Program Review time. Particular activities which are deemed 'high risk' are subject to additional monitoring and reporting procedures.

Identifying and managing risk is an integral part of Save the Children's approach to decision making and accountability. Whilst it is never possible to eliminate all risk, the aim of child protection risk management is to create awareness of the specific risks to children's safety and wellbeing and ensure any opportunities for children to be abused or exploited are minimised. Assessing and managing any child protection risks ensures that a proactive and preventive approach underpins Save the Children's programs and activities.

Source: *Submission S252*, Save the Children Australia, p. 5.

The Committee noted that guidance for risk management is often provided by accrediting bodies and insurance agencies. Insurance agencies have an interest in contributing to the degree to which organisations effectively manage risk. For example, Ansvr Insurance informed the Inquiry that it imposes very specific requirements on the organisations it insures. Mr Andrew Moon, the CEO of Ansvr explained that:

We require our insureds to certify to us that they do in fact have policies and protocols in place to ensure that abuse does not occur and cannot occur. We seek detailed information over the previous 12-month period, and we identify risk management procedures, particularly relating to the escalation of issues or events of which they become aware, training programs and refresher programs. We have a series of surveyors across our business who are risk surveyors both for property risk in terms of the construction of buildings, but also for these policies and procedures. They check

⁹¹ Formerly the Office of the Child Safety Commissioner. See Child Safety Commissioner (2006) *A guide for creating a child-safe organisation*, p. 5.

that they exist and that they are in fact being adhered to and implemented within those organisations. Of course we have to adopt a principle of utmost good faith.⁹²

Ansvar does not provide advice on child safety or practices, but shares its experience so that the practices within organisations are improved to the best extent possible. It recommends that organisations put the following preventative measures in place:

- Understand the legal obligations the organisation must comply with.
- Develop a policy statement on client protection to demonstrate the seriousness with which the organisation views the prevention of abuse and allow a framework to be drafted to guide actions in the future.
- Document the way in which staff are selected, including paid and unpaid employees, volunteers, students, people on work experience, management, board members, contractors and others who may act on behalf of the organisation.
- Reduce the risk through sound supervision practices during all activities and events.
- Have an appropriate response plan including advising the statutorily responsible authority to investigate such incidents.⁹³

The Committee noted, however, that organisations that implement risk management processes only with the motivation of reducing their insurance premiums can ultimately prioritise their financial and legal concerns over their moral responsibility to protect children from criminal child abuse.

Finding 11.2

Identifying high risk activities and children's varying needs is important, yet there is minimal guidance to assist organisations to assess and mitigate risks specific to criminal child abuse.

11.1.2. Behavioural expectations

Organisations highlighted to the Inquiry that the establishment of a code of conduct demonstrated their commitment to preventing criminal child abuse. Others emphasised that they had clear statements on the expectations regarding appropriate boundaries with children. For some organisations these boundary expectations were included in the organisation's code of conduct, others had established a separate policy.

The Committee identified that a number of organisations had codes of conduct in place relating to child protection, including:

- Anglican Church
- Baptist Union
- Berry Street Victoria
- Catholic Church
- Girl Guides Victoria
- Scouts Victoria

⁹² *Transcript of evidence*, Ansvar Insurance Ltd., Melbourne, 4 April 2013, p. 2.

⁹³ Ansvar Insurance Limited (2009) *Risk management guide: Preventing abuse*. pp, 1–3.

- Seventh Day Adventist Church
- Uniting Church in Australia Synod of Tasmania and Victoria.

These codes of conduct are outlined in Appendix 6.

The Committee found that while most organisations have a code of conduct, they vary considerably in content and quality. Some were standalone codes relating specifically to children's safety, such as the code established in 2011 by the Catholic Church in Victoria. Others were integrated into a broader code of conduct relevant to all expectations about appropriate behaviour of personnel in the organisation, such as Berry Street Victoria.

Very few organisations provided clear explanation regarding their processes for ensuring the code of conduct on paper was translated into practice. The Committee did note, however, that some organisations provide training for personnel to ensure awareness of the code of conduct. For example, the Uniting Church has bi-annual training on its Code of Ethics in Ministry. The Seventh Day Adventist Church also advised that it has incorporated workshops on its boundary expectations and undertakes refresher training every two to three years.

The Committee found that not all organisations referred to their processes for managing misconduct in their code of conduct. The Committee cannot conclude that processes for managing such breaches do not exist, but it was concerned that the way breaches of the code are dealt with is not always integrated into the code of conduct or cross-referenced to a relevant document. This potentially limits the extent to which personnel can be aware of the implications of not abiding by the organisation's expectations.

The Committee considered it important that organisations balance expectations regarding appropriate boundaries while avoiding an environment of suspicion. Professor Stephen Smallbone from Griffith University explained to the Inquiry that this is a fine balance between not having exceptions to rules and also not creating an environment where everybody feels like they are under suspicion.⁹⁴

Finding 11.3

Organisations need to establish clear behavioural expectations and boundaries for personnel interacting with children without creating an environment of undue suspicion.

11.1.3. Education and training

A number of organisations identified education and training as an important part of their commitment to taking reasonable care to prevent criminal child abuse in their organisation. The Committee found variations in how organisations approached training and whether they engage external providers or conduct in-house training. It also identified inconsistencies in the nature of training provided and how decisions are made about training requirements.

Some organisations considered they have an obligation to ensure personnel understand the importance of creating safe environments for children. Others placed

⁹⁴ *Transcript of evidence*, Professor Stephen Smallbone, p. 9.

an emphasis on educating children in protective behaviours. Another small category focused on educating parents. Examples of training and education approaches in a range of organisations are outlined in Appendix 6.

The Anglican Church explained its education and training processes to the Inquiry. It stated that in addition to training on its *Professional Standards Act 2009* (Vic):

... clergy and lay leaders are regularly exposed to training and other publications which are designed to build their awareness of the risk factors inherent in pastoral ministry to the vulnerable and to provide ways of keeping themselves and other safe in a ministry context.⁹⁵

In its submission to the Inquiry, the Catholic Church in Victoria also explained that the *Programme for Priestly Formation Australia* (established in 2007) informs training in Australian diocesan seminaries. The Catholic Church advised that through the National Committee for Professional Standards (NCPS), established under *Towards Healing*, a wide range of training is provided. This training targets different religious and lay personnel in the Church. It explained that:

Education and training days are ... held in each state frequently, with presentations from experts on understanding abuse and its effects, on the *Towards Healing* program *Integrity in Ministry* and *Integrity in the Service of the Church*.⁹⁶

The Catholic Church also indicated that ‘presentations are made to a wide variety of groups, including youth ministers, deaneries, Congregational schools and Centacare’ on its codes of conduct and ‘preventive measures generally, and awareness and understanding of the effects of abuse’.⁹⁷

The Catholic Church, the Anglican Church and other religious organisations indicated that they collaborate with other religious denominations through the National Council of Churches Australia and the Safe Church Network. Under the auspices of the group, the inter-denominational *Safe Churches Training Agreement* established a training manual template, which includes four Modules for Church Boards. The template is used by over 40 Christian groups and denominations. The Seventh Day Adventist Church and the Baptist Union have used the training manual template.

Other organisations did not appear to have any training in place, such as the Greek Orthodox Archdiocesan District of Victoria, the Islamic Council of Victoria and the Federation of Indian Associations Victoria. The Committee did note that as a consequence of their participation in the Inquiry, these organisations indicated a commitment to improving their processes and to seeking the appropriate guidance and assistance to establish training and to raise awareness.

The Community Child Care Association advised the Inquiry that child care staff are not required to have training on child safety before they commence work. Under the National Quality Framework (see Section 12.4.2), Regulation 84 of the *Education and Care Services National Regulations 2011* requires that child care workers be aware of child protection laws. Ms Catherine Kimber, Professional Support Consultant to the association, stated that:

Everyone in that service has to have an awareness of child protection law. Previously

95 *Submission S244*, Anglican Diocese of Melbourne, p. 29.

96 *Submission S185*, Catholic Church in Victoria, p. 101.

97 *Submission S185*, Catholic Church in Victoria, p. 102.

it tended to be the team leader, the director or the coordinator who would do the more formal training and would then just inform their assistants and casual staff, whereas everyone needs to have an awareness, which is why right now there is a peak of services trying to access the protocol training online, because it is also accessible to services that cannot afford to release staff for formal training.⁹⁸

The Committee notes that the online training focuses on child abuse in families rather than criminal child abuse by carers or other staff at a child care centre.

Professor Desmond Cahill from the School of Global, Urban and Social Studies at RMIT made a recommendation that there is ‘monitoring of the education and training of all religious personnel, because education is the key to overcoming the issues associated with child sexual abuse and other issues.’⁹⁹

Finding 11.4

A number of organisations indicated that education and training are strategies they use to ensure their personnel are informed about child safety, yet there can be inconsistencies in the nature of the training provided by organisations.

11.1.4. Ongoing support and supervision

The Committee determined that ongoing support and supervision of personnel in organisations is an important component of preventing criminal child abuse. This includes the induction process and probation periods for personnel in organisations. In the same vein as the code of conduct, the Committee noted the importance of balancing expectations without creating an atmosphere of suspicion.

Some organisations told the Inquiry that they had introduced induction processes for new personnel in their organisation as a strategy to help prevent criminal child abuse. For example, Jesuit Social Services informed the Committee that:

Members of staff are provided with opportunities to become familiar with and enhance their practice in accordance with our values through a comprehensive induction process.¹⁰⁰

It has also established a six-month probation period that includes a performance review.

In evidence to the Inquiry, some organisations referred to how they use supervision arrangements to oversee the interactions of their staff and volunteers with children. In its submission, Berry Street Victoria outlined its program for supervising and supporting staff in the context of child safety. These arrangements are outlined in its *Child safety and wellbeing policy*:

Quality staff supervision is a hallmark of good human service management practice and indicative of a mature and child-safe organisation. Solid staff support and supervision structures/processes are a central feature of Berry Street’s commitment to child safety. It is a mandatory part of a staff member’s work with Berry Street. Staff support and supervision are closely linked with initial orientation and induction

98 *Transcript of evidence*, Community Child Care Association, Melbourne, 15 April 2013, p. 7.

99 *Transcript of evidence*, Professor Desmond Cahill, School of Global, Urban and Social Studies, RMIT University, Melbourne, 22 October 2012, p. 5.

100 *Submission S206*, Jesuit Social Services, p. 5.

processes undertaken when a new staff member commences with Berry Street.¹⁰¹

Staff supervision requirements are also set out in the agency's code of conduct.¹⁰² Berry Street provides support and development opportunities for home-based carers as set out in the Berry Street Foster Carers' Charter. Such activities include regular telephone contact, visits to carers' homes, caregiver reviews, placement reviews, quality of care reviews, group training, care teams and after hours telephone support.¹⁰³ Examples of supervision arrangements in other organisations are outlined in Table 11.2.

Table 11.2: Examples of supervision and support in organisations

Organisation	Type of training and education
Anglicare Victoria	<ul style="list-style-type: none"> Require staff to account for activities in program documentation.
Anglican Church	<ul style="list-style-type: none"> Mandatory appraisals of all clergy every three years.
Jesuit Social Services	<ul style="list-style-type: none"> Focus on supporting and developing staff to ensure practice reflects culture. Commitment to continuous improvement and supervision.
Scouts Victoria	<ul style="list-style-type: none"> District Personnel Committee conducts performance reviews of all leaders after 3 years.

Source: Compiled by the Family and Community Development Committee.

The Committee determined that many organisations working with children would benefit from greater awareness of how to use regular supervision practices and performance monitoring to identify any issues of concern. In relation to the conduct of personnel interacting with children, the former Child Safety Commissioners' *Guide to creating a child-safe organisation* (now the Commission for Children and Young People) states that:

If staff and volunteers are provided with regular opportunities to meet with and talk to a 'supervisor', they are more likely to share any observations or problems they experience or are concerned about. This could act as an alert when something is not going well or someone is not acting in the best interests of the organisation or the children in their care.¹⁰⁴

Finding 11.5

Non-government organisations that provide activities and services for children would benefit from greater awareness of how to use regular supervision and performance monitoring to identify concerns regarding the conduct of personnel interacting directly and regularly with children.

101 Berry Street (2009) *Child safety and wellbeing policy*. Richmond, Berry Street, p. 8 (Section 4.4.4).

102 *Submission S262*, Berry Street, p. 34 (Code of Conduct).

103 Berry Street (2009) *Child safety and wellbeing policy*, p. 8 (Section 4.4.4).

104 Child Safety Commissioner (2006) *A guide for creating a child-safe organisation*, p. 21.

11.1.5. Physical environments

In reviewing evidence to the Inquiry, the Committee noted that some organisations had assessed their physical spaces and how they might be adjusted to prevent the risk of criminal child abuse. For example, Wesley Mission explained that it had adopted a principle for working with children, which ensures:

... physical spaces for children ... are safe and secure and meet appropriate standards.¹⁰⁵

Other organisations, such as Anglicare Victoria and Baptist Union Victoria, indicated a need to consider physical spaces as part of their broader prevention framework.

In evidence to the Inquiry, Professor Smallbone from Griffith University commented on the idea that:

... the physical environment itself can be altered. As an example ... reducing blind spots and out of the way places. In one case that I was involved with, abuse in an organisational setting had occurred in two specific places where the offender had a kind of unique access because of their role but they were also places where people were not routinely walking by; they were out of the way places.¹⁰⁶

One strategy used by organisations seeking to create safer physical environments for children included ensuring two people are with children at all times. The Seventh Day Adventist Church has established this policy and the Federation for the Preservation of the Mahayana Tradition in Australia is proposing a similar approach in its draft child protection policy.

In this context, the Committee heard that low and single-staff ratios pose an increased risk to children. For example, Ms Leanne Giardana, CEO of the Community Child Care Association, a peak organisation for long day care and outside school hours care, expressed her concern regarding single-staff models. The current regulations that apply to outside school hours care services allow one staff member to care for up to 15 children at one time.¹⁰⁷ The Association advised that single staff models pose a risk not just for the children but also for the adult, and it ‘happens a lot in regional and rural areas, where numbers for services are quite low’.¹⁰⁸ It recommended that there should be no services that operate with only one staff member, that there should be a minimum of two staff at all times. The Committee recognises, however, that this presents a significant resourcing issue and that it is necessary to further explore strategies to address this issue.

11.2. Child-safe organisational cultures

Criminal child abuse thrives on secrecy and a key strategy for organisations in preventing risk to children is to cultivate a culture of awareness, transparency and communication. Child Wise told the Inquiry that:

It is through organisational cultures of secrecy, denial and ignorance that children are rendered vulnerable to abuse, and that allows child sex offenders to gain access to our children.¹⁰⁹

¹⁰⁵ *Submission S165*, Wesley Mission Victoria, p. 12.

¹⁰⁶ *Transcript of evidence*, Professor Stephen Smallbone, p. 9.

¹⁰⁷ *Transcript of evidence*, Community Child Care Association, p. 3.

¹⁰⁸ *Transcript of evidence*, Community Child Care Association, p. 3.

¹⁰⁹ *Transcript of evidence*, Child Wise, Melbourne, 5 April 2013, p. 5.

A child-safe culture potentially assists personnel in organisations to readily identify inappropriate behaviour, to raise any issues and to discuss them in appropriate ways.

Based on evidence to the Inquiry, the Committee determined that processes can be put in place to assist organisations to develop or sustain a child-safe culture. Table 11.3 outlines the factors that contribute to child-safe cultures in organisations.

Table 11.3: Components of child-safe organisational cultures

Component	Meaning and examples
Effective leadership and management	<ul style="list-style-type: none"> Management and leadership styles that are open and egalitarian, that encourage people to speak out, that avoid high risk situations and that promote ongoing learning.¹¹⁰
Takes children's disclosure seriously	<ul style="list-style-type: none"> Engaging children and young people in discussion and giving them opportunity to be heard. Acting on all disclosures, encouraging early disclosure, clarifying unacceptable behaviour, empowering children to disclose and responding appropriately to criminal behaviour.
Encourages reports of suspected abuse	<ul style="list-style-type: none"> Processes that encourage reporting and administer any reports sensitively with appropriate safeguards for all who may be involved in their use to ensure they are not used inappropriately.¹¹¹

Source: Compiled by the Family and Community Development Committee.

Of all the prevention elements reviewed by the Committee, the actions of non-government organisations in relation to organisational culture were the least developed. As outlined in Chapter 7 of Part C, the culture of the Catholic Church in Victoria contributed to the existence of systemic criminal child abuse.

The Committee determined that there is a need to build the capacity of leaders and managers in understanding how to create an organisational culture that ensures children are reasonably protected from criminal child abuse.

11.2.1. Changing organisational culture

Creating a child-friendly and child-safe environment will often involve changing an organisation's culture. It is widely acknowledged that changing organisational culture is challenging.

The Committee did not systematically compare the range of organisational structures of those organisations that participated in the Inquiry. It did note, however, that the structure of many religious organisations makes cultural change particularly difficult. For example, the Uniting Church highlighted to the Inquiry the challenges

110 L.R. Beyer, D. J Higgins, & L.M. Bromfield (2005) *Understanding organisational risk factors for child maltreatment: A review of literature.*, p. 55.

111 M. Erooga, D. Allnock, & P. Telford (2012) *Towards safer organisations II: Using the perspectives of convicted sex offenders to inform organisational safeguarding of children*, p. 83.

in changing its culture to increase its capacity to provide a safe environment for children. According to its submission, the Uniting Church stated that:

It is crucial to develop and maintain a culture of safety for children and for all people in the church

The handling of child abuse by the Synod takes place within the specific organisational culture and structures of the Synod ...

The creation of a culture of safety needs to occur in traditional and new expressions of the Church. There is an opportunity to create a culture that makes these new expressions of Church safe from the outset ...

It is important to note the Synod is comprised of many units and agencies within the one entity and that the structure is based on inter-related, delegated power structures. The Synod is not structured nor does it operate as a linear, top down bureaucracy ...

Given the inter-related model of the Uniting Church, which is non-hierarchical in structure, a challenge for the Synod is how to achieve accountability for the development and quality of these policies and procedures.

There is merit in the argument for policies to be developed and owned at the local level. This approach increases the likelihood of the policy being responsive to and fitting the environment in which it applies. However this dispersed, local approach also means there is no coordinating body or mechanism for ensuring these policies are in place across the Church or to assess their quality and effectiveness.

Whilst acknowledging the interrelated model of the Church and the non-hierarchical structure of the Synod, general support was expressed as part of the development of this submission for the Church to have a 'bottom line' on the issue of child abuse and for this to be communicated and directed centrally ...

A safe church relies on good practice in policies, processes, culture and structure.¹¹²

Other organisations identified that they had considered the need to address organisational culture. These include Jesuit Social Services, the Catholic Church in Victoria and the Seventh Day Adventist Church. The Seventh Day Adventist Church explained that in the 1990s it had identified:

... a need to develop an 'aware culture' within the Church that understood abuse, abusers and victims of abuse.¹¹³

It expressed the reality that:

... transforming Church culture is not something that has happened very easily or quickly—yet, it has been affected intentionally and has mostly occurred slowly over time.¹¹⁴

11.2.2. Effective leadership and cultural change

Non-government organisations that have not previously established child-safe environments need to consider changes to their organisational culture. Leadership is critical in achieving cultural change in organisations.

To achieve a child-friendly environment that promotes child safety, leadership styles need to be open and egalitarian. Management needs to encourage people to speak out.

112 *Submission S164*, Uniting Church in Australia.

113 *Submission S258*, Victorian Conference of the Seventh-day Adventist Church, p. 13.

114 *Submission S258*, Victorian Conference of the Seventh-day Adventist Church, p. 13.

It also needs to assess organisational risk and be prepared to put in place measures that minimise high risk situations. In addition, cultural change occurs through leaders that promote ongoing learning and a willingness to change.¹¹⁵

Professor Smallbone from Griffith University emphasised to the Inquiry the importance of leadership in the prevention of criminal child abuse in organisations:

There is a physical environment, but there is also the social environment to do with the culture of the organisation, the clarity of rules, policies and procedures and so on, and the commitment of managers and so on to administer those rules and codes of conduct and not to make exceptions.

Very often I have seen cases where after somebody has been arrested for sexually abusing a child in an organisational setting a number of other people have said, 'We saw this and we saw that but we didn't put two and two together'. It is often small things that people observe but only when those pieces of information are joined up does it start to make some kind of sense of a problem. For example, in a school I am aware of where there was abuse of students other teachers had walked into a room with this person, the offender, and a victim—they did not actually see sexual abuse. There was a rule in the school, 'You are not allowed to do that', but they did not report it because they thought, 'Well, this guy, we know him, he's trusted'.¹¹⁶

Dr Higgins from the AIFS suggested to the Inquiry that to achieve cultural change organisations can use 'sponsors or champions' who can 'talk about what that policy means, regularly bring it up in team meetings and flesh it out and mentor new staff who might be coming into an organisation.'¹¹⁷

Finding 11.6

There is a need to build the capacity of leaders and managers to increase their awareness of how to create an organisational culture that ensures children are reasonably protected from criminal child abuse.

115 L. R. Beyer, D. J. Higgins, & L. M. Bromfield (2005) *Understanding organisational risk factors for child maltreatment: A review of literature.*, p. 55.

116 *Transcript of evidence*, Professor Stephen Smallbone, p. 9.

117 *Transcript of evidence*, Australian Institute of Family Studies, p. 6.

Chapter 12

Policies to protect children from criminal child abuse

AT A GLANCE

Background

A written child-safe policy demonstrates an organisation's commitment to its duty to reasonably protect children from criminal child abuse while in their care. It may be long or short depending on an organisation's purpose, size or the activities it undertakes. Ideally it should contain a statement of zero tolerance of criminal child abuse, principles to guide decisions, procedures on the employment of new personnel, a risk management approach and processes for reporting allegations of criminal child abuse.

Key findings

- Many non-government organisations have given consideration to the need to develop policies to protect children from criminal child abuse, but these are often basic and fragmented across other policies.
- Those organisations that voluntarily participated in the Inquiry had often considered policies for protecting children, while those directly requested to participate were less likely to have adequately considered their duty to take reasonable care to ensure children are safe with their personnel.
- The level of knowledge and the degree of action in establishing and improving child safety policies varied greatly, ranging from proactive to inactive.
- Funded organisations and registered professionals are expected to meet standards relating to child safe practices that vary considerably across sectors such as early education, teaching and community services.

Recommendation

- That the Victorian Government review its contractual and funding arrangements with education and community service organisations that work with children and young people to ensure they have a minimum standard for ensuring a child-safe environment, including the following principles:
 - ♦ a statement of zero tolerance of criminal child abuse
 - ♦ principles to guide decisions
 - ♦ procedures on the employment of new personnel
 - ♦ a risk management approach
 - ♦ processes for reporting and responding to allegations of criminal child abuse.

That the Victorian Government consider the potential for extending a standard for child-safe environments to other organisations or sectors that have direct and regular contact with children.

The Committee heard that organisations need to do more than acknowledge the problem of criminal child abuse. The core elements of prevention need to be clearly articulated in a written policy and effectively implemented.

Dr Daryl Higgins from the Australian Institute of Family Studies explained this to the Inquiry:

It is not good enough ... for organisations to claim to be aware of and responding to issues of child abuse and neglect unless there are actually written policies that clearly talk about what the expectations are and what they intend to do in response to concerns that are raised, clearly articulating how those issues should be raised and the kind of supports that will be provided and the processes they will undertake. Obviously they will be quite different for different organisational contexts, but there are some overarching principles.¹¹⁸

12.1. Key components of internal organisational policies to protect children

The Committee identified a number of guidelines designed to assist organisations develop a child safety policy relevant for non-government organisations. These are provided by statutory bodies, such as the Victorian Commission for Children and Young People, the New South Wales Ombudsman and Australian Agency for International Development (AusAid). Non-government organisations, such as the Australian Childhood Foundation and Child Wise have been instrumental in informing these guidelines. Child Wise explains that policies to protect children from abuse in non-government organisations should serve a number of purposes. It states that they need to:

- state the organisation's commitment to keeping children safe, and how this commitment will be implemented
- set out a series of principles that will help guide decisions on keeping children safe
- provide a clear direction and a pre-planned, uniform approach to issues that arise
- assist when a difficult situation arises—such as a disclosure
- be accessible and tailored to a specific organisation in order to be meaningful
- be regularly reviewed.¹¹⁹

The Committee acknowledges that policies will differ from organisation to organisation in view of the variability in their size, purpose and the activities they undertake. For example, in its *Guide to creating a child-safe organisation*, the former Child Safety Commissioner stated that:

In some organisations, the Child Safety Policy is a short document, which provides an overview of the key elements of the organisation's approach to creating a child-safe organisation. In these organisations, the Child Safety Policy does not stand alone but is supported by other documents, such as a detailed Code of Conduct. In other organisations, the Child Safety Policy is a longer document, which incorporates more detailed information, such as the Code of Conduct and procedures for reporting complaints.¹²⁰

¹¹⁸ *Transcript of evidence*, Australian Institute of Family Studies, p. 9.

¹¹⁹ Childwise (2004) *Choose with care: A handbook to build safer organisations for children*. South Melbourne, Childwise, pp, 56–57.

¹²⁰ Child Safety Commissioner (2006) *A guide for creating a child-safe organisation*, p. 8.

In reviewing the available guides and information relating to child safety policies, the Committee identified that regardless of length, a policy should contain the five components outlined in Table 12.1.

Table 12.1: Five components of a child safety policy

Check	Includes
Policy commitment	<ul style="list-style-type: none"> • zero tolerance to criminal child abuse • commitment to children’s best interests and to keeping them safe • statement on prevention.
Principles to guide decisions	<ul style="list-style-type: none"> • roles and responsibilities of personnel involved in protecting children • definitions of terms relevant to the policy • appropriate boundaries and cross-reference to the code of conduct if not incorporated in the policy • any relevant legislative or regulatory requirements.
Employment of new personnel	<ul style="list-style-type: none"> • recruitment, screening and pre-employment checking processes • induction process.
Risk management approach	<ul style="list-style-type: none"> • identifying and managing risks associated with any activities involving children • training, support and supervision of personnel • commitment to creating a child-safe culture.
Process for reports and allegations of criminal child abuse	<ul style="list-style-type: none"> • procedural fairness • support to all parties • documentation processes.
Review process	<ul style="list-style-type: none"> • states who is responsible for reviewing the policy • states the date it will be reviewed.

Source: Compiled by the Family and Community Development Committee.

In Victoria there is no current legislative requirement for non-government organisations to comply with their duty of care to protect children by establishing preventive policies. Some other jurisdictions have introduced screening and protection legislation that requires organisations to have systems and processes in place to ensure they meet their duty of care.

For example, in South Australia, the *Children’s Protection Act 1993* (SA) requires that all government organisations and non-government organisations that provide services either wholly or partly for children develop appropriate policies and procedures to establish and maintain child safe environments. These policies and procedures must reflect the standards and principles of good practice developed by the Chief Executive, Department for Families and Communities. Currently it ‘requires transparent assessment policies and procedures that include consideration

of situational factors, the nature of vulnerability of the children receiving the services, and personal factors relating to the applicant.¹²¹

Similarly, in Queensland, organisations which are included within the scope of the working with children's check system must implement child and youth risk management strategies covering eight minimum requirements. To comply with the requirements that are set out in the legislation, a child and youth risk management strategy must include a number of components:

- a statement of commitment
- a code of conduct
- policies for recruiting, selecting, training and managing employees (including volunteers)
- procedures for handling disclosures and suspicions of harm
- a risk management plan for high risk activities and special events.¹²²

12.2. Establishment and implementation of policies by organisations for the protection of children

The establishment and implementation of policies relating to the protection of children by an organisation is a demonstration of its level of commitment to preventing criminal child abuse and meeting its duty of care to protect children.

Child Wise has identified that organisations in Victoria generally fall into one of three categories:

- no policy and/or surrounding procedures
- policies and procedures that are scattered across a number of different documents: sexual harassment, recruitment, discipline, social media
- comprehensive policies which cover some/all aspects of child protection, to varying degrees of effectiveness.¹²³

The majority of the organisations Child Wise works with have policies that fall into the first and second categories, where there are no policies or fragmented policies. It explained that:

This applies to all organisations, from small child-care centres or sporting clubs through to large state—or national-level bodies that operate throughout Victoria, Australia and internationally.¹²⁴

It clarified that often 'ineffective policies are not due to deliberate avoidance or obstructionism, but to a lack of resources and/or understanding of how child abuse can best be prevented within an organisation.'¹²⁵ It also explained that:

We are certainly seeing some organisations wanting to be incredibly open and transparent and accountable, and we have seen other organisations that do not

121 Government of South Australia Department of Families and Communities (2007) *Child Safe Environments: Principles of Good Practice*. Adelaide, DECD, p. 31.

122 Queensland Commission for Children and Young People and Child Guardian (2013) *Child and youth risk management strategies*. Accessed on 7 June 2013 from www.ccypcg.qld.gov.au.

123 *Submission S388*, Child Wise, p. 5.

124 *Submission S388*, Child Wise, p. 5.

125 *Submission S388*, Child Wise, p. 5.

work in that kind of realm. They are happy to take on board the concepts of child protection but what that actually means to them is something different from other organisations.¹²⁶

The Committee's findings were consistent with this, with organisations demonstrating a willingness to be transparent and accountable and others that were just gaining an awareness of their need to consider issues relating to child-safety in their organisation.

Finding 12.1

Many non-government organisations have given consideration to the need to develop policies to protect children from criminal child abuse, but these are often basic and fragmented across other policies.

12.3. Existing policies to protect children from criminal child abuse

The Committee identified a range of practices, policies and protocols in place in non-government organisations to prevent criminal child abuse. It found that the majority of organisations voluntarily participating in the Inquiry had given some thought to a policy to protect children from the harms of criminal child abuse.

The Committee determined that there are notable differences in the processes adopted by non-government organisations and those adopted by religious organisations. In some respects this tends to relate to their organisational structures and the activities they undertake. Some organisations integrate their child protection policy into their code of conduct or duty of care policy, whereas other organisations have a separate policy.

Table 12.2 outlines some of the policies that organisations have developed to protect children from the harm of child abuse.

¹²⁶ *Transcript of evidence*, Child Wise, p. 10.

Table 12.2: Examples of child-safety policies

Date	Organisation	Policy	Features
Adopted 1999	Uniting Church	Policy for child safe organisations	<ul style="list-style-type: none"> • all agencies required to adopt policy • code of conduct • selection and recruitment • supervision • abuse notification • complaints process • ongoing training.
Adopted 2002	Baptist Union	Duty of care policy	<ul style="list-style-type: none"> • biblical concern for people • definition of duty of care • needs of different groups—children, playgroups, youth • leaders • recruitment of leaders • supervisory practices • responding to suspicions & allegations of abuse.
Adopted 2004	Anglican Church	<ul style="list-style-type: none"> • Faithfulness in service • Safe ministry policy check 	<ul style="list-style-type: none"> • statement on child protection • chapter on children • definition of child abuse, grooming, sexual abuse of child • statement on children's rights • screening & selection • supervision • reporting suspected abuse • activities • disciplining children • record keeping.
Reviewed 2009	Berry Street	Child and safety wellbeing policy	<ul style="list-style-type: none"> • commitment to prevention, policy objectives • definitions—staff, safety, foreseeable risk • complaint handling process • privacy and confidentiality • aboriginal cultural competence • recruitment, code of conduct, supervision and support • client interaction • service environments • care environments • authorities and accountabilities • links to relevant policies.

Date	Organisation	Policy	Features
Current version 2009	Salvation Army	Child protection policy	<ul style="list-style-type: none"> • definitions • outlines police checks and Working with Children Checks processes.
Current version 2010	Girl Guides	Child protection policy	<ul style="list-style-type: none"> • statement on protection of children • acceptable behaviours and boundaries.
Adopted 2011	Catholic Church	May our children flourish	<ul style="list-style-type: none"> • statement on valuing children • definitions—child, parent, parish activities • scope of code of conduct • legislative responsibilities • creating a positive environment • appropriate behaviours for adults • appropriate behaviours for children • reporting child abuse • review of policy.
Updated 2012	Scouts Victoria	Child protection & protection from harm policy	<ul style="list-style-type: none"> • statement on duty of care • authorised person in charge • role of branch • rights of the child • respect for others & personal standards • privacy • procedures for safe practice.
No date	vicsport	Member protection policy template for all members	<ul style="list-style-type: none"> • child protection position statement • develop code of conduct • definitions • responsibilities • identify and analyse risk of harm • recruitment, support, training and supervision • complaints procedures • legislative requirements • policy review.

Source: Compiled by the Family and Community Development Committee.

In reviewing the policies non-government organisations have developed, the Committee noted that very few organisations had comprehensive models of prevention in place. Most organisations had developed a basic policy or had fragmented policies in place.

As discussed in Chapter 2 of Part A, it is important to note that the majority of organisations assessed by the Committee were voluntary participants in the Inquiry and potentially represent those organisations open to a degree of scrutiny or are confident their policies are adequate.

Notably, those organisations that the Committee directly requested to participate in the Inquiry often had given no consideration to the criminal abuse of children in their sector. The Committee is concerned that a significant number of organisations and at-risk sectors across Victoria might not have assessed the risk of criminal child abuse.

The Committee sought the view of the Victorian Commission for Children and Young People regarding the extent to which prevention models are currently being implemented in religious and other non-government organisations in Victoria. The Principal Commissioner, Mr Bernie Geary, advised the Inquiry that:

I have not conducted detailed research on how well organisations are doing today, but based on the information I have received from various areas of work at my office, I believe that more can and should be done to assist all organisations to put in place best practice strategies for keeping children safe. In addition, specific strategies should be put in place for those children who are most vulnerable.¹²⁷

The Committee identified that there has been no baseline research conducted into the practices, policies and protocols organisations have established to prevent criminal child abuse in Victoria. The extent to which organisations are addressing this issue cannot be accurately assessed.

In reviewing the policies of organisations that participated in the Inquiry, the Committee identified five broad categories:

- Proactive—indicated an understanding of core elements of their duty of care to children and committing to prevent child abuse and to continuous improvement.
- Active—policy demonstrated an understanding of child abuse and the need to address it through good systems and processes and to improve them when necessary.
- Compliant—an understanding that organisations have a responsibility to address child abuse. They have achieved a level of compliance and have little commitment to ongoing improvement.
- Reactive—given little consideration to issues relating to child safety and have not previously considered the risk associated with child abuse, but reactive to pressure.
- Inactive—given no consideration to child abuse, do not consider there is an issue in their organisation and have little intention of doing things differently.

Finding 12.2

Those organisations that voluntarily participated in the Inquiry had often considered policies for protecting children, while those directly requested to participate were less likely to have adequately considered their duty to take reasonable care to ensure children are safe with their personnel.

¹²⁷ *Transcript of evidence*, Commission for Children and Young People, p. 3.

Proactive approach to prevention

Organisations that had a comprehensive understanding of the core components to meet their duty of care and are ‘proactive’ in their approach tend to have the following knowledge and commitment to action:

- Knowledge—have an understanding of the core elements of their duty of care to children and are committed to preventing child abuse.
- Action—have adopted all elements of a risk management framework and committed to continuous improvement.

Those organisations with government service agreements and funding arrangements tended to have more extensive policies in place and revealed a commitment to ongoing improvement in their policies. Yet the Committee is mindful that written policies also need to be implemented to be effective. Table 12.3 outlines the Committee’s review of two policies that were particularly comprehensive:

- Save the Children Australia—*Child protection policy & code of conduct*
- Berry Street Victoria—*Child safety and wellbeing*

Table 12.3: Review of child-safe policies—Save the Children Australia and Berry Street Victoria

Policy components	Save the Children	Berry Street Victoria
Policy commitment	<ul style="list-style-type: none"> • outlines the scope of the policy and who it applies to • statement committing the organisation to protect children • zero tolerance to child abuse. 	<ul style="list-style-type: none"> • introduction and scope of policy outlined • policy objectives to demonstrate organisational commitment to child safety and wellbeing.
Principles to guide decisions	<ul style="list-style-type: none"> • contains a number of definitions relevant to the policy • refers to confidential storage of information • refers to code of conduct • refers to the roles and responsibilities relevant to the policy. 	<ul style="list-style-type: none"> • clear definitions of terms in policy • specific reference to authorities and accountabilities • refers to relevant legislation • refers to document management and confidentiality • refers to code of conduct.
Employment of new personnel	<ul style="list-style-type: none"> • recruitment practices referred to, including checking and screening processes. 	<ul style="list-style-type: none"> • outlines recruitment processes and links to relevant policies, including checking and screening.
Risk management approach	<ul style="list-style-type: none"> • risk assessment not referred to in the policy, but submission outlines approach and the tool used • refers to staff management practices . 	<ul style="list-style-type: none"> • no reference to risk assessment processes • outlines supervision and support, behaviour expectations and specific environments of service provision.

Policy components	Save the Children	Berry Street Victoria
Process for reports and allegations of criminal child abuse	<ul style="list-style-type: none"> reference to reporting processes, including one-page flow chart outlines roles responsible for handling complaints. 	<ul style="list-style-type: none"> states that all complaints are handled in accordance with established reporting and investigation processes and refers to relevant policy.
Review process	<ul style="list-style-type: none"> review policy every two years. 	<ul style="list-style-type: none"> specifies the review date.

Source: Adapted from *Submission S252*, Save the Children Australia, Appendix 1, and *Submission S262*, Berry Street, Appendix 1.

In reviewing the two policies, the Committee determined that they both appear to contain the majority of components for an effective policy to demonstrate that an organisation is taking reasonable care to protect children from criminal abuse.

Save the Children was notable in its adoption of a risk management tool for assessing the risk of specific activities within the organisation.¹²⁸ This was outlined in more detail in Chapter 11. In its review of the Berry Street Victoria *Child safety and wellbeing policy*, the Committee identified that on the whole it appeared ‘proactive’.

Both Berry Street Victoria and Save the Children Australia receive government funding to provide services and have contractual requirements to meet minimum standards. Berry Street provides residential, out-of-home care, youth and education services for children and young people. Save the Children Australia is an international organisation for children and provides programs that focus on school attendance, early childhood care and development, youth engagement, parenting support, reconciliation, and multicultural early learning.

Active approach to prevention

The Committee considered organisations that are active in their approach to protect children from criminal child abuse have established aspects of a risk management policy and have the following knowledge and action levels:

- Knowledge—have an understanding of child abuse and the need to address it through good systems and processes.
- Action—have established elements of a risk management framework and are willing to improve systems and processes if required.

The Committee identified that Scouts Victoria have an active child protection policy which the organisation is continuing to improve. The policy reveals that the organisation has considered issues relating to the safety of children and young people. In reviewing the *Child protection and protection from harm policy* established by Scouts Australia Victorian Branch, the Committee identified that it meets many of the key requirements of a good child protection policy.

It noted, however, that the Scouts policies on child protection are fragmented, with the complaints handling processes containing some of the aspects that relate to protecting children from harm. Table 12.4 outlines the Committee’s review of Scouts Victoria’s two child protection policies.

128 *Submission S252*, Save the Children Australia, Appendix 1.

The Committee noted that Scouts Victoria makes a strong statement regarding its zero tolerance approach in its most recent *Child protection—reporting policy* authorised on 4 March 2013. It also noted that Scouts Victoria makes no reference to risk assessment or identification processes that the organisation might undertake.

Table 12.4: Review of Scouts Victoria policies—duty of care and child protection reporting

Policy components	Overview
Policy commitment	<ul style="list-style-type: none"> states its duty of care to protect members from harm states Scouts Victoria has a zero tolerance for any form of child abuse towards children and young people.
Principles to guide decisions	<ul style="list-style-type: none"> defines child abuse, but no list of other relevant definitions states positions of those with responsibility for reporting suspected abuse refers to the importance of keeping documents in secure storage.
Employment of new personnel	<ul style="list-style-type: none"> makes reference to induction processes undertaking suitability interviews are covered in a different policy.
Risk management approach	<ul style="list-style-type: none"> no reference to risk assessment process specific to organisation.
Process for reports and allegations of criminal child abuse	<ul style="list-style-type: none"> reference to fair process in complaints handling policy.
Review process	<ul style="list-style-type: none"> states who has responsibility for reviewing the policy policy reviewed every 3 years.

Source: Adapted from *Submission S200 and S200A*, Scouts Australia (Victoria).

Compliant approach to prevention

The Committee identified a number of organisations that have basic child protection policies in place. While this indicates these organisations recognise they have a duty of care, the Committee observed that some of these policies are minimal in their coverage of the issues and others are fragmented. This includes the following knowledge and level of action:

- Knowledge—understand that organisations have a responsibility to address child abuse.
- Action—have established a basic policy that touches on basic elements of a risk management framework, have achieved a level of compliance and have minimal commitment to ongoing improvement. They might be reactive to pressure.

For example, Girl Guides Victoria established a child protection policy that meets the basic requirements of its duty of care to children and young people. In reviewing

this policy, the Committee noted that it has a number of elements that are consistent with a good child protection policy. The policy contains the following components:

- statement that Girl Guides Australia recognises that all children should be protected from harm
- definition of a child in the policy
- guidance to adult volunteers on the acceptable behaviours and appropriate boundaries when working with children
- statement that leaders in charge of children should be aware of and have access to the policy.¹²⁹

In its submission, Girl Guides Victoria also explained to the Committee that:

- policies are reviewed every three years for currency or more frequently if necessary, with a clear process for authorisation
- an alleged offender would be treated by the relevant policy and if necessary reported to the appropriate authority
- support for victims would be provided through the most appropriate professional group.¹³⁰

These additional aspects of its approach, however, are not listed in the written child protection policy.

The Salvation Army provides another example of a policy to protect children that meets the basic requirements to comply with its duty of care. The central purpose of the policy is to outline the screening process through the police check and Working with Children Check (WWCC) processes. In addition, the Salvation Army acknowledges its moral and legal responsibility. However, it does not extend beyond the minimal requirements. Other components of the Salvation Army's organisational policies relating to protecting children are contained in other policies, such as their Orders and Regulations and Guidelines for Salvationists.

Reactive approach to prevention

Some organisations had given little consideration to their duty of care to protect children from the harms of criminal child abuse. Of the organisations the Committee directly requested to provide information, some fell into this category of reactive approaches to prevention. This includes the following knowledge and level of action:

- Knowledge—have given little consideration to issues relating to child safety and have not previously considered the risks that contribute to child abuse.
- Action—have taken no action to address issues relating to child abuse within their organisation, but pressure might lead to some action.

The Committee noted that both individual organisations and peak bodies for some sectors were reactive in their approach but with some pressure, were willing to consider steps they may need to take.

For example, the Committee identified that the Greek Orthodox Church, the Islamic Council of Victoria and the Australian Camping Association had not given attention

¹²⁹ *Submission S084*, Girl Guides Australia (Victoria), Appendix 1, p. 2.

¹³⁰ *Submission S084*, Girl Guides Australia (Victoria), p. 2.

to preventing criminal child abuse in organisations within their communities or membership. These organisations indicated a willingness to be guided on the most appropriate systems and processes for preventing criminal child abuse and to meet their duty of care to protect children in their care.

In evidence to the Inquiry, Bishop Iakovos of Miletoupolis, Greek Orthodox Archdiocesan District of Victoria, stated that ‘we would all benefit from guidelines and structures.’¹³¹ The Greek Orthodox Church’s *Child protection policy* (2013) makes a brief statement regarding its commitment to the safety and welfare of all children. It contains a list of the prevention strategies it will employ and highlights the importance of reporting suspected criminal abuse of children.¹³²

The Australian Camping Association makes it clear in its objectives that it considers it has a role ‘To improve the management of the risks inherent in camps and adventure activities.’¹³³ Yet the Association initially did not consider it had a role in supporting its members to manage the risks of criminal child abuse that can occur in camping and adventure activities. Its CEO, Mr David Petherick, agreed to appear before the Inquiry and he advised the Committee that:

Since I had the phone call in regard to this inquiry I have been in touch with Child Wise. I have had an initial meeting with them, and I have indicated to them that we have multiple roles here.¹³⁴

Notably, the Islamic Council of Victoria told the Inquiry that:

there are gaps where there are no policies. We are aware, and we heavily speculate, that there are organisations that do not have any policies. They have practices—the practices are referred to in the [submission], and this is again based on very minimal consultation—but we think there is an absence with regard to policies within certain organisations, just complete absence.¹³⁵

Yet they advised the Committee that policies were in place in some sections of their community that fall within funded and regulated sectors, such as Islamic schools:

We have schools that are doing wonderful things. I have had extensive consultation with Islamic schools. They have wonderful policies. They are laid out, they are being implemented, and we think that some of that infrastructure is best practice because they have been around for a very long time. They are also funded organisations, and they are not volunteer organisations. I think that is a big distinction to make.¹³⁶

The next section discusses the disparity between funded and unfunded sectors in the expectations of their regulatory requirements. It identifies strategies for building the capacity of unfunded organisations to increase their focus on prevention where there are no regulatory requirements.

131 *Transcript of evidence*, Greek Orthodox Archdiocesan District of Victoria, Melbourne, 12 April 2013, p. 9.

132 Primate of the Greek Orthodox Church in Australia (2013) *Child protection policy*. Accessed on 5 September 2013 from <http://www.greekorthodox.org.au>.

133 Australian Camps Association *About Us*. Accessed on 21 February 2013 from <http://www.auscamps.asn.au/about>.

134 *Transcript of evidence*, Australian Camps Association, Melbourne, 11 April 2013.

135 *Transcript of evidence*, Islamic Council of Victoria, Melbourne, 15 April 2013, p. 10.

136 *Submission S398*, Islamic Council of Victoria, p. 4.

Inactive in prevention efforts

The Committee identified that some organisations had not established policies to ensure the safety of children engaging in activities with their personnel. Some organisations informed the Inquiry that they did not consider the protection of children from abuse to be relevant to their organisation.

The Committee determined that these organisations could be considered naive in their understanding of criminal child abuse in organisations and in denial about the likelihood of it occurring in their organisation. This includes the following level of knowledge and action:

- Knowledge—given no consideration to child abuse and have no understanding of the issue.
- Action—do not consider there is any issue and have little intention of doing things differently.

The Committee determined that there were two levels of inactivity in adopting preventative approaches. On the individual organisational level, some non-government organisations were unaware that they might need to consider the risk of criminal child abuse occurring by their personnel. At the level of peak bodies, some organisations did not consider they had a responsibility for supporting their members to understand and respond effectively to the issue of criminal child abuse.

For example, the Committee requested that Independent Schools Victoria participate in the Inquiry to clarify its role in supporting its members to develop child-safe policies and to respond to allegations of criminal child abuse. In its subsequent written submission made to the Inquiry on 28 March 2013, it stated that:

Independent Schools Victoria is a not a system authority managing schools, but a membership organisation providing professional services to inform schools and raise quality standards ...

Our association does not impose conditional standards on our members because they are independently-managed schools.¹³⁷

It explained that it provides information and advice about government legislation and regulations.

In the context of individual organisations, the Committee sought information from a range of organisations, including the Sikh Council of Australia. The Council advised the Inquiry that in its community:

Child abuse such as physical, psychological, neglect, or sexual is not an issue and almost non-existent ...

Since no child abuses have been reported ... at this stage, [it has] not developed any means or processes to respond to the issue.¹³⁸

Part C outlined the Committee's view that all religious and non-government organisations that have any interaction with children are potentially at risk of criminal child abuse, irrespective of whether any allegations have been brought to the attention of the organisation.

¹³⁷ *Submission S399*, Independent Schools Victoria.

¹³⁸ *Supplementary evidence*, Response to request for information, Sikh Council of Australia, 12 March 2013, p.2.

The lack of understanding of some organisations about the potential risk of criminal child abuse illustrates that there is a need for greater awareness of these and the critical importance of having a child-safe policy in place. It also highlights the need to engage peak organisations more effectively to support organisations in developing child-safe practices to prevent criminal child abuse. Chapter 13 discusses this further.

Finding 12.3

The level of knowledge and the degree of action in establishing and improving child safety policies varied greatly, ranging from proactive to inactive.

12.4. Standards—Government funded services

While mindful that not all organisations will fit into these groupings, the Committee identified three main types of non-government organisations:

- Unfunded and largely volunteer based organisations—which often find it difficult to get the support and guidance they need to develop policies to prevent child abuse.
- Funded—organisations that can be required to meet contractual obligations to ensure ongoing funding.
- Religious organisations—often well-financed, international organisations with unclear hierarchies, accountabilities and organisational structures.

The Australian Childhood Foundation (ACF) highlighted to the Committee that non-funded organisations are not covered by any regime which supports them to develop and implement child-safe policies and systems. In its submission, the ACF explained that:

Using compliance to safeguarding children standards by organisations is increasingly viewed as an effective approach to protecting children from harm by employees and volunteers ...

More critically, non-funded organisations are not covered by any regime which supports them to develop and implement child safe policies and systems. This leaves a major gap in compliance in Victoria.¹³⁹

Anglicare Victoria commented on the influence of regulatory requirements for different types of organisations:

Not every religious and other organisation that is involved with children and young people ... has the same sort of program focus as Anglicare Victoria. Because of this, some organisations employ few or no workers who possess the knowledge and skill base as those who work for our agency.

... where such workers are not required to be ‘child abuse experts’ due to the nature of their work, it is far less likely that the organisations for which they work will have to abide by such regulatory frameworks as does Anglicare Victoria. Again, these include the legislation and DHS [Department of Human Services] guidelines previously mentioned in this submission which direct Anglicare Victoria’s response to allegations of organisational abuse—and which we have extended in our internal policies to pertain to non-DHS funded programs.¹⁴⁰

¹³⁹ Submission S224, Australian Childhood Foundation, p. 5.

¹⁴⁰ Submission S146, Anglicare Victoria, p. 14.

The Committee identified that certain professions and sectors that receive funding from the Government have contractual requirements in relation to minimum standards and registration processes. The sectors and professions that currently have requirements to meet minimum standards include:

- Victorian teaching profession
- early education providers
- out-of-home care services.

The Committee noted that there are variations in the compliance requirements of different professions and sectors which do not always directly relate to the prevention of criminal child abuse.

12.4.1. Standards for Victorian teachers

Teachers are required by the Victorian Institute of Teaching (VIT) to meet specific standards relating to codes of conduct and professional development. The standards are broad and are relevant to knowledge, practice and engagement in ongoing learning.

Teachers in Victoria are expected to meet the Australian Professional Standards for Teachers, which are monitored by VIT. In the context of ensuring children's safety, the relevant standard is Standard 4, which requires teachers to 'create and maintain supportive and safe learning environments', and more specifically:

4.4 Maintain student safety—Ensure students' well-being and safety within school by implementing school and/or system, curriculum and legislative requirements.¹⁴¹

There is no specific reference to preventing criminal child abuse. Registered teachers in Victoria, however, are also required to comply with the Victorian Teaching Profession Code of Conduct. This stipulates that:

Principle 1.5: Teachers are always in a professional relationship with the students in their school, whether at school or not.

Teachers hold a unique position of influence and trust that should not be violated or compromised. They exercise their responsibilities in ways that recognise that there are limits or boundaries to their relationships with students.¹⁴²

In its submission to the Inquiry, VIT explained that this professional relationship will be violated if the teacher:

- (a) Has a sexual relationship with a student
- (b) Uses sexual innuendo or inappropriate language and/or material with students
- (c) Touches a student without a valid reason
- (d) Holds conversations of a personal nature or has contact with a student via written or electronic means including email, letters, telephone, text message or chat lines, without a valid consent
- (e) Accepts gifts, which could reasonably be perceived as being used to influence them, from students or their parents.¹⁴³

141 Victorian Institute of Teaching *Professional Standards*. Accessed on 7 October 2013 from <http://www.vit.vic.edu.au/standardsandlearning/Pages/professional-standards.aspx>.

142 Victorian Institute of Teaching *Professional Standards*.

143 *Submission S406*, Victorian Institute of Teaching, p. 3.

Each new registered teacher is provided with a copy of the Code of Conduct on gaining registration. VIT also presents information sessions to final year cohorts of teacher education students at higher education institutions.

12.4.2. Standards in the early education sector

Long day care, family day care, preschool/kindergarten and outside school hours care services are expected to comply with the National Quality Framework and be rated against the National Quality Standard. The Quality Assessment and Review Division (QARD) of the Department of Early Education and Childhood Development (DEECD) is responsible for ensuring compliance with these standards.

Protection of children in these services falls under Element 2.3.4 of Standard 2.3, which requires that:

Educators, co-ordinators and staff members are aware of their roles and responsibilities to respond to every child at risk of abuse or neglect.¹⁴⁴

This standard sets an expectation that early education providers undertake education and keep up-to-date with child protection legislation in their state or territory. The standard focuses on protecting children and responding to child abuse that might be occurring in families, but not on preventing criminal child abuse within the organisation.

National regulations require services to have a policy and procedure on 'providing a child-safe environment'. The Committee notes, however, that what constitutes a 'child-safe environment' is not defined by the regulations and it is unclear whether this meets the minimal requirements necessary to guard against criminal child abuse. There is no requirement for early learning and child care services to have a child abuse prevention framework in place. As noted by Berry Street in its submission to the Inquiry:

The Education and Care Services National Regulations 2011 are relatively silent on quality service standards relating to providing a child safe environment or in relation to establishing robust policies and procedures for responding to allegations of child abuse or maltreatment.¹⁴⁵

Although most early childhood services fall under the National Quality Framework and associated legislation, a smaller number of services are subject to the *Children's Services Act 1996* (Vic) and the Children's Services Regulations 2009. As with the National Law and National Regulations, the Children's Services Act and Regulations do not create a positive obligation for services to develop and maintain policies and procedures to prevent physical, emotional and sexual harm from staff and visitors. As Berry Street's submission indicates:

The regulations [Children's Services Regulations 2009] have a predominant focus on the physical environment, staff qualifications and child:staff ratios and the physical safety of children.¹⁴⁶

144 Australian Children's Education & Care Quality Authority (2013) *Guide to the National Quality Standard*. Sydney, ACECQA, pp, 44, 76.

145 *Submission S262*, Berry Street, p. 9.

146 *Submission S262*, Berry Street, p. 7.

12.4.3. Standards in out-of-home care

Deputy Director of the AIFS, Dr Higgins, informed the Inquiry that where adults are acting in the role of parents, children can be more vulnerable to child abuse. He explained that:

It automatically brings to mind situations like children and young people in out-of-home care, whether that be placed in the broader kinship networks but particularly in foster and residential care settings.¹⁴⁷

DHS indicated it recognised the significance of this issue. In the guidelines for responding to allegations of physical or sexual assault, it states that:

Staff should be aware that many clients, including young people, and people with a disability, are at greater risk of physical and sexual assault than the general population.¹⁴⁸

This includes the risk of physical and sexual assault by adults and other clients in the out-of-home care system. The Secretary of DHS, Ms Gill Callister, expressed to the Inquiry that:

... the worst thing that can happen to a child who has already been removed from their family for abuse or neglect is to suffer any further abuse in their care environment.¹⁴⁹

As part of the funding arrangements for services, organisations funded to provide out-of-home funded agencies enter into service agreements and need to be registered and comply with the departmental service quality standards.

The DHS Standards reflect mandatory requirements under the *Children, Youth and Families Act 2005* (Vic) (CYF Act) in child care service provision and quality. They are also consistent with the National Standards in Out-of-Home Care.

In evidence to the Inquiry, the Department highlighted the role of service agreements and compliance with DHS Standards.¹⁵⁰ Section 60 of the CYF Act requires community services to comply with the relevant performance standards. Standard 3.5 emphasises the need for providing safe services:

Services are provided in a safe environment for all people, free from abuse, neglect, violence and/or preventable injury.¹⁵¹

Indicators for meeting this Standard for safe environments are that:

The service provider promotes an environment where people are free from abuse, neglect, violence and preventable injury.

The service provider has clearly documented policies and processes for responding to potential or actual harm, abuse, neglect, violence and/or preventable injury.

People are safe from abuse, neglect, violence and preventable injury, in service environments.¹⁵²

147 *Transcript of evidence*, Australian Institute of Family Studies, p. 4.

148 Department of Human Services (2008) *Responding to physical and sexual assault*. Melbourne, DHS, p. 1.

149 *Transcript of evidence*, Department of Human Services, p. 4.

150 *Transcript of evidence*, Department of Human Services, Melbourne, 3 June 2013, pp. 6–7.

151 Department of Human Services (2011) *Department of Human Services standards evidence guide*. Melbourne, DHS, p. 36.

152 Department of Human Services (2011) *Department of Human Services standards evidence guide*, p. 36.

To remain registered, agencies must undergo an independent review by a DHS accreditation agency every three years. This review also requires agencies to perform an annual self-assessment against the standards set out in the service agreement or in relation to accreditation conditions required by DHS.

However, DHS does not provide any comprehensive information about the key components of a policy to ensure organisations are child-safe. In the absence of prescribed benchmarks, the Committee determined that it is unclear how funded non-government organisations are assessed for compliance with DHS Standard 3.5 when they undergo the accreditation process. For instance, it is unclear how the quality of policies is evaluated and the degree to which associated processes are implemented in practice.

Discussing the requirements of DHS-funded agencies in the context of ensuring children are protected from abuse in non-government organisations, the CEO of the Australian Childhood Foundation, Dr Joe Tucci advised the Inquiry that:

Most organisations would say that within the standards that the Department sets in their funding and service agreements, child protection is one category that is already met and therefore it does not require additional resourcing, does not require an additional level of accreditation.

Dr Tucci went further to explain his views:

I do not take the same view, because of those organisations that we work with, when we have gone in to examine their policies and procedures, on the surface they look good but when you dig deep you find that staff are not necessarily trained, that staff do not necessarily know what their obligations are and that those systems are not always easy to follow, so there is a good reason to separate out child protection as its own set of standards and its own accreditation process.¹⁵³

The Cummins Inquiry¹⁵⁴ made recommendations for greater transparency in the approaches of the DHS to show how community service organisations are complying with the standards. It recommended that:

The Department of Human Services should produce a comprehensive annual report on its regulation and monitoring of community service organisations. This report should include information on:

- The registration of community service organisations and their performance against the standards
- The registration and disqualification of out-of-home carers.¹⁵⁵

The Committee considers the Victorian Government needs to explore strengthening its standards for funded agencies to ensure that there is a minimum requirement to create child-safe environments. See Recommendation 12.1 which suggests that the Victorian Government considers reviewing its funding arrangements.

153 *Transcript of evidence*, Australian Childhood Foundation, Melbourne, 9 November 2012, p. 6.

154 P. Cummins, D. Scott, OAM, & B. Scales, AO (2012) *Report of the Protecting Victoria's Vulnerable Children Inquiry*.

155 P. Cummins, D. Scott, OAM, & B. Scales, AO (2012) *Report of the Protecting Victoria's Vulnerable Children Inquiry*, p. lxiii.

12.4.4. Example of standards for funded agencies

The Committee considered how government agencies can leverage their reach and role as funders to protect children from criminal child abuse in non-government organisations. One example it noted is the approach adopted by the Australian Agency for International Development (AusAID), which requires its funded agencies to comply its *Child protection policy*.

The standards used by AusAID for funded organisations requires them to:

- have a child protection policy in place that applies to all personnel, partners and subcontractors that are engaged by a contractor or civil society organisation to perform any part of an AusAID-funded activity
- have robust screening processes for all personnel in contact with children
- have a documented reporting procedure for child exploitation and abuse allegations and policy non-compliance, including available sanctions for breaches
- provide child protection training for personnel
- have a child protection code of conduct that meets the minimum standards set by AusAID (Attachment 2 of AusAID’s policy)
- prevent a person from working with children if they pose an unacceptable risk
- have employment contracts that contain provisions for dismissal, suspension or transfer to other duties for any employee who breaches the child protection code of conduct
- regularly review its child protection policy—at least every five years
- undertake a risk assessment that covers all AusAID-funded activities that involve contact with children.¹⁵⁶

Finding 12.4

Funded organisations and registered professionals are expected to meet standards relating to child safe practices that vary considerably across sectors such as early education, teaching and community services.

¹⁵⁶ AusAID (2013) *Child Protection Policy*. Canberra, Commonwealth of Australia (Attachment 1).

→ **Recommendation 12.1**

That the Victorian Government review its contractual and funding arrangements with education and community service organisations that work with children and young people to ensure they have a minimum standard for ensuring a child-safe environment, including the following principles:

- a statement of zero tolerance of criminal child abuse
- principles to guide decisions
- procedures on the employment of new personnel
- a risk management approach
- processes for reporting and responding to allegations of criminal child abuse.

That the Victorian Government consider the potential for extending a standard for child-safe environments to other organisations or sectors that have direct and regular contact with children.

Chapter 13

Improving preventive systems and processes

AT A GLANCE

Background

Non-government organisations are in various stages of progressing their systems and processes to ensure reasonable care to prevent criminal child abuse occurring in their organisation. Greater knowledge and awareness is necessary to assist them to understand their responsibilities and duty of care.

Key findings

- Some organisations indicated a willingness to be subjected to higher levels of accountability through accreditation processes that involve both self-assessment and external scrutiny of prevention systems.
- Sector peak bodies potentially have an important role in supporting their members to become child-safe organisations and many are well positioned to promote child-safe practices by their members.
- Children should never be responsible for protecting themselves from the harm of criminal child abuse, and prevention approaches that target children should be focused on initiatives that build their awareness.
- Many organisations have a poor understanding of criminal child abuse and often people find the issue too confronting to acknowledge, respond to or address.

Recommendations

- That through the relevant statutory body or department the Victorian Government should:
 - ♦ identify an effective approach or model for supporting peak bodies to build preventative capacity in sectors that interact with children
 - ♦ identify ways to encourage smaller organisations or activities to be affiliated with peak bodies to enable access to capacity building opportunities.
- That the Victorian Government expand on its response to Recommendation 10 in the Cummins Inquiry report to ensure that non-government organisations are equipped with high quality information and advice about the prevention of criminal child abuse in organisations.

As noted in previous chapters, organisations are in various stages of progress in developing systems and processes that ensure child-safe environments. Some organisations are yet to acknowledge that the issue of protecting children from harm is necessary, while others have basic policies in place. The Committee identified an overemphasis on screening processes with less attention on internal systems to protect children from the harms of criminal child abuse.

To improve the preventive approaches in place by organisations and to ensure that they are actively implemented, the Committee identified the following areas for reform:

- accreditation—self-assessment and external oversight
- building the knowledge of organisations and their capacity to take preventative action
- increasing awareness within organisations of the need for internal systems to protect children
- raising the awareness of children and the community.

13.1. Accreditation—self-assessment and external oversight

Critical to creating a culture that nurtures a child-safe environment is the willingness of organisations to be open to scrutiny and accountability. Some organisations that participated in the Inquiry acknowledged this. For example, Jesuit Social Services expressed the view that:

We believe that a full account and absolute scrutiny of the handling of child sexual abuse by religious and community organisations is overdue and hope that the inquiry will fulfil this role.¹⁵⁷

It went on further to state that ‘We hope that opening ourselves up to scrutiny will allow us to restore the trust and integrity that forms the basis of our relationship with the community.’¹⁵⁸

One strategy for promoting accountability and independent scrutiny is the requirement that organisations participate in accreditation processes either voluntary or as part of an expectation by funding bodies. The former National Child Protection Clearinghouse explained that:

An accreditation system for child organisations is one way in which to encourage and guide adoption of child safety strategies. All organisations working with children could be subject to the same quality control processes including minimum standards and processes of external validation.¹⁵⁹

Other research findings support this view. A study on safeguarding children in organisations in the United Kingdom found that:

There is a potential role for kite-marking [a UK service quality certification mark] and accreditation schemes to complement regulation, particularly for the voluntary and community sectors.¹⁶⁰

¹⁵⁷ *Submission S206*, Jesuit Social Services, p. 2.

¹⁵⁸ *Submission S206*, Jesuit Social Services, p. 2.

¹⁵⁹ L.R. Beyer, D.J. Higgins, & L.M. Bromfield (2005) *Understanding organisational risk factors for child maltreatment: A review of literature.*, p. 68.

¹⁶⁰ M. Erooga, D. Allnock, & P. Telford (2012) *Towards safer organisations II: Using the perspectives of convicted sex offenders to inform organisational safeguarding of children*, p. 13.

Similarly, the Director of Child Abuse Prevention Research Australia, Professor Chris Goddard, explained to the Inquiry that:

There are programs like the Australian Childhood Foundation's Safeguarding Children program, a voluntary accreditation scheme for organisations that have a duty of care to children when delivering services. Such programs should be extended and made compulsory because they recognise children's vulnerabilities, they design and implement policies and procedures and train staff.¹⁶¹

Some organisations that provided information and evidence to the Inquiry, particularly government funded agencies, indicated that they participate in accreditation processes. It found, however, that organisations use a range of different accreditation providers, depending on the services they deliver. Many of these accreditation processes are focused on ensuring compliance with required standards by funding bodies, such as standards required by the Department of Human Services (DHS) and the Department of Education and Early Childhood Development (DEECD). As outlined in Chapter 12, those standards do not have specific requirements relating to child-safe environments.

The Committee recognises that many organisations could potentially experience an additional regulatory burden if requested to become a child-safe accredited organisation, particularly if they are already involved with other accreditation processes. For example, vicsport explained to the Committee that this is an issue for volunteers in its sector:

It is not suggested that regulatory burden is a greater problem than Child Abuse, however many of Victoria's 349,000 volunteer administrators are now time-poor and struggling to cope with the increased demands placed upon them in managing and providing participation opportunities in community sport. Such demands include; responsible serving of alcohol, food handling, code of conduct and respect agendas, club administration, regulatory compliance, coaching, officiating and dealing with complex disputes.¹⁶²

Yet it is critical that organisations that work directly with children have the appropriate systems and processes in place to ensure that they are child-safe environments. Based on the findings in the Inquiry, the Committee does not consider there is room to be anything less than vigilant about having the right processes in place.

Some organisations indicated a willingness to be subjected to higher levels of scrutiny and accountability. For example, the Registrar of the Anglican Archdiocese of Melbourne, Mr Ken Spackman, stated that:

We would be very open to having our process accredited. We would also be very open to having the next step, which might be a process of audit and reporting; we would be open to that as well'.¹⁶³

The Committee recognises that there are existing accreditation and certification schemes that specifically relate to child safety. Two organisations—the Australian Childhood Foundation (ACF) and Child Wise—have developed programs with specific standards that provide a baseline for accreditation or certification for a

161 *Transcript of evidence*, Professor Chris Goddard, Child Abuse Prevention Research Australia, Monash University, Melbourne, 19 October 2012, p. 7.

162 *Submission S389*, vicsport, p. 7.

163 *Transcript of evidence*, Anglican Diocese of Melbourne, p. 15

child-safe environment. A brief overview of the two programs is outlined below. The programs are:

- ACF: *Safeguarding children*—7 standards
- Child Wise: *Choose with care*—12 standards

Finding 13.1

Some organisations indicated a willingness to be subjected to higher levels of accountability through accreditation processes that involve both self-assessment and external scrutiny of prevention systems.

13.1.1. *Safeguarding children* program—Australian Childhood Foundation

The national accreditation scheme—*Safeguarding children*—is operated by the ACF. It is an approach to assist organisations to build protective environments for children and young people.

The *Safeguarding children* program aims to ensure expert advice from experienced child protection practitioners. It helps organisations to develop policies to prevent harm to children and also offers a range of resources, including training manuals.

Over a four-week period, the program assists organisations to build their knowledge and capacity to keep children and young people safe from abuse and exploitation by staff, volunteers or other relevant individuals. Following this process, organisations may achieve accreditation.

Dr Joe Tucci, CEO of the ACF, explained the framework to the Committee at a hearing:

... what it requires an organisation to do is evaluate itself against seven standards that have been researched around the world ... That is not complicated. That just requires a commitment to seeing that child protection is as important as occupational health and safety.¹⁶⁴

In order to receive accreditation under the *Safeguarding children* program organisations must meet seven standards, outlined in Appendix 5. In November 2012, between 50 and 60 organisations were undertaking the process of accreditation through the scheme across Australia.

The Committee noted that only 15 organisations have been accredited in Victoria including Big Brothers Big Sisters (Geelong and Melbourne), Jewish Care, The Salvation Army—Crisis Services, and the YMCA (Ballarat, Bendigo, Geelong, Manningham and Whittlesea).¹⁶⁵ The limited number of accredited Victorian agencies may be due to the regulatory burden experienced by organisations. The ACF advised the Committee that interest in its program has expanded with the recent focus on criminal child abuse in organisations.

¹⁶⁴ *Transcript of evidence*, Australian Childhood Foundation, p. 5.

¹⁶⁵ Australian Childhood Foundation *Safeguarding Children. Which organisations are already Safeguarding Children accredited?* Accessed on 9 September 2013 from <http://www.safeguardingchildren.com.au/the-program/accredited-organisations.aspx>.

In 2005, as part of the initial pilot for the accreditation program, a review found that 96 per cent of participants in the evaluation found it was useful to their organisation. The review concluded that the project had been successful according to its major aim: increasing the number of organisations on the accreditation pathway.¹⁶⁶

13.1.2. *Choose with care* program—Child Wise

In 2001, Child Wise established the *Choose with care* program, which provides a certification process for religious and non-government organisations. Once an organisation can demonstrate it meets a series of minimum standards, it can receive certification as a child-safe organisation.¹⁶⁷

The program is based on a general content of principles that are tailored to different organisations and different industries. Child Wise has developed 12 standards for child-safe organisations.

Child Wise states that in designing the program and establishing the 12 standards it aimed to ground the elements in well-established prevention models, such as public health models and situational crime prevention. Appendix 5 outlines the 12 standards that form the *Choose with care* program.

13.2. Capacity building to create child safe organisations

The Committee identified that many organisations are evolving in their response to the prevention of criminal child abuse in their organisation, providing an opportunity to support them to further develop their responses. The Committee considered that peak bodies and sector networks are important avenues in supporting organisations to build their prevention capacity.

Those peak bodies that participated in the Inquiry demonstrated different levels of commitment to their role in supporting member organisations to increase their knowledge and actions in preventing criminal child abuse by personnel within their organisations.

13.2.1. Organisations—seeking support and guidance

As noted in Chapter 12, Child Wise informed the Inquiry that ineffective policies are not generally due to deliberate avoidance or obstructionism, but to lack of resources and/or understanding of how child abuse can best be prevented within an organisation. It also explained that:

... many organisations mean well and seek to provide safe environments but may take safety for granted and are unaware of the risks, or do not have the capacity to develop safe environments effectively.¹⁶⁸

The Committee heard that many non-government organisations acknowledge the importance of preventive frameworks and are very willing to develop them in their organisations. It also heard, however, that many feel a need for assistance and

166 L. Hoiles, I. Prilleltensky, & J. Sharples (2003) *Evaluation of the Australian Council for Children and Youth Organisations (ACCYO) pilot accreditation project*. St Albans, Wellness Promotion Unit, Victoria University, p. 1.

167 *Transcript of evidence*, Child Wise, pp. 5–7.

168 *Submission S388*, Child Wise, p. 5.

expert guidance in doing so. For example, the President of the Federation of Indian Associations of Victoria, Mr Vasan Srinivasan, advised the Committee that:

We understand logic and we understand other issues, but not the law and order issues or step-by-step what needs to be done. I put a request through the Chair that if there is a platform for us to come together to share and learn and educate our community, that would be very useful.¹⁶⁹

The Director of the Australian Muslim Women's Centre for Human Rights, Ms Joumanah El Matrah explained to the Committee that:

There is also no religious precedent or teaching or anything that specifically deals with child sexual abuse. I have not been able to find anything overseas, and I know there is not anything here, so there is nothing which the religious leaders can use as a springboard for a response. This would really need to be driven outside the religious institutions.¹⁷⁰

The Committee also noted that some organisations with established processes demonstrated a willingness to continue learning and improving on their systems for preventing child abuse, such as the Anglican Church and the Uniting Church. Yet it also identified that there were some that appeared less willing to adopt a continuous learning approach.

13.2.2. Capacity building—strengthening the role of peak organisations

The Committee considered that peak bodies can have an important role in supporting organisations to become child-safe. Peak organisations have a potential role in assisting non-government organisations to reduce the regulatory burden often experienced by their members.

The Committee identified, however, that there are mixed views among peak bodies regarding their role in supporting their members to become child-safe organisations. It noted that some peak bodies consider they have a direct role in supporting their organisations to manage risk, including risks to children. Others, however, did not see a role for them as peak bodies in this capacity.

A number of peak organisations appeared before the Inquiry or provided a written submission. Some included:

- sports sector (vicsport)
- community and private child care sector
- religious organisations (and religious education sector)
- camping sector (Australian Camps Association).

The Committee heard that some peak organisations have conditions of membership, such as a requirement to have a code of conduct in place. For example, the Australian Camps Association (ACA) stated that:

We have the capacity to put in place guidelines through our membership requirements, for example. Our members sign a code of conduct. I am sure my board would be amenable to adding something in there as a requirement that they have appropriate child protection policies.¹⁷¹

¹⁶⁹ *Transcript of evidence*, Federation of Indian Associations of Victoria, Melbourne, 12 April 2013, p. 8.

¹⁷⁰ *Transcript of evidence*, Australian Muslim Women's Centre for Human Rights, Melbourne, 22 April 2013, p. 7.

¹⁷¹ *Transcript of evidence*, Australian Camps Association, p. 3.

Others, such as vicsport, indicated a willingness to support its membership to build capacity in providing child-safe environments. It recommended to the Committee that:

That Victorian State Sporting Associations receive additional support to ensure the adoption of existing programs, policies and procedures related to safe sport environments at all levels.¹⁷²

Similarly, the Jewish Community Council of Victoria (JCCV) highlighted its efforts since July 2011 to address child abuse and attitudes towards the problem within the local Jewish community. The Council has publicly condemned child abuse and a new child protection policy was ratified in 2012. In addition in September 2013, Australia's most senior Orthodox rabbi apologised for years of mishandling and cover-up of child sexual abuse within the Jewish community.

In 2011, a Child Protection Reference Group was established in the Jewish community to promote resources that educate parents about protecting their children. The group also works with organisations to assist with policy development and practices and link victims to support services. JCCV has requested that the Australian Childhood Foundation (ACF) be engaged to assess organisational policies and practices. The President of the JCCV, Ms Nina Bassat, told the Inquiry that:

... first of all we do have to play a role. The role is one of creating a culture that is responsive and of creating a culture that understands this is an issue—it is not something that does not touch our community; in fact it does—and where a child, or even an adult, will feel comfortable enough to come forward and speak and know that they will be heard and understood and responded to appropriately.

She went on to explain that:

I think we [JCCV] definitely have a role to play in creating that process, but it would be very arrogant of me to assume that we as a community body can play that role solely. It is a role that needs to be supported by government. It is a role that needs to be supported by the education system. It is a role that needs to be supported by campaigns.¹⁷³

The Committee recognises that steps have been taken in the Jewish community to address issues relating to criminal child abuse.

The Committee noted, on the other hand, that some peak bodies were reluctant to assume a stronger role in protecting children. The Australian Association of Christian Schools stated that all its member schools were also members of the Independent Schools Victoria (ISV) and that if they had any concerns relating to child abuse they expected they would contact ISV for advice.¹⁷⁴

As noted in Chapter 12, however, ISV informed the Inquiry that it considers it has a minimal role in this regard:

Our association does not impose conditional standards on our members because they are independently-managed schools.¹⁷⁵

¹⁷² *Submission S389*, vicsport, p. 8.

¹⁷³ *Transcript of evidence*, Jewish Community Council of Victoria (JCCV), Melbourne, 22 April 2013, p. 57.

¹⁷⁴ *Supplementary evidence*, Response to request for information, Australian Association of Christian Schools, 11 March 2013, p.1.

¹⁷⁵ *Submission S399*, Independent Schools Victoria, p. 3.

It does, however, provide some advice to schools on safety and welfare. Organisations indicated that they would turn to ISV for advice, revealing some confusion regarding the role of the peak body for independent schools. For example, Bishop Iakovos of Miletoupolis from the Greek Orthodox Archdiocesan District of Victoria explained that ‘our schools have got the relevant material that is necessary to adhere to the ISV legislative requirements.’¹⁷⁶ The Committee recognises that ISV does not have the same statutory responsibilities as the Victorian Institute of Teaching.

The Committee considered there is scope for peak bodies to liaise with organisations such as Child Wise and the Australian Childhood Foundation in order to promote child-safe practices in their sector. These might include developing codes of conduct, training programs or sector specific accreditation processes.

Currently, the Committee notes that the Working with Children Unit in the Department of Justice (DOJ) does not routinely share the data it collects with peak organisations. For example, the Australian Camps Association told the Inquiry that prior to being contacted to give evidence to the Inquiry, it had not had any contact with DOJ regarding the high level of negative notices issued in the camping sector.¹⁷⁷ It expressed a keen interest in receiving such information from the Department so it could act on it. Overnight camps are a high risk activity for children in relation to child abuse because carers take the place of parents in supervising children. There are multiple opportunities for isolating children and the camps are often held overnight or over several nights.

The Committee determined that the Commission for Children and Young People has the potential to work more closely with peak bodies to assist them in their role in supporting members and sectors to build their knowledge and capacity to take effective preventative action. The Committee was informed of two approaches by peak organisations to build the capacity of their members:

- Scripture Union—ChildSafe
- vicsport—Play by the Rules.

Finding 13.2

Sector peak bodies potentially have an important role in supporting their members to become child-safe organisations and many are well positioned to promote child-safe practices by their members.

→ Recommendation 13.1

That through the relevant statutory body or department the Victorian Government should:

- identify an effective approach or model for supporting peak bodies to build preventative capacity in sectors that interact with children
- identify ways to encourage smaller organisations or activities to be affiliated with peak bodies to enable access to capacity building opportunities.

¹⁷⁶ *Transcript of evidence*, Greek Orthodox Archdiocesan District of Victoria, p. 4.

¹⁷⁷ *Transcript of evidence*, Australian Camps Association, p. 4.

ChildSafe—Scripture Union

ChildSafe is an initiative of Scripture Union Australia. It demonstrates the potential that networks can provide in supporting their affiliates to build capacity to become child-safe environments. Scripture Union Australia is an evangelical Christian movement. Separate, affiliated movements operate in each Australian state and territory. In Victoria, Scripture Union describes itself as a Christian based children, families and youth community development organisation.

Scripture Union conceived and developed ChildSafe as an internal project before creating ChildSafe Limited as a separate entity in 2007.¹⁷⁸ While the program resources are suitable for all types of organisations, ChildSafe focuses particularly on the needs of churches.

ChildSafe gave evidence to the Inquiry and provided an overview of the framework developed by Scripture Union, which has been endorsed by Ansva Insurance. The framework emphasises the importance of protecting children from harm. The Committee noted that the approach highlights the importance of organisations ensuring compliance with legislative and other requirements.

In explaining its approach, ChildSafe identifies three critical processes for an organisation. These are:

- the appointment process for people working with children
- the training required of those people
- the control taken by the organisation over its programs with children.¹⁷⁹

It aims to support organisations in improving those processes by providing training materials and an online resource. ChildSafe can also assist organisations to plan safe activities and programs using a risk management framework.

ChildSafe states that children and young people deserve the best endeavours of an organisation towards their safety. This involves more than good intentions, or the assumption that harmful incidents will not happen.

In its promotional material, ChildSafe highlights that there is increasing scrutiny on organisations:

- Governments are increasingly legislating standards and requirements for organisations working with children.
- Insurers are rightly expecting organisations to have effective risk management processes in place to minimise claims.

Over 3,000 churches in the Christian sector are either using ChildSafe or are getting ready to use it. Currently, organisations that are using Childsafe in Victoria include:

- Scripture Union Victoria
- Prison Fellowship
- Uniting Church
- Baptist Churches

¹⁷⁸ Childsafe *Childsafe—About us*. Accessed on 25 March 2013 from <http://www.childsafe.org.au/about-us>. See also Scripture Union Australia *Childsafe—Safety Management System*. Accessed on 25 March 2013 from <http://www.scriptureunion.org.au>.

¹⁷⁹ *Transcript of evidence*, Scripture Union Victoria, Melbourne, 5 April 2013.

- Christian Reformed Churches
- Churches of Christ Victoria/Tasmania
- Australian Christian Churches Victoria
- The Salvation Army
- Lutheran Church (national)
- Youth for Christ.¹⁸⁰

Play by the rules: vicsport

The *Play by the rules* model is used by some sporting organisations and clubs. It is overseen by the Australian Sports Commission, and promoted by vicsport for its members. vicsport explained to the Inquiry that:

Play By The Rules [PBTR] has been well promoted within the Victorian sports sector and many sporting organisations are using it as a resource.

The website is considered very useful within sport and provides step by step guides for organisations and individuals in the event they are dealing with a child abuse related issue. vicsport and many of its members would refer to the PBTR websites if a general query in regard to child protection was received.¹⁸¹

The program provides information, resources and online training to increase the capacity and capability of administrators, coaches, officials, players and spectators to prevent and deal with discrimination, harassment and child safety issues in sport. This includes child abuse that occurs both within and outside the family.

13.3. Awareness raising and behaviour change

Preventing criminal child abuse in non-government organisations requires an integrated approach to a number of different focus areas that include individuals, organisations and the community. The Committee identified that a key component in preventing criminal child abuse is raising awareness. This section considers each of the areas and the strategies that need to be undertaken to achieve increased understanding and confidence in identifying and responding to criminal child abuse in organisations.

13.3.1. Awareness in organisations

The Committee identified a need to raise awareness amongst non-government organisations regarding the critical importance of protecting children from criminal child abuse in their organisations.

The Committee heard that there are challenges for small, volunteer-based organisations in developing prevention strategies. In its submission to the Inquiry, the now Commission for Children and Young People stated that:

A key challenge going forward is to ensure that these (child-centred, child-safe) principles are put into practice across all organisations. For this to happen, organisations (particularly those which are small and run by volunteers) need more than access to information, they also require:

¹⁸⁰ *Transcript of evidence*, Scripture Union Victoria, p. 5.

¹⁸¹ *Submission S389*, vicsport, p. 5.

- assistance to formulate policies that will work well within their organisation
- high quality training and information so that they can educate staff, volunteers and committee members about how to create a child-safe organisation
- training for all staff on how to identify and respond to behaviours which are of concern and
- in particular, ready access to advice on how to particular issues when they arise.¹⁸²

The Committee heard that there is a particular need for greater support for smaller organisations, unfunded agencies and organisations in culturally diverse communities. The Principal Commissioner for Children and Young People, Mr Bernie Geary explained his views about the help required by small organisations:

To help organisations, especially those which are small and volunteer based, I recommend that other supports be considered, including funding, to better assist organisations to develop their own policies and practices and to respond appropriately when they suspect that someone within their organisation may be unsafe or inappropriate to work with children. In a small organisation that can become helpful because relationships are involved.¹⁸³

In his submission to the Inquiry he recommended that a body be established and funded to support and advise organisations on the implementation of strategies to reduce the risk of abuse occurring, and how to respond to any allegations that arise.¹⁸⁴

The Committee considers, however, that the current Commission for Children and Young People is well positioned to assume greater responsibility for preventive activities with organisations that work with children and provide some oversight of those activities. It sees scope for strengthening the prevention role of the Commission.

The Committee noted that the Commission for Children and Young People has developed some awareness raising material for organisations. In 2006, as the former Office for Child Safety, it circulated a series of publications for organisations and parents on child-safe organisations. These included:

- a guide for creating a child-safe organisation
- a booklet, information for parents—things to look at when selecting child-safe activities or services for your child
- a DVD and fact sheets entitled *Wise choices: safe children*.

13.3.2. Children's awareness

While programs that focus on developing children's capacity to protect themselves from child abuse are popular, the Committee heard that they need to be approached with caution. A consistent message made to the Committee was that children should never be responsible for protecting themselves from the harms of child abuse. Yet it also heard about the importance of encouraging children to disclose behaviour that makes them feel unsafe or uncomfortable.

While acknowledging the ethical complexities of educating children about safety and child abuse, researchers Smallbone, Marshall and Wortley suggested that there

182 *Submission S202*, Office of Child Safety Commissioner, p. 3.

183 *Transcript of evidence*, Commission for Children and Young People, p. 3.

184 *Submission S202*, Office of Child Safety Commissioner, p. 1.

could be value in reframing some of the current strategies for protective behaviour programs for children. The reframing approaches they recommended include:

- Exploring the use of resilience programs over resistance programs.
- Assisting young people to identify the complexity of grooming in sexual abuse.¹⁸⁵

The Committee identified an example of a recently released protective behaviour program specifically designed to help young people to understand and identify grooming behaviours. In Western Australia, an organisation known as Protective Behaviours WA recently released a guide titled *Teenager's guide to personal safety*. It outlines the grooming process and how to identify and respond to grooming attempts. It also acknowledges that most adults in our community are trustworthy and want to make sure children and teenagers are safe.¹⁸⁶

The Committee received information from the Victorian Department of Early Education and Development (DEECD) advising that it is considering the introduction of a child safety curriculum in Victoria based on the Queensland Daniel Morcombe Child Safety Curriculum. It is based around three key messages:

- Recognise—the message encourages students to be aware of their surroundings and to recognise warning clues.
- React—the message helps students to consider choices that may keep them safe or help make them safe again as quickly as possible.
- Report—the message encourages students to report unsafe incidents to an adult.

The Committee is aware that a number of organisations use some element of educating children about safety in their approach to prevention. For example, Scouts Australia in conjunction with Scouts Canada produced a parent's guide in 2002 called *Protecting your children*. The guide states that:

As a major youth-serving organisation, Scouts Australia has a unique opportunity to help protect youth. This booklet will help you teach your children how to protect themselves. It will help you and your children establish open communication on this sensitive topic.¹⁸⁷

At the same time, however, it is also aware that some members of the community have concerns about the focus on raising children's awareness. For example, in her submission to the Inquiry Ms Vivien Refosky expressed a view that the strategy adopted by the Jewish community has some limitations. She participated on the Child Protection Reference Group established by the Jewish Community Council of Victoria (JCCV) and explained that she has had a close association with the development of the Jewish community's prevention policy.

Ms Refosky's key concern was that the approach of the Jewish Community Council of Victoria and the Jewish Taskforce Against Family Violence and Sexual Assault has a primary focus on teaching children personal safety to prevent abuse. She expressed the view that:

The Taskforce's emphasis has been on educating Rabbis and telling children to say

¹⁸⁵ S. Smallbone, W.L. Marshall, & R. Wortley (2008) *Preventing child sexual abuse: Evidence, policy and practice*.

¹⁸⁶ Protective Behaviours WA Inc (2013) *Teenagers guide to personal safety*. East Perth, Department of Education WA.

¹⁸⁷ Scouts Australia (2002) *Protecting your children: a parent's guide*. Chatswood, National Executive Committee of The Scout Association of Australia, p. 1.

NO but parents in the Jewish community are not being provided with very important information they need to protect their children from being abused. They are not being informed about the need for institutional child protection policies, codes of conduct etc and how to assess whether policies are good.¹⁸⁸

Importantly, the Committee determined that any prevention strategies that focus on children or victims should not do so in isolation from a broader preventive approach targeting organisations and the broader community.

Finding 13.3

Children should never be responsible for protecting themselves from the harm of criminal child abuse, and prevention approaches that target children should be focused on initiatives that build their awareness.

13.3.3. Community awareness

The Committee heard that there are ranging levels of understanding about child abuse across the wider community. Awareness about child abuse is still growing, particularly with respect to ways in which child abuse should be addressed. The Committee identified that there is less chance that people will effectively report suspected abuse if communities have a poor understanding of what child abuse is.

Professor Chris Goddard, Director of Child Abuse Prevention Research Australia at Monash University advised the Inquiry of the low level of community understanding of child abuse. Box 13.1 outlines the findings of research relating to awareness.

Box 13.1: Community understanding of child abuse

Research conducted by Monash University, Quantum Market Research and the Australian Childhood Foundation over the last decade has found:

- Child abuse is not well understood by the Australian public.
- The public does not understand the true extent of child abuse and lacks an understanding of the social and financial costs.
- A 2003 survey found child abuse was perceived to be a far less serious problem than council rates.
- A 2006 survey identified that child abuse was perceived to be less serious than the rising cost of petrol.
- In 2010, a survey revealed that 26 per cent of respondents advised they had seen a child that they believed had been abused. One in four had identified a child who had been abused or neglected in the past five years. 21 per cent involved child sexual abuse. 60 per cent of the children, they said, were under the age of eight. 44 per cent of those seeing children whom they suspected of having been abused had made a report, while 16 per cent did nothing.

Source: Adapted from *Transcript of evidence*, Prof Chris Goddard, Director, Child Abuse Prevention Research Australia, Monash University, Melbourne, 19 October 2012, p. 4.

188 *Submission S424*, Ms Vivien Resofsky, p. 3.

Researchers have identified that there is a range of reasons why awareness of child abuse is low. These include:

- Gaze aversion—people find it easier to turn away from the issue. 28 per cent of people reported they felt tense and anxious talking about child abuse and nearly 60 per cent could not bear to look at pictures in the media of children who were abused or neglected, thereby contributing to the silencing of children.
- Disbelief—32 per cent of people believe children make up stories about being abused despite evidence to the contrary.
- Confusion about abuse—17 per cent said that children were unlikely to know the perpetrator.¹⁸⁹

Evidence to the Committee aligned with these research findings. For example, Ms Joumanah El Matrah from the Australian Muslim Women's Centre for Human Rights, stated that:

I think at the moment the vast majority of the community are not aware of what child sexual abuse is and that is something that they need to be aware of and something they may potentially need to protect their children from.¹⁹⁰

The Committee determined, therefore, that there is a need to increase understanding about abuse in the community if people are to effectively identify criminal child abuse and report it.

The broader objective of raising awareness in communities is to strive for change in behaviour and responses to child abuse. The CEO of the Australian Childhood Foundation, Dr Joe Tucci, emphasised this point to the Inquiry and compared the required outcomes of such campaigns to other major awareness raising efforts:

Just like you have to build an awareness of problems in the community like smoking and other public health issues, child abuse should be considered one of those, and community campaigns that are sustained over time will build that knowledge base.¹⁹¹

The Committee determined that awareness raising efforts need to be targeted to the broad community and to parents and families. In addition, there needs to be initiatives in place to improve the understanding of organisations that work with children.

The Cummins inquiry recommended that DEECD develop a wide-ranging education and information campaign for parents and caregivers of all school-aged children on the prevention of child sexual abuse.¹⁹² In its response to this recommendation, the Government stated that:

The Victorian Government will aim to equip families with high quality information and advice about the prevention of child sexual abuse. The Department of Education and Early Childhood Development, Department of Human Services, Department of Justice and Victoria Police will work together to develop child sexual abuse prevention strategies tailored to children and young people. This will also involve using an

189 *Transcript of evidence*, Sexual Offences and Child Abuse Investigation Team (SOCIT), Victoria Police, Melbourne, 9 November 2012; *Transcript of evidence*, Australian Institute of Family Studies.

190 *Transcript of evidence*, Australian Muslim Women's Centre for Human Rights, p. 28.

191 *Submission S224*, Australian Childhood Foundation, p. 4.

192 P. Cummins, D. Scott, OAM, & B. Scales, AO (2012) *Report of the Protecting Victoria's Vulnerable Children Inquiry*, p. li.

evidence-based curriculum on sexuality education, respectful relationships and building protective factors'.¹⁹³

The Principal Commissioner of the Commission for Children and Young People, Mr Bernie Geary, advised the Inquiry that a committee was established at the end of 2012 to progress this recommendation. The Commissioner has strongly advocated for the development of a state-wide campaign to educate parents, carers and teachers about the incidence and nature of child abuse within the family, which is often a precursor to a child becoming vulnerable to other forms of abuse, including abuse in organisations.¹⁹⁴

The Committee believes that any campaign to educate about child abuse needs to extend beyond child sexual abuse and beyond abuse that occurs only in families. Although educating children and young people is important, the Committee believes that the adults should be the primary target audience for education campaigns. The consistent message received in the Inquiry is that children should not be responsible for protecting themselves from abuse, and that the community has a responsibility to raise their awareness of abuse.

Finding 13.4

Many organisations have a poor understanding of criminal child abuse and often people find the issue too confronting to acknowledge, respond to or address.

→ Recommendation 13.2

That the Victorian Government expand on its response to Recommendation 10 in the Cummins Inquiry report to ensure that non-government organisations are equipped with high quality information and advice about the prevention of criminal child abuse in organisations.

193 Victorian Government (2012) Victoria's vulnerable children. *Our shared responsibility. Directions paper*. Melbourne, Victorian Government, pp. 15–16.

194 *Supplementary evidence*, Response to request for information, Commission for Children and Young People, 21 May 2013, p.2.

PART E

RESPONDING TO REPORTS AND ALLEGATIONS OF CHILD ABUSE IN ORGANISATIONS



The Committee has established the importance of preventing and minimising the risk of child abuse from occurring in organisations through the creation of child-safe organisations. Unfortunately, as the Committee has also identified, there are nevertheless circumstances in which children in the care of non-government organisations will be exposed to criminal physical, emotional or sexual abuse.

This part of the Report considers the processes that have been adopted by non-government organisations in responding to allegations of criminal abuse of a child currently in their care or that occurred years before. Non-government organisations retain responsibility for the consequences of criminal abuse perpetrated by their personnel. In order to ensure these situations are managed appropriately and allegations are reported to the relevant authorities, organisations need to have effective processes in place to respond to and report allegations and these processes must be properly monitored.

The Committee emphasises that child abuse is a crime and makes recommendations in Part G of this Report that has implications for the failure to report criminal child abuse. This will put additional responsibility on organisations to ensure they have adequate processes for responding and reporting criminal child abuse.

Victims' views on improved responses to allegations

Many victims told the Inquiry they want to see improved responses to disclosures and reports of suspected child abuse. This included responses to abuse that occurred in the past.

Victims emphasised the need for organisations to report perpetrators of criminal child abuse to police. For example, in his submission, Mr Neil Graham made the point that clergy 'offenders should have been reported to the police like any other offender in the community.'¹

Particularly concerning to the Committee were examples where failure by organisations to respond and act on early disclosures or suspicions of criminal abuse allowed those same perpetrators to offend against other children. Mr Hugh McGowan explained that:

The first action should have been to report him to the police so that they could take whatever action was necessary. I am reliably informed that this did not happen. Had it been reported, had he been convicted, had he been jailed and had it been widely reported in the media, it may have been a warning to other paedophiles and I may not have been subjected to the attention of the person who abused me.²

Almost all the victims indicated that one of the reasons they disclosed their experience of abuse was to ensure that other children were protected. Chapter 7 of Part C established that organisations did not always respond to allegations in a manner that ensured children were no longer at risk of abuse.

Victims were also dissatisfied with the process of organisations in responding to the allegation. For example, one victim told the Committee that organisational processes should be structured so that victims do not have to retell their experience at each stage of the process:

Telling him my story was very stressful. In fact I even said, 'Could you please send a copy across ... so I don't have to tell my story again?'... When I went to see [him] ...

1 *Submission S355*, Mr Neil Graham, p. 3.

2 *Transcript of evidence*, Mr Hugh McGowan, Melbourne, 4 February 2013, p. 2.

He made me tell my story again.³

Victims told the Inquiry that better monitoring, accountability and scrutiny of organisations is needed in order to improve the systems that these organisations have in place. For example, one victim said that the Catholic Church in Victoria needs ‘to be accountable, as all authorities should be, to scrutiny, legal jurisdiction and socially mandated checks and balances.’⁴

Others had similar views, such as Ms Mary Rutledge who stated that she ‘would like to see greater transparency in their processes and more accountability.’⁵ She went on to explain her view that ‘someone needs to be able to monitor the accountability of organisations, because victims can get lost in the system and lose their lives.’⁶

Another message to the Inquiry was the need for consistency in processes for responding to allegations of child abuse. Mr John Frederiksen, for example, said that:

All state and non-government schools must be subject to the same level of public reporting and auditing of sexual assaults. This would apply to both government and truly independent schools that receive no funding.⁷

The need for effective responses to allegations

When an allegation of suspected criminal abuse of a child is made in a non-government organisation, there needs to be effective systems and processes to ensure the situation is handled appropriately and reported to the police and relevant authorities.⁸ Organisations also need to support the person making the allegation and ensure that all parties are treated fairly and consistently. They need to provide clarity regarding:

- what behaviour or conduct should trigger a notification
- who should notify any concerns and who to notify in the organisation
- reporting to police and authorities and the timing of reporting
- internal processes during and after an investigation
- internal reviews to assess and improve systems and processes.

The processes that organisations establish need to be simple, transparent and easily accessible for children, personnel and other adults who are involved with the organisation. Ideally organisations should incorporate requirements to undertake internal systemic reviews into their process to ensure ongoing learning and improvement.

During the Inquiry, many organisations said they would welcome expert guidance in the design and implementation of complaints handling policies and procedures, and independent oversight and monitoring of such policies and procedures.⁹

3 *Submission S462*, Name withheld. See also *Transcript of evidence*, Mr Jim Commadeur, Melbourne, 23 November 2012, pp. 3–4.

4 *Submission S469*, Name withheld.

5 *Transcript of evidence*, Ms Mary Rutledge, Melbourne, 1 March 2013, p. 4.

6 *Transcript of evidence*, Ms Mary Rutledge, p. 7.

7 *Transcript of evidence*, Mr John Frederiksen, Melbourne, 4 March 2013, p. 3.

8 See Glossary.

9 For example *Submission S226*, Law Institute of Victoria, p. 34; *Transcript of evidence*, Federation of Indian Associations of Victoria, Melbourne, 12 April 2013, p. 8; *Transcript of evidence*, Greek Orthodox Archdiocesan District of Victoria, Melbourne, 12 April 2013, p. 5; *Transcript of evidence*, Anglican Diocese of Melbourne, Melbourne, 22 April 2013, pp. 10, 15; *Transcript of evidence*, Catholic Archdiocese of Melbourne, Melbourne, 20 May 2013, p. 53; *Transcript of evidence*, Catholic Archdiocese of Sydney, Melbourne, 27 May 2013, p. 34; *Transcript of evidence*, Australian Camps Association, Melbourne, 11 April 2013, pp. 3–4.

Chapter 14

The importance of effective processes for responding to allegations of criminal child abuse in organisations

AT A GLANCE

Background

Effective processes for handling allegations or suspicions of criminal child abuse ensure the situation is managed appropriately, reported to the police and relevant authorities, and that all parties are treated fairly and with consistency.

Key findings

- Processes for handling allegations of criminal child abuse need to be simple, transparent and easily accessible for children, adults and personnel within the organisation.
- An effective process for responding to allegations of suspected criminal abuse of a child should:
 - ♦ clearly state what types of conduct should be notified, who can or should make notifications and who they should notify in the organisation
 - ♦ make it clear what next steps need be taken, including ensuring the child is safe, and reporting suspected criminal abuse to police and relevant authorities
 - ♦ provide guidance for responding to the outcomes of a report of criminal child abuse, including disciplinary processes, ongoing support for the victim and the review of internal policies and processes.
- Internal and external processes in response to an allegation of criminal child abuse may occur in parallel, which requires transparency and communication across all relevant bodies to ensure internal processes do not impede on any criminal investigation in progress.
- Written processes are not always implemented effectively and it is important that there are oversight and monitoring systems to enable scrutiny of an organisation's handling of criminal child abuse if there are concerns.

Having a process in place for responding to reports of suspected criminal child abuse is essential for child-safe organisations. Effective processes for handling allegations or suspicions ensure the situation is managed appropriately, reported to the relevant authorities, and that all parties are treated fairly and with consistency.

If new legislative obligations are introduced for reporting criminal child abuse as suggested in Part G, effective processes will assist personnel in organisations to know what to do to avoid committing an offence.

14.1. The importance of effective processes for responding to allegations of criminal child abuse

The Committee recognises that organisations need to tailor their policies to their management structure, size and operations. It found that the processes do not have to be complex in order to be effective and that clarity and ease of implementation are important. It determined that effective policies:

- are simple and transparent
- are appropriate in scope and level of formality
- are easily accessible to children, parents, personnel in the organisation and other relevant community members
- prioritise the best interests of children
- enable timely and well communicated decision-making and formal review processes
- are responsive to victims
- are fair to all parties.¹⁰

In addition, the process for responding to suspected criminal child abuse needs to be part of an organisation's culture, leadership and internal practices. The culture and senior management of an organisation must actively support the reporting of suspicions or allegations of criminal child abuse to the police and relevant authorities. The organisation must also have an ongoing commitment to reviewing and continuously improving its processes.

14.1.1. Regulatory processes in the non-government sector

The Committee identified differences between non-government organisations that provide services in sectors that are regulated by government and in those that are not. These are broadly outlined in Table 14.1. Organisations that provide services in regulated sectors are required to comply with incident reporting requirements, including reporting to police. However, organisations that provide services in unregulated sectors are

Regulation—is one of the key instruments available to government to achieve its social, economic and environment objectives and to respond to community needs. It is commonly held that government regulation involves an intentional measure or intervention by a government agency that seeks to influence the behaviour of individuals, businesses and not-for-profit organisations.¹¹

10 Adapted from Commonwealth Ombudsman (2009) *Better practice guide to complaint handling*. Canberra, Commonwealth Ombudsman, p. 2; NSW Ombudsman (2010, 2nd Edition) *Effective complaint handling guidelines*. Sydney, NSW Ombudsman, p. 12.

11 P. Cummins, D. Scott, OAM, & B. Scales, AO (2012) *Report of the Protecting Victoria's Vulnerable Children Inquiry*. Melbourne, Department of Premier and Cabinet, p. 491.

generally not required by any authority to have processes in place for responding to and reporting allegations of criminal child abuse. Largely, the onus has been on individual religious and other organisations to develop their own processes for responding to reports of suspected criminal child abuse.

Table 14.1: Services that interact with children—regulated and unregulated sectors

Services operated by non-government organisation	Is the sector regulated or unregulated?	Responsible government/ statutory authority
Out-of-home care and other DHS funded services	Regulated	DHS
Early childhood services	Regulated	DEECD
Government schools	Regulated	DEECD, VIT
Independent schools	Regulated	VIT
Catholic schools	Regulated	VIT
Places of worship	Unregulated	Not applicable
Other services, including clubs, associations and youth groups	Unregulated	Not applicable

Source: Compiled by the Family and Community Development Committee.

The Committee noted that there is a great deal of variation in the effectiveness of the processes that organisations have in place. It is also conscious that while there are requirements for establishing processes in regulated sectors, this does not guarantee effective implementation. Regardless of the context in which a service operates, effective implementation of written policies and procedures can be varied.

Finding 14.1

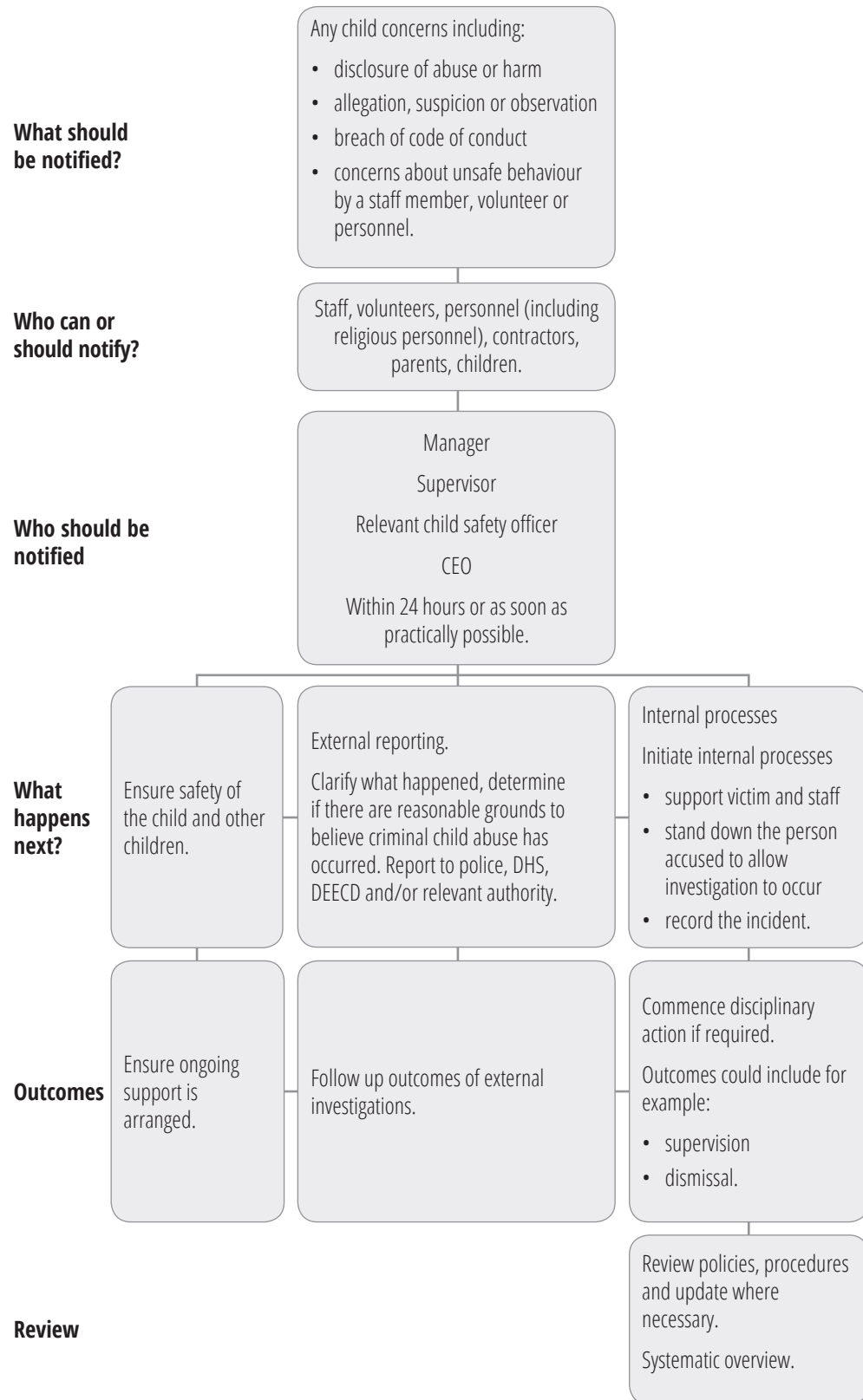
Processes for handling allegations of criminal child abuse need to be simple, transparent and easily accessible for children, adults and personnel within the organisation.

14.2. What is an effective process for responding to allegations of child abuse?

The Committee considered a number of different models for responding effectively to allegations of child abuse, and for complaint handling generally. For example, these included processes encouraged by accreditation organisations such as the Australian Childhood Foundation and Child Wise, as well as processes set out by the Victorian Child Safety Commissioner (now the Commission for Children and Young People) and the New South Wales (NSW) Ombudsman.

It drew upon a range of evidence to identify the broad components of an effective process for responding to allegations of child abuse in an organisation, as illustrated in Figure 14.1. It is important to note that some components of the process can occur in parallel with each other.

Figure 14.1: Process for effectively responding to allegations of child abuse in organisations



Source: Compiled by the Family and Community Development Committee.

12 Using material published by the Australian Childhood Foundation, Child Wise, Victorian Child Safety Commissioner (now the Commission for Children and Young People) and the New South Wales (NSW) Ombudsman.

The Committee identified that an effective process ensures that victims, their family and personnel in the organisation can make reports or disclosures of child abuse without fear of negative repercussions or of not being believed. It emphasises the safety of children and the need to provide adequate supports. It has a clear framework for assessing what happened and whether there are reasonable grounds to believe that criminal child abuse has occurred that should be reported to police or other relevant authorities. It also provides a basis for pursuing any necessary disciplinary processes and ensures that the organisation's systems and processes are subject to review.

Different considerations can apply in determining the suitability of an organisation's response where the allegation relates to events that occurred in the past. However, there are similarities between responses to current and past child abuse, particularly where the alleged perpetrator remains working in the organisation or for other organisations with access to children. Part F examines the evidence received by the Committee in relation to processes for responding to allegations of past criminal child abuse.

The Committee was particularly concerned that the following components of the process for responding to allegations of child abuse were not always well-developed in non-government organisations:

- Encouraging disclosure and notification of incidents.
- Ensuring staff are trained in appropriate initial responses to disclosures, particularly ensuring the safety of the child—this is critical in situations where children could currently be at risk of further abuse.
- Having in place processes for external reporting, including ensuring that management and other relevant staff are able to recognise criminal child abuse and incidents that need to be reported to the police and other authorities, such as the Department of Human Services (DHS), the Department of Early Education and Childhood Development (DEECD) and the Victorian Institute of Teaching (VIT).
- Having in place internal processes, including standing down the alleged offender from their duties pending the determination of facts or police investigation, documenting the incident, and potentially engaging in disciplinary processes.
- Undertaking systemic reviews of organisational processes following allegations or suspicions of criminal child abuse.

The Committee's findings and analysis of these components are discussed in Chapters 15, 16 and 17.

Finding 14.2

An effective process for responding to allegations of suspected criminal abuse of a child should:

- clearly state what types of conduct should be notified, who can or should make notifications and who they should notify in the organisation
- make it clear what next steps need be taken, including ensuring the child is safe, and reporting suspected criminal abuse to police and relevant authorities
- provide guidance for responding to the outcomes of a report of criminal child abuse, including disciplinary processes, ongoing support for the victim and the review of internal policies and processes.

14.3. Parallel processes

Allegations of criminal child abuse can give rise to a number of internal and external processes that can operate concurrently. These vary depending on the organisation and can include investigation by police, government departments and statutory authorities. Incidents can also trigger screening and quality review processes.

For example, for out-of-home care services, DHS has specific processes for addressing concerns about quality of care, which are outlined in Chapter 17. These can occur in parallel with a police investigation and include:

- the departmental investigation, focusing on ensuring the safety and wellbeing of children and young people in out-of-home care
- internal processes by the community service organisation, to ensure that carers are meeting established standards and expectations in the way they provide care
- an independent investigation and suitability process, to assess whether the carer is suitable to remain on the register of out-of-home carers.¹³

Organisations need to be aware of processes that may be occurring at the same time as their own internal response. Particular care needs to be taken to not jeopardise a police investigation. However, this should not mean that organisations should cease to provide support to victims during the process or neglect regular systemic reviews of their internal processes.

Finding 14.3

Internal and external processes in response to an allegation of criminal child abuse may occur in parallel, which requires transparency and communication across all relevant bodies to ensure internal processes do not impede on any criminal investigation in progress.

14.4. In practice, processes vary in scope and focus and involve complex decisions

The extent to which organisations in Victoria have processes in place for responding to allegations of criminal child abuse is not known. Because of the number and range of non-government organisations that currently have contact with children, the Committee found it difficult to determine the extent to which all of these organisations have systems and processes for handling current allegations of suspected child abuse.

In evidence and information provided to the Inquiry, however, it was apparent that organisations vary considerably in their systems and processes (or lack of them). At one end of the spectrum, some organisations reported that they do not have processes in place for responding to or reporting allegations, or that they believe they do not require such a process.¹⁴

13 Department of Human Services (2009) *Guidelines for responding to quality of care concerns in out-of-home care*. Melbourne, Children Youth & Families Division, DHS, p. 48.

14 For example, as explained by the Sikh Council of Australia *Supplementary evidence*, Response to request for information, Sikh Council of Australia, 12 March 2013, p.2.

As described in Section 15.2, some organisations have informal processes in place and others have processes that are difficult to access. A number of non-government organisations have specific processes for responding to allegations of child abuse while other organisations use their general complaints handling process for responding to allegations. At the other end of the spectrum, a number of organisations have extremely complex and detailed processes specifically designed to respond to allegations of suspected child abuse.¹⁵

As described in Chapter 4 of Part B, the maintenance of records about allegations of suspected abuse has significant implications for police investigations and victims' pursuit of justice. The degree to which current practices allow documentation to be available to assist in any investigations of allegations is not known. However, the Committee is aware that over the past decade, governments have strengthened requirements for funded agencies to maintain comprehensive documentation about clients and any allegations of abuse. For example, DHS has developed requirements for funded agencies and instructs them to record any allegation on the client's file.¹⁶

14.5. Oversight and monitoring

While non-government organisations must be encouraged to develop effective processes for responding to criminal child abuse, independent oversight of these processes is also critical.

As noted above, the Committee observed that processes for responding to allegations of child abuse vary considerably across organisations. Some non-government organisations have contractual requirements to establish systems for responding to suspected child abuse by personnel in their agency, while other organisations are not.

While some organisations may have policies and procedures in place, they are not always followed or fully implemented. The Deputy Director of the Australian Institute of Family Studies (AIFS), Dr Darryl Higgins, made this point to the Inquiry:

Policies, though, are not enough if they sit on a shelf; they obviously have to be implemented, so that involves regular training, reviewing the policies, monitoring them, often having sponsors or champions, if you like, who talk about what that policy means.¹⁸

Organisations contracted by the Victorian Government to provide services are required to comply with incident reporting requirements. Their main purpose is to ensure that the department meets its duty of care to individuals who receive services from those organisations it funds.

Oversight—involves an external body reviewing the conduct and decisions of non-government organisations. The review may take the form of an investigation, inspection or audit and can be based on a complaint, a legal obligation or the oversight body's own discretion.¹⁷

15 For example, the approach of the Uniting Church in Australia, which varies depending on the position of the alleged perpetrator and the context in which the allegation arose. *Submission S164*, Uniting Church in Australia, p. 20. and Appendix 3.

16 Department of Human Services (2011) *Critical client incident management instruction*. Melbourne, Victorian Government, p. 14.

17 Adapted from P. Cummins, D. Scott, OAM, & B. Scales, AO (2012) *Report of the Protecting Victoria's vulnerable children inquiry*, p. 491.

18 *Transcript of evidence*, Australian Institute of Family Studies, Melbourne, 19 October 2012, p. 6.

Finding 14.4

Written processes are not always implemented effectively and it is important that there are oversight and monitoring systems to enable scrutiny of an organisation's handling of criminal child abuse if there are concerns.

Chapter 15

Encouraging disclosure and an appropriate initial response

AT A GLANCE

Background

It is essential that there are opportunities for any child to disclose or tell someone about an experience of abuse or behaviour by personnel in an organisation that makes them feel unsafe or uncomfortable. How personnel initially respond to children who raise any concerns can enable action to be taken to ensure the child and other children are safe. It is equally important that other adults, including parents, know what conduct they can or should notify, who to tell and how to appropriately respond to a disclosure made by a child.

Key findings

- Very few organisations indicated that they had simple, accessible processes that help children to understand what to do if they need to disclose behaviour that makes them feel unsafe or uncomfortable and that may constitute criminal child abuse. This may prevent children from telling an adult if they have concerns.
- Some organisations appeared progressive in their guidance to personnel regarding what they should notify and who to notify if they observe or suspect conduct of concern.
- Many policies used by organisations are complex and unclear regarding the responsibility of personnel to notify, including the person in the organisation they should notify, if a child discloses concerning behaviour or if they have a concern about the conduct of other personnel. This may discourage some individuals and personnel in organisations from reporting or disclosing abusive behaviour.
- A number of organisations provide guidance on how to respond to a disclosure made by a child, yet very few make reference regarding how they ensure the child is safe and receives appropriate medical and other professional support.

It is critical for organisations to encourage disclosure of criminal child abuse. To do this effectively, non-government organisations must promote a culture that makes it safe for children and others to disclose any observations or suspicions of criminal child abuse and to ensure that such disclosures are taken seriously. Organisations must also make their processes accessible and transparent in order to make it easy for victims and others to make a complaint or report an allegation.

The Committee heard that an organisation's initial response to a disclosure is of particular significance to victims of criminal child abuse. Staff need to have the knowledge and skills to respond appropriately and in a timely way in such situations. This includes validating the disclosure, determining if a child is at risk and ensuring their safety, as well as offering counselling and other support.

15.1. Children and disclosure

The Committee heard that to prevent criminal child abuse in organisations, it is critical to encourage disclosure of any behaviour that makes a child or young person unsafe or uncomfortable. In evidence given to the Inquiry, Dr Darryl Higgins of the Australian Institute of Family Studies (AIFS) indicated the importance of facilitating disclosure:

I think that is one of the critical things for organisations. If we are going to be serious about preventing child abuse, we need to be seen to be active in responding to concerns when they are first raised, because it may be that someone has a concern before anything has become too serious.¹⁹

He went further to explain that:

Sexual abuse sometimes is a very serious and one-off single event—ie, a rape. Often it is a whole process, and it is a graduation of experiences that build up. If a child or a young person is able to come and talk to someone who is trusted and say, 'Hey, I feel a little bit uncomfortable about something that someone has said or the way they looked at me', it may be that we are able to intervene, give some support to that young person and stop that abuse before it occurs or intervene in the middle of that cycle before it worsens.²⁰

Yet the reality is that often disclosures are not effectively responded to. Dr Higgins went on to explain to the Inquiry that:

The research on victims' disclosures shows that often they are not believed by the first person that they tell. Often it is not until they have told three or four or five times that they eventually are believed and some concrete action is taken.²¹

As described in Part B of this Report, the Committee heard that victims delay disclosing abuse for years or decades, and in some cases will never disclose the abuse. Professor Patrick Parkinson from Sydney University, for example, explained that:

Children who were abused sometimes 30, 40, or 50 years ago have often not disclosed until their adult lives. In our Anglican Church study we found that the average length of time between boys being abused and boys disclosing was 25 years.²²

19 *Transcript of evidence*, Australian Institute of Family Studies, pp. 6–7.

20 *Transcript of evidence*, Australian Institute of Family Studies, pp. 6–7.

21 *Transcript of evidence*, Australian Institute of Family Studies, p. 7.

22 *Transcript of evidence*, Professor Patrick Parkinson, University of Sydney, Melbourne, 19 October 2012.

In 2006, the AIFS provided tips on developing an effective disclosure policy. It explained that organisations that have contact with children need to demonstrate their capacity to respond appropriately to disclosures of criminal child abuse in order to gain, and keep, public confidence. It suggested that effective processes for encouraging disclosures ensure that:

- all disclosures are acted on
- early disclosure is encouraged
- unacceptable behaviour is clear to all children and adults connected to an organisation
- children and adults are empowered to disclose and are confident their disclosure will be treated appropriately.²³

Other evidence to the Inquiry supported the need for organisations to promote a culture that makes it safe for children to disclose instances of criminal child abuse or talk about behaviour that makes them feel unsafe or uncomfortable. For example, Professor Stephen Smallbone from Griffith University explained that:

Early detection is very important ... In my mind, the best way to do that is to try to create conditions that are conducive to reporting—so making it safe for children to report ... If you have mandatory reporting but the child has a terrible outcome every time abuse is reported, then there is no point. It seems to me the point is to create safety around the disclosure for children.²⁴

The Committee heard that a disclosure policy should emphasise the importance of listening to children's concerns and that abuse is more common in non-government organisations where children are not heard.²⁵ For example, in its submission the Centre for Excellence in Child and Family Welfare highlighted the importance of supportive and protective community attitudes towards children in the context of protecting them from harm:

Efforts to prevent and respond to criminal abuse of children must be undertaken in the context of supportive and protective community attitudes toward children. This requires a whole-of-community awareness about the centrality of children in our community. Further, it requires that the voice of children and young people in all aspects of their lives are listened to.²⁶

The Committee heard that a number of non-government organisations were committed to ensuring a supportive attitude towards children. Anglicare Victoria, for example, stated that it is committed to ensuring children are heard and effectively communicated with. It explained that its:

... staff members typically have an advanced understanding of the dynamics and indicators of child abuse, as well as the importance of 'hearing the voices' of children and young people—of artfully engaging them in discussion, rather than just 'talking about' them and affording them no opportunity to speak. All of this strongly contributes to the child-focused culture within the agency.²⁷

23 M. Irenyi, L. Bromfield, L. Beyer et al. (2006) *Child maltreatment in organisations: Risk factors and strategies for prevention*. *Child Abuse Prevention Issues series*. vol. 25, Spring 2006, Melbourne, Australian Institute of Family Studies, p. 18.

24 *Transcript of evidence*, Professor Stephen Smallbone, Griffith University, Melbourne, 9 November 2012, pp. 6–7.

25 Childwise (Undated) *Choose with care: 12 steps to child safe organisation*. South Melbourne, Childwise.

26 *Submission S327*, Centre for Excellence in Child and Family Welfare, p. 5.

27 *Submission S146*, Anglicare Victoria, p. 7.

Anglicare went on to explain that ‘This allows case managers to gauge how a child or young person is responding to their placement, and gives the child or young person opportunity to safely voice any concerns or complaints that they might have.’²⁸

The Seventh Day Adventist Church told the Inquiry that it had identified a ‘need to recognise that there existed a “reluctance to disclose abuse”, or to act on behalf of those who disclosed.’²⁹ It went on to explain that it has a ‘commitment to respectfully facilitating the reporting of abuse, responding to disclosures and providing appropriate referrals and support.’³⁰

The Committee noted that while organisations might commit to a culture of safety for children, effectively implementing these policies is of equal importance.

15.2. Accessibility of procedures for reporting allegations and making disclosures

Children and others who want to report an allegation of potential criminal child abuse or disclose behaviour that makes them feel unsafe or uncomfortable need to be aware of the organisation’s response process and be able to easily access it.

The Committee found that the policies and processes of some non-government organisations for reporting child abuse were not readily accessible. In particular:

- Policies and procedural documentation were not always publicly available.
- In some cases, copies of the relevant policies had to be requested from the organisation’s head office.
- Some organisations require complaints to be made in writing.

For example, the Salvation Army’s policy for responding to allegations of child abuse is not publicly available. The policy of the Baptist Union of Victoria, *Procedure for allegations of misconduct by pastoral leaders* is only available by request from the organisation’s offices. Girl Guides Australia (Victoria), Jesuit Social Services and the Catholic Church’s *Towards Healing* require allegations of child abuse to be made in writing.³¹

The Committee also heard that some organisations have informal processes in place, and some use their standard complaints procedure for dealing with child abuse. For example, Bishop Iakovos of Miletoupolis of the Greek Orthodox Archdiocesan District of Victoria explained that in the instance of a child abuse allegation, the Archdiocese would follow its standard process for dealing with complaints.³² However, the Committee identified that many generic organisational complaints handling processes make no reference to the need for allegations to be reported to police where the complaint relates to criminal child abuse, as discussed in Section 16.2.

28 *Submission S146*, Anglicare Victoria, p. 7.

29 *Submission S258*, Victorian Conference of the Seventh-day Adventist Church, p. 13.

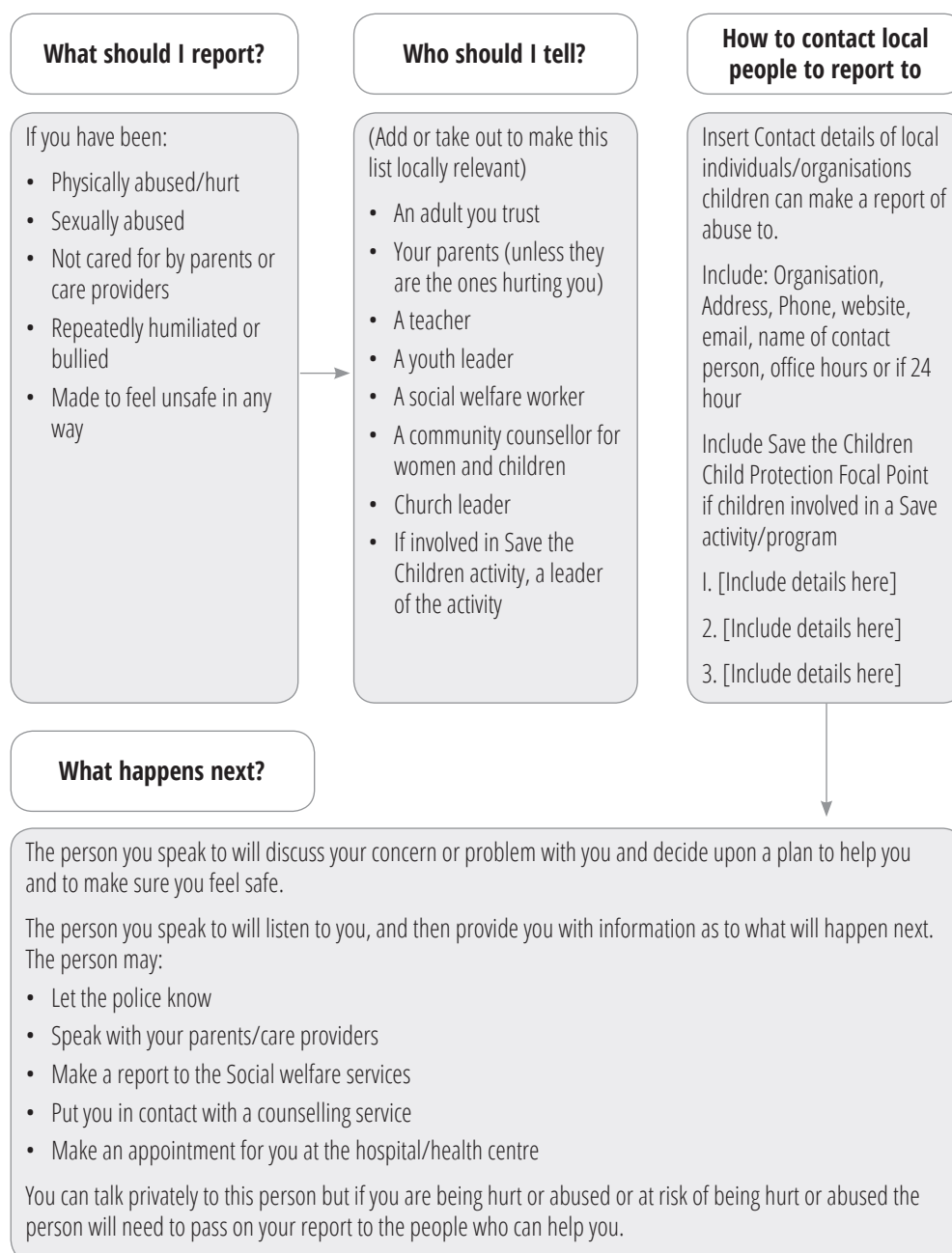
30 *Submission S258*, Victorian Conference of the Seventh-day Adventist Church, p. 36.

31 Girl Guides Australia (Victoria) (2013) *Grivance procedure GP43*. South Melbourne, Girl Guides Australia (Victoria), p. 1; Jesuit Social Services (2012) *Policy and Procedure. Participants feedback and complaints* Jesuit Social Services, p. 4 (Section 2.3); Australian Catholic Bishop Conference and Catholic Religious Australia (January 2010) *Towards Healing. Principles and procedures in responding to complaints of abuse against personnel of the Catholic Church in Australia.*, Alexandria NSW, National Committee of Professional Standards, p. 16.

32 *Transcript of evidence*, Greek Orthodox Archdiocesan District of Victoria, p. 3.

Where possible, individuals should be offered support to formulate and lodge allegations and suspicions of child abuse.³³ Save the Children Australia gave evidence about how it communicates its reporting process to children, as set out in Figure 15.1.

Figure 15.1: Save the Children Australia reporting process for children



Source: Save the Children (2010), *Child protection implementation guidelines—Australian programs*, p.97.

33 NSW Ombudsman (2010, 2nd Edition) *Effective complaint handling guidelines*, p. 8.

Finding 15.1

Very few organisations indicated that they had simple, accessible processes that help children to understand what to do if they need to disclose behaviour that makes them feel unsafe or uncomfortable and that may constitute criminal child abuse. This may prevent children from telling an adult if they have concerns.

15.3. What should be notified?

Although not all concerning behaviour or conduct amounts to criminal child abuse, the Committee considered that management should be notified of all disclosures of potential child abuse and all concerns about unsafe or concerning behaviour. In addition, personnel in an organisation should notify any allegation, suspicion or observation of concerning behaviour and any possible breaches of the organisation's code of conduct.

Chapter 16 discusses the responsibility of management in forming reasonable grounds for believing that criminal child abuse has occurred and reporting matters to police and other authorities.

15.4. Who should notify?

Linked to the effective facilitation of disclosure by children is the importance of ensuring that any personnel in an organisation who witness or become aware of inappropriate behaviour can and do notify management and relevant child safety personnel.

The Committee identified several examples of effective processes for ensuring personnel notify management about concerns and allegations of child abuse. It noted that in addition to having documented processes, organisations need to ensure that staff are aware of their responsibility to notify concerns to management.

In its guidelines to organisations for responding to allegations, the Australian Childhood Foundation (ACF) provides useful advice. The ACF requires organisations that undergo its accreditation process to have in place a policy that requires the following personnel to immediately report concerns, allegations or disclosures:

- all employees and volunteers who have direct contact with children or young people, and their supervisors and managers
- all senior managers responsible for delivering services to children or young people
- anyone involved in dealing with reports of allegations of child abuse or with access to children's or young people's records
- directors, CEOs, director-generals or equivalent personnel of any organisation whose purpose includes delivering services to children or young people.³⁴

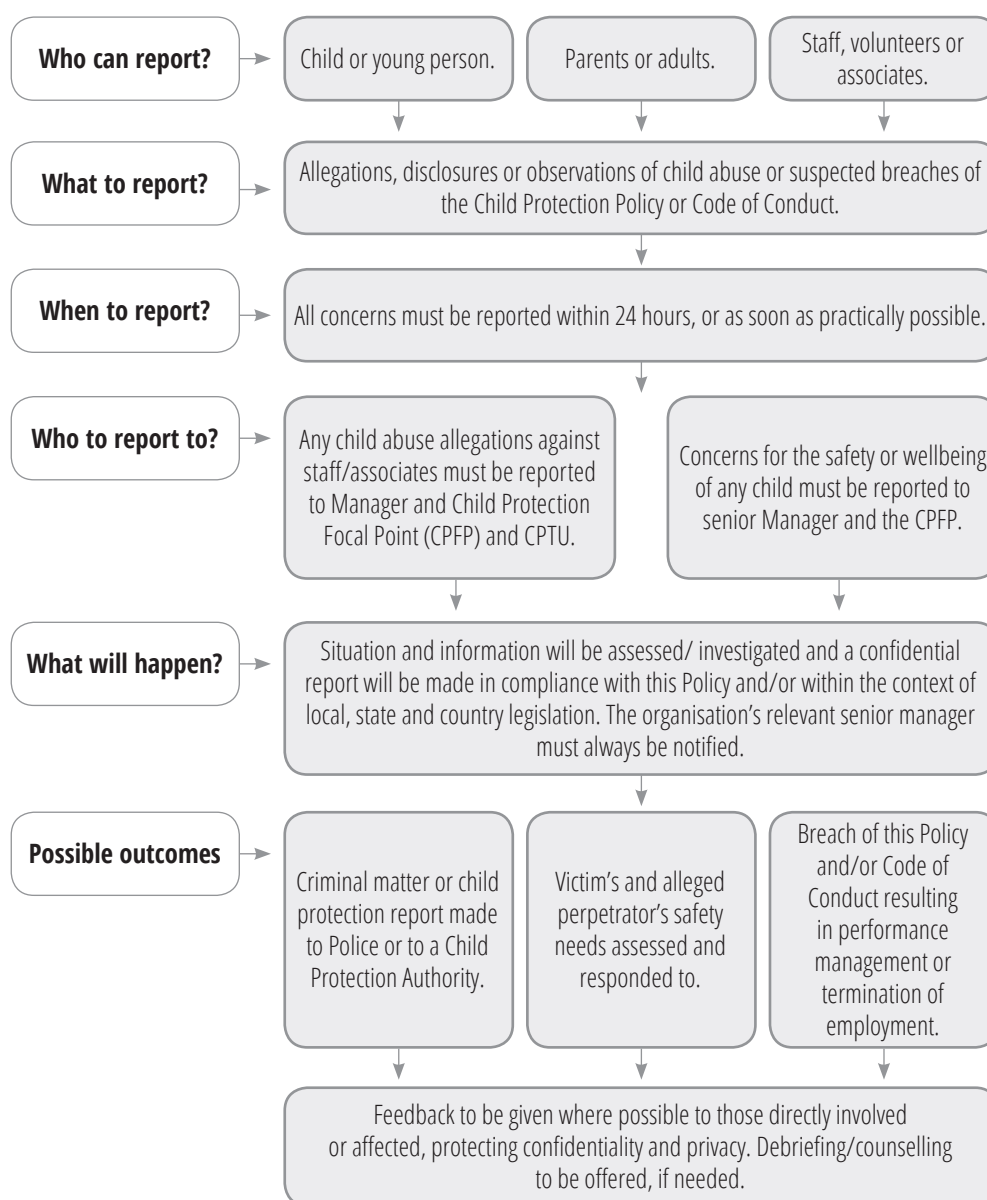
The ACF requires organisations to clearly state the nominated person and/or statutory body (with contact details) to whom the observation or concern should be reported, and the reporting timeframe. Furthermore, it requires organisations to

³⁴ Australian Childhood Foundation *Safeguarding Children: A program resourcing organisations to protect children and young people, Information booklet*. Ringwood, ACF, p. 98.

specify that failing to report instances, allegations, disclosure or concerns of child abuse or neglect is viewed as serious misconduct and as grounds for disciplinary action which may (depending on circumstances) include dismissal.

Another example is the process adopted by Save the Children Australia, shown in Figure 15.2. Save the Children receives funding from AusAID, which requires it to have a policy in place for responding to allegations of child abuse. As noted in Part D, Save the Children is particularly proactive in its approach to protecting children from criminal abuse.

Figure 15.2: Save the Children Australia process for reporting allegations of child abuse



CPTU [Child Protection Technical Unit] can be contacted at any point for advice and support
cptu@savethechildren.org.au

Source: Save the Children, *Submission S252*, Attachment 1.

The Committee noted the following aspects of the Save the Children Australia policy:

- There is no ambiguity as to whether management should be notified about allegations of child abuse—Save the Children staff and associates must report any concerns to management and designated child protection officer.
- The onus is not only on Save the Children staff to notify but also on ‘associates’, who are defined as all consultants, board members, researchers, volunteers, partner organisations, interns and students.
- The timeframe for notifying is clear—within 24 hours or as soon as practically possible.
- The obligation to notify is far reaching—for example, staff must notify management if they become aware that a child or children from another agency (possibly a partner organisation) is experiencing abuse or exploitation, or if a staff member or associate abuses a child outside work.
- The response process is simple to follow.

The Committee also noted that Uniting Church Camping has a process in place for responding to allegations of suspected criminal abuse. It contains many of the same steps as the above example, including advice regarding what to notify and who to notify, but is less clear regarding timeframes for making a notification.

The importance of personnel having clarity about the process was highlighted to the Inquiry. As Mr Paul Mondo, president of Childcare Victoria, commented:

If the support is not there for staff to be certain about the processes in place within a service, it often makes it difficult for them and they would more often than not err on the side of non-reporting than reporting in that circumstance.³⁵

Although having a process that requires personnel to report allegations or suspicions to management is important, there is also a need to ensure that the culture of the organisation supports such disclosures.

The Committee heard from a number of witnesses about their experiences when they attempted to report criminal child abuse.³⁶ These witnesses told the Inquiry that they did not feel supported by management, even where the allegations they had initiated had proved to be of substance. Some explained that they felt pressured to leave the organisation and had suffered repercussions in their careers and in their communities. For example, Inquiry participant Ms Carmel Rafferty explained that ‘I felt bullied, humiliated, isolated and traumatised ... and I was forced to resign.’³⁷

The Committee is aware that the need to report allegations of child abuse must be balanced with the need to ensure that such a policy is not misused. Clearly, the reputations of individuals can be seriously damaged if vexatious or malicious complaints are made against individuals. For example, the Executive Officer of the Australian Association of Christian Schools, Mr Robert Johnston, stated that ‘In the case of vexatious reports that [are] contested vigorously by accused adults ... a great

³⁵ *Transcript of evidence*, Child Care Victoria, Melbourne, 12 April 2013, p. 4.

³⁶ *Transcript of evidence*, Ms Carmel Rafferty, Melbourne, 23 January 2013., *Transcript of evidence*, Mr Graeme Sleeman, Melbourne, 23 January 2013., *Transcript of evidence*, Mrs Carol Crowe, Ballarat, 28 February 2013.

³⁷ *Transcript of evidence*, Ms Carmel Rafferty, p. 5.

deal of trauma is caused to innocent parties in such cases.³⁸ Mr Johnson noted the challenge of balancing the rights of the accused and taking seriously any complaints made. He and other witnesses suggested one option might be to engage an external body to fully investigate the matter.³⁹

Finding 15.2

Some organisations appeared progressive in their guidance to personnel regarding what they should notify and who to notify if they observe or suspect conduct of concern.

15.5. Who should be notified?

The Committee identified the importance of clear policies regarding who in the organisation should be notified about allegations or suspicions of child abuse. However, it found that in some organisations the responsibility for receiving such notifications was overly complex. For example, the Committee noted that notification of incidents within the Uniting Church in Australia, Synod of Victoria and Tasmania (the Uniting Church) vary depending on the position of the alleged offender in the organisation:

- Employees—the line for reporting for complaints against employees of the Synod or one of its agencies is through the person's manager and the director of the Synod Unit, CEO of the Uniting Church agency or principal of a school.
- Minister of religion—in the case of a complaint against a minister which comes within the realms of sexual misconduct, the complaint goes to the General Secretary and is directed to the Synod Sexual Misconduct Complaints Committee.
- Others—any other complaint goes to the Chair of the Presbytery. If an agreeable conclusion cannot be reached, the matter is referred to the Presbytery Pastoral Relations Committee, and if a resolution is not reached, to the Committee for Counselling.⁴⁰

The process also varies depending on the context in which the allegation arises. For example, a different process applies if the allegation arises in the context of a special event.⁴¹

The Committee noted that in its *Complaint procedure for allegations of misconduct by pastoral leaders*, the Baptist Union Victoria process applies to only a limited section of its personnel. Section 2.3 of the procedure states:

We recognise that this document cannot cover complaints against unpaid voluntary leaders who may offend. However it can provide principles and guidelines for the local church to use in these instances. We strongly recommend that local churches value the relevance of this document and use it accordingly.⁴²

38 Australian Association of Christian Schools, Correspondence in response to Committee request for information, 28 February 2013. The Committee was made aware that a number of organisations have formal policies in place that safeguard against abuse of the reporting processes. These include the whistleblowing policies of the Association of Independent Schools Victoria, the Catholic Education Office and Wesley Mission Victoria. The whistleblowing policy of Wesley Mission Victoria also includes specific supports and protections for whistleblowers in case of detrimental action against them.

39 *Submission S382A*, Ms Pam Krstic, p. 32.

40 *Submission S164*, Uniting Church in Australia, p. 20.

41 *Submission S164*, Uniting Church in Australia. Appendix 3, p. 33.

42 Baptist Union of Victoria (Revised 2011) *Complaint procedure for allegations of misconduct by pastoral leaders*. Camberwell, BUV, p. 5.

The Baptist Union's process for responding to an allegation of child abuse by personnel other than pastors is unclear.

The process of the Catholic Archdiocese of Melbourne is fragmented. In its 2011 code of conduct, *May our children flourish*, it outlines its reporting process, stating that:

109. If:

- a) A child makes a disclosure to you that sexual, physical or psychological abuse is occurring, or
- b) You form an objectively reasonable belief that a child is being harmed, or is at risk of being harmed,

you should immediately report the matter to the Independent Commissioner who will discuss your concerns and advise you on the next steps to take.⁴³

However, the document sets out other processes that apply for matters outside the responsibility of the Independent Commissioner, including matters arising in a parish or a Catholic agency:

105. All matters other than those within the purview of the Independent Commissioner should be reported as follows:

- a) Any matter that arises within a parish should be reported in the first instance to your parish priest (unless the matter involves the parish priest, in which case it should be reported in accordance with paragraph 106. The parish priest will listen to the allegations and decide what action to take in accordance with the procedures below at paragraph 108. If, after a reasonable time has elapsed, you are not satisfied with the parish priest's response to your report you may then refer the matter to the Vicar-General of the Archdiocese of Melbourne 03 9926 5677 or vicargeneral@cam.org.au
- b) Any matter that arises within an agency of the Catholic Archdiocese of Melbourne, should be reported in the first instance to the head of the agency (unless the matter involves the agency head, in which case it should be reported in accordance with paragraph 106). The agency head will listen to the allegations and decide what action to take in accordance with the procedures below at paragraph 108. If, after a reasonable time has elapsed, you are not satisfied with the response to your report, you may refer the matter to the HR Office on 03 9926 5677 or human.resources@cam.org.au.

106. Matters relating to parish priests, agency heads, or any other matters should be reported as follows:

- a) Any report that relates to a parish priest should be reported in the first instance to the Vicar-General on 03 9926 5677 or vicargeneral@cam.org.au
- b) Any report that relates to an agency head should be reported to the HR Office on 03 9926 5677 or human.resources@cam.org.au.
- c) Any other matter may be reported to the HR Office on 03 9926 5677 or human.resources@cam.org.au.

Reports will be dealt with in accordance with the procedures at paragraph 108.

107. Any medical emergency, a missing child, or any other emergency situation should be reported in the first instance to the appropriate authorities (such as police, fire or ambulance by dialling 000). As soon as possible thereafter, the child's parent/

43 *Submission S185*, Catholic Church in Victoria. Appendix 12; Catholic Archdiocese of Melbourne (2011) *May our children flourish: code of conduct for caring for children*. East Melbourne, Catholic Archdiocese of Melbourne, p. 17.

guardian should be notified and a report should be made (at the latest within 24 hours) to the HR Office on 03 9926 5677 or human.resources@cam.org.au.⁴⁴

To be effective, processes for responding to allegations of suspected or alleged child abuse must be simple, consistent and easy to follow. In addition, personnel in the organisation must be clearly aware of their responsibilities under these processes.

Finding 15.3

Many policies used by organisations are complex and unclear regarding the responsibility of personnel to notify, including the person in the organisation they should notify, if a child discloses concerning behaviour or if they have a concern about the conduct of other personnel. This may discourage some individuals and personnel in organisations from reporting or disclosing abusive behaviour.

15.6. Initial response to notifications

Following notification of a disclosure, suspicion or observation, it is important that the management of the organisation act immediately. The initial response may vary depending on whether the report of child abuse relates to a current situation of abuse or an event that occurred in the past (which might be relatively recent or a long time ago).

Although the Committee identified some comprehensive approaches, it noted that on the whole the level of advice for responding to reports of suspected criminal child abuse is not provided in the written procedures of many organisations. Such an allegation against personnel in their agency may occur very infrequently. However, not having a clearly articulated, written process to follow can lead to inappropriate or inadequate action being taken.

15.6.1. Ensuring children's safety

In the event of a current situation of abuse, the Committee noted the NSW Ombudsman advises that ‘The first step must always be to protect the best interests of the child—once an allegation is made there should be an immediate response that protects the child from further potential abuse or victimisation.’⁴⁵ In such cases, the manager (or a designated child protection officer) should consider:

- whether there is a risk to the child and other children
- whether there is a need to intervene to protect a child or children, including medical and/or forensic intervention
- the support needs of the child and other parties.⁴⁶

A number of organisational policies submitted to the Inquiry included guidance on identifying and minimising the risk of harm to children and young people involved in the allegation. Some organisations had more progressive processes in these circumstances. For example, Berry Street Victoria states in its policy:

44 *Submission S185*, Catholic Church in Victoria. Appendix 12; Catholic Archdiocese of Melbourne (2011) *May our children flourish: code of conduct for caring for children*, p. 16.

45 *Submission S388*, Child Wise, p. 9.

46 Ombudsman NSW (2012) *Planning and conduction an investigation. Fact sheet 4*. Sydney, NSW Ombudsman.

Within 24 hours of an allegation of abuse or neglect being made, an assessment will be made about whether there is an immediate risk of harm to the child or young person, which may mean the child or young person is removed, or arrangements are made for the removal of the worker/carer that allegations have been made against. This can also occur any time before, during or after a review or investigation.⁴⁷

The Scouts Victoria *Inappropriate conduct or behaviour policy* is another example of organisations taking into account any risk to the safety of children in responding to an allegation. The policy states:

4.3 If an allegation is made against an Adult in Scouting the District Commissioner (DC), Regional Commissioner (RC) or Branch Commissioner (BC), dependent on the organisational location of the Adult in Scouting, will, considering the information available at the time, determine whether the Adult in Scouting is to:

- a) remain in their current role
- b) be temporarily placed in another role, or
- c) be stood down from Scouting duties.

Note: If the alleged incident has occurred during a special activity, eg. a Jamboree, the nominated leader in charge will make the determination.

4.4 The DC, RC or BC considering the allegation must not permit an Adult in Scouting, the subject of an allegation, to continue to carry out any Scouting duties unless and until the DC, RC or BC is satisfied that it has been established that there is no material risk of a future breach occurring by reason of the Adult in Scouting continuing to carry out those duties.⁴⁸

Similarly, the policy of the Victorian Conference of the Seventh Day Adventist Church states that establishing a safe environment for children includes ‘Introducing safeguards ... where a situation of risk has or may be identified such as before, during or after an investigation.’⁴⁹

15.6.2. Validating a victims’ disclosure

The Committee heard that the first response to a victim’s disclosure of criminal child abuse is critical. Importantly, in first responding to any reported allegations of criminal child abuse it is not appropriate for an organisation to determine whether abuse has taken place or not. The role of the manager and personnel in the organisation is to listen, ascertain the facts and determine the appropriate next steps.

In its evidence to the Inquiry, Child Wise stated that:

Organisations should never push the child/young person into giving details of the abuse. Their role is to listen to what the child/young person wants to tell them and not to conduct an investigation. Any leading questions, any undue pressure exerted on the child, may prejudice any subsequent investigation, and indeed may make the child hesitant or unwilling to repeat their disclosure.⁵⁰

McKillop Family Services provides a guide for its staff in the first 24 hours after receiving an allegation of suspected child abuse in their organisation. The guidance has a strong emphasis on protecting children and taking their disclosure seriously. It

47 *Submission S262*, Berry Street, p. 2 Appendix 3.

48 *Submission S200*, Scouts Australia (Victoria), p. 2 Appendix 2.

49 *Submission S258*, Victorian Conference of the Seventh-day Adventist Church, p. 44.

50 *Submission S388*, Child Wise, p. 9.

emphasises that in the first 24 hours (in addition to notifying police and authorities) it is important to:

1. Take the child seriously
2. Contact the manager
3. Protect the child
4. Distance the alleged perpetrator
5. Protect others involved
6. Document the incident.⁵¹

The Catholic Archdiocese of Melbourne code of conduct *May our children flourish* provides the following guidance to those in its organisation who receive disclosures:

Be aware that the child may be feeling ashamed, guilty and scared, and may be worried about the consequences of telling someone about the abuse. Stay calm and listen carefully to the child. Tell them you believe them and that they did the right thing by telling you. Do not make promises you cannot keep such as promising that you will not tell anyone else.⁵²

The 2004 NSW Ombudsman's guide outlines the following checklist to assist in interviewing a child following the making of a disclosure, as outlined in Table 15.1.

Table 15.1: Checklist for interviewing a child who discloses

Do	Do not
<ul style="list-style-type: none"> • interview a child only when it is necessary • learn the relevant background to the allegation • understand the developmental stage of the child • respect the rights of the child • build a rapport with the child • reassure the child they are not in trouble • explain to the child the purpose of the interview • talk to the child in appropriate language • ask simple and clear questions • limit the number of people present during the interview • allow the child a support person, where appropriate • minimise distractions and interruptions • thank the child at the end of the interview. 	<ul style="list-style-type: none"> • ask leading questions • touch the child • intimidate the child • make the child feel bad about what they're disclosing • ask more than one question at a time • interview a child on more occasions than is absolutely necessary • interview a child when someone more qualified is available to do so.

Source: NSW Ombudsman (2004) *Child Protection in the Workplace*, p.141.

51 The guidance also includes reporting in to authorities Advise the Client Protection Panel and Liaise with DHS, Police and Family *Supplementary evidence*, Response to request for information, McKillop Family Services, 8 March 2013.

52 *Submission S185*, Catholic Church in Victoria. Appendix 12; Catholic Archdiocese of Melbourne (2011) *May our children flourish: code of conduct for caring for children*, p. 17.

15.6.3. Support for victims during the response process

Although most organisational policies for responding to allegations of child abuse require an initial assessment of a child's safety, the Committee identified that very few appeared to require medical or psychological support to be provided to children and adult victims of child abuse.

Some processes of non-government organisations reviewed by the Committee included guidance on what supports should be in place for victims, however many did not. For example, few identified what steps should be taken if a victim needs medical attention after an incident of suspected child abuse. A number did not specify any arrangements for providing counselling to children who are victims of alleged abuse.

The Committee identified a number of non-government organisations that do have clear processes. For example, St Luke's Anglicare explained the developments in its counselling support before and since 2005:

The complainant was offered the dedicated support of an appropriate staff member. Referrals to other specialist services, for example, CASA [Centre Against Sexual Assault] were offered. Issues of potential conflicts of interest with St Luke's continuing support were discussed ...

A similar practice approach has existed since 2005 as was practiced prior to 2005. However, since 2005 under the Quality of Care processes, a support plan for the complainant is developed with DHS and clear roles and responsibilities for the support of the complainant is negotiated between St Luke's and DHS.⁵³

The Committee noted that government departments that fund organisations can provide specific guidance regarding what non-government organisations should do in this instance. For example, DHS requires agencies to report all instances of alleged sexual assault to the local Centre Against Sexual Assault (CASA), unless a victim does not want this contact.

Finding 15.4

A number of organisations provide guidance on how to respond to a disclosure made by a child, yet very few make reference regarding how to ensure the child is safe and receives appropriate medical and other professional support.

⁵³ *Supplementary evidence*, Client concerns and complaint guidelines, St Luke's Anglicare, 28 March 2013.

Chapter 16

Recognising criminal child abuse and reporting allegations to authorities

AT A GLANCE

Background

In the context of the Committee's recommendation for a new criminal law to make it an offence to fail to report the suspected criminal abuse of children, personnel in organisations will need to be fully informed of their responsibility to report to police. Personnel in positions of authority in organisations will also need the knowledge and skills to consider any allegations or notifications of concerning conduct to determine whether they have reasonable grounds to believe that criminal child abuse may have occurred.

Key findings

- Responding to a notification of concerning behaviour and forming reasonable grounds to believe that a crime may have occurred is complex and requires a skilled and sophisticated level of judgement.
- Some organisational policies reviewed by the Committee for responding to allegations of criminal child abuse were narrowly focused on child sexual abuse rather than all forms of criminal abuse.
- Organisations providing services funded by the Department of Human Services are required to report all physical and sexual assault of clients by staff to the police, yet the inconsistent implementation of this requirement indicates that not all personnel in organisations have the appropriate skills and knowledge to determine suspected criminal conduct.
- Catholic and independent schools are not expected to meet the same requirements as government schools in responding to suspected sexual assault of children and there is no clear guidance for any schools regarding other forms of criminal abuse.
- A number of policies used by organisations that provide services in unregulated sectors do not make it clear that all staff have a responsibility to report allegations of criminal child abuse to police, and some policies suggest that the onus is on victims to do so.
- Organisations in regulated sectors have requirements to report critical incidents to a funding or relevant body and can be subject to review if they do not handle allegations of criminal child abuse appropriately.
- Organisations that provide services in unregulated sectors have no overarching requirements or oversight to ensure they report all suspected criminal child abuse to police and relevant authorities and are not subject to any external review of their responses if they do not handle allegations appropriately.

Recommendation

- That the Victorian Government review the current Department of Education and Early Childhood Development (DEECD) procedures for responding to allegations of all forms of criminal child abuse within all Victorian schools and identifies a benchmark that could be applied more broadly to non-government schools.

Determining whether to make a report to police or other authority is a critical component of a non-government organisation's response to allegations of child abuse. Management and other relevant personnel need confidence and sophisticated skills to recognise and report criminal child abuse. The Committee noted that this is an area in which organisational processes are lacking.

It is critical for organisations to report suspected criminal child abuse to police yet there is currently no legislative requirement in Victoria for personnel in organisations to report such allegations. In view of this, Part G of this Report makes a recommendation to make it an offence to conceal criminal child abuse offences and introduce compulsory reporting to police. This will make it even more important for organisations to have clear processes regarding the responsibility of personnel to report criminal child abuse to police.

The Committee recognises that reporting requirements will vary between organisations. However in the event of suspected or alleged criminal child abuse, it determined that all organisations should be required to report to police and should have appropriate policies in place to ensure staff know their responsibilities in this regard.

16.1. Recognising criminal child abuse

It is essential that non-government organisations notify police and other relevant authorities when there are reasonable grounds to believe that the criminal abuse of a child has occurred.

The Committee determined that many staff in positions of authority in organisations do not have the necessary skills to confidently assess reports of suspected child abuse, identify reportable conduct, and make a decision to report an allegation to the police or other relevant authorities. During the Inquiry, the New South Wales (NSW) Deputy Ombudsman, Mr Steve Kinmond explained that assessing how to respond appropriately to an allegation of child abuse is complex:

At the one end of the spectrum there is the issue of agencies deliberately failing to deal with matters, but at the other end of the spectrum there are agencies that are extremely well intentioned but have no idea what to do in relation to this very complex area of practice.⁵⁵

The NSW Ombudsman covers the reporting of criminal and non-criminal conduct and provides guidance as to what action organisations should take. This is described in Chapter 18.

In its submission to the Inquiry, the Jewish Taskforce Against Family Violence and Sexual Assault also demonstrated the difficult decisions that must be made:

Reasonable grounds for belief—sufficient facts must exist to induce the relevant suspicion or belief in the mind of a reasonable person. The nature of the facts required to be established to demonstrate reasonable grounds for a suspicion or belief are different, as facts sufficient to found a suspicion may be insufficient to ground a belief. A belief is based on reasonable grounds that criminal child abuse has occurred when all known considerations or facts relevant to the formation of a belief are taken into account and these are objectively assessed. Circumstances or considerations may include the source of the allegation and how it was communicated, the nature of and details of the allegation, whether there are any other related matters known regarding the alleged perpetrator.⁵⁴

⁵⁴ See *George v Rockett* [1990] 170 CLR 104, 112.

⁵⁵ *Transcript of evidence*, NSW Ombudsman, Melbourne, 4 April 2013, p. 5.

We have worked with particular Rabbis during certain sensitive cases, including ones where there wasn't enough evidence to charge anyone but there were many concerns. In some cases, advice was given not to allow a person direct contact with children and also to advise parents not to allow a person to be alone with their child. In many cases it is difficult as there is not enough evidence to bring charges, but there is a clear need to protect potential victims.⁵⁶

An organisation often needs to make complex and nuanced decisions when responding to an allegation of suspected child abuse. These decisions require a high level of professional judgement and generally need to be made at the most senior levels. To assess how to respond to suspected child abuse, an organisation needs to:

- understand how to make an assessment about whether the conduct is potentially criminal child abuse
- know the right questions to ask and how to gather the relevant information in order to clarify what has happened and to assist personnel in forming reasonable grounds for a belief that a crime may have occurred
- ensure matters are reported to the right authorities within appropriate timeframes and that appropriate information is provided.

Not all allegations that are made against personnel in an organisation amount to criminal child abuse.

Knowing when to report a matter to police can be a difficult decision. Personnel in organisations need the skills and knowledge to identify and understand:

- potential grooming behaviour
- misconduct
- criminal conduct.

Observations and suspicions of criminal child abuse could include observed behaviour that gives cause for concern. For example, suspicion might be raised by a staff member committing subtle breaches of the organisation's code of conduct, or by a one-off incident. Alternatively, a child or group of children could be exhibiting behaviours which may indicate they are currently, or at risk of, being abused.

The Committee acknowledges that grooming in particular can be difficult to identify and to raise concerns about. Ms Pam Krstic, for example, explained that she did not recognise a perpetrator's grooming tactics at the time 'although looking back they were very obvious'.⁵⁷ She indicated that this was particularly difficult because it involved a senior figure in the organisation. She explained her experience in a Catholic school:

It is very difficult to make allegations on grooming alone particularly when the alleged offender is your boss and in sole charge of both school and parish.⁵⁸

The Committee identified that the majority of organisations emphasise the need to report allegations of child abuse to the police where there are reasonable grounds to believe a child has been criminally abused. Yet the process by which personnel can identify reasonable grounds for forming this belief is often expressed unclearly or

56 *Submission S086*, Jewish Taskforce against Family Violence and Sexual Assault Inc., p. 4.

57 *Submission S382A*, Ms Pam Krstic, p. 12.

58 *Submission S382A*, Ms Pam Krstic, p. 2.

inconsistently in organisational written policies. Organisations that have had little experience in responding to allegations of child abuse, will not necessarily have this knowledge and expertise.

Some organisations do provide such guidance, often within the context of how to determine if a report needs to be made regarding a child at risk of harm in their family. For example, Anglicare provides guidance on ‘forming a belief’ that a child is in need of protection, advising that it is a ‘thinking process, where a person is more inclined to accept rather than reject that there is significant harm for the child or young person.’⁵⁹

The Committee identified a need for increased and ongoing support for staff to build their knowledge and skill in making assessments of allegations regarding all forms of suspected child abuse in their organisation. This will help organisations assess more accurately whether to report an incident to police and to other authorities.

Finding 16.1

Responding to a notification of concerning behaviour and forming reasonable grounds to believe that a crime may have occurred is complex and requires a skilled and sophisticated level of judgement.

16.1.1. Narrow approach to responding to criminal child abuse

The Committee noted that many organisations provide narrow or unclear instructions on how to assess an allegation of suspected criminal child abuse, how to identify the nature of the behaviour being reported and what criteria to consider when deciding whether to report an allegation to police, other authorities and the child’s parents.

The processes established by some organisations focus narrowly on only one type of child abuse, usually sexual abuse. For example, the *Creating a safe place policy* of the Seventh Day Adventist Church states:

The Church recognises that the sexual abuse of a child usually occurs within a context of other forms of child abuse (such as emotional, psychological or spiritual abuse). Therefore, other forms of child abuse (namely emotional abuse, neglect, physical abuse and spiritual abuse) may be canvassed in a Church investigation. However, these other forms (i.e. non-sexual) of a child abuse do not trigger an investigation by Safe Place Services.⁶⁰

This policy is quite specific in clarifying that it does not respond directly to allegations of abuse other than child sexual abuse.

Similarly, in its *Complaint procedure for allegations of misconduct by pastoral leaders*, Baptist Union Victoria refers only to child sexual abuse, sexual assault, sexual boundaries, sexual harassment and sexual misconduct.⁶¹ It does not specifically mention other forms of criminal child abuse.

59 *Submission S146*, Anglicare Victoria. Appendix 1, p. 6.

60 Safe Place Services (2008 & 2011) *AUC and NZPUC Creating a safe place policy—Version 2012.01*. Seventh-day Adventist Church of the New Zealand Pacific Union Conference, p. 13.

61 Baptist Union of Victoria (Revised 2011) *Complaint procedure for allegations of misconduct by pastoral leaders*, p. 21.

Finding 16.2

Some organisational policies reviewed by the Committee for responding to allegations of criminal child abuse were narrowly focused on child sexual abuse rather than all forms of criminal abuse.

16.2. Policies and practices for reporting allegations of criminal child abuse to police

The Committee identified that there are different policies and practices in non-government organisations with regard to reporting to police. There are differences between reporting requirements for organisations that operate in government regulated sectors and those that operate in unregulated sectors. Furthermore, the Committee identified that requirements to report to police are not always clear.

It also noted that having a policy in place for reporting to police does not necessarily translate into good implementation. To ensure the implementation of such policies, it is necessary to have oversight of these processes, as discussed in Chapter 18.

16.2.1. Organisations that operate services in government-regulated sectors

The Committee recognises that organisations that operate services in government-regulated sectors are subject to regulations and guidance that requires them to report allegations of criminal child abuse to police. This includes government-funded out-of-home care and other Department of Human Service (DHS) services, schools and early childhood services.

DHS instructions for reporting to police

Non-government organisations funded by DHS to provide out-of-home care and other DHS services are required to report allegations of criminal child abuse involving clients to police. As stated in the DHS *Responding to allegations of physical and sexual assault Departmental instruction*:

All allegations of physical or sexual assault as defined for the purposes of this document must be reported to the Police, whether or not the victim has consented to the matter being reported.⁶²

The instruction defines physical and sexual assault broadly, with only minor incidents being excluded from the requirement to report to police (examples given of minor incidents are those that do not involve allegations involving personnel—clients shoving one another with no injury, inappropriate touching by a disability client who lacks understanding of the behaviour and exposure in a public place by a disability client in some contexts).⁶³

The instruction operates in conjunction with the DHS critical incident reporting (described in more detail in Section 16.3). The 2011 *Critical incident management instruction* (Critical incident instruction) clearly states that ‘alleged criminal acts that

62 Department of Human Services (2005) *Responding to allegations of physical or sexual assault. Departmental instruction*. Melbourne, DHS, p. 7.

63 Department of Human Services (2005) *Responding to allegations of physical or sexual assault. Departmental instruction*, p. 7.

occur during service delivery must be reported to the police as soon as practicable.⁶⁴ The *Critical incident instruction* classifies allegations of criminal child abuse perpetrated by a staff member as the most serious (Category One) type of incident.⁶⁵

The Committee found that sometimes there are gaps between the requirements set out in an organisation's reporting policy and its actual practices. For example, organisations funded by DHS are required to report all Category One incidents that are staff to client assaults to police under the DHS critical incident process. The Acting Secretary of DHS, Mr Arthur Rogers, confirmed that in such cases there is no discretion, noting that with:

... a Category One allegation of staff-to-client, there is no discretion; it must be reported to police in child protection and family services.⁶⁶

However, the Committee was informed that in practice there appears to be some degree of discretion in reporting staff to client assault allegations to police. Information provided to the Inquiry by DHS stated:

A review of a sample of three months of reports between April and June 2012 of staff to client assault allegations made in non-government agencies indicates that 79 per cent of all allegations in non-government organisations were reported to police. The department considers all staff to client assault allegations as Category One incidents, however the DHS Critical Client Incident Management Instruction 2011, section 7 notes that reporting to police should be considered in the context of the individual client's behaviour or disability. Where allegations are not of a criminal nature a report to police may not be made, e.g. a staff member may restrain a client from running onto a busy road resulting in an allegation of physical assault. While this would be reported within the department as a category one incident, it may not be reported to police when the context is considered. Other examples where a police report may not be made may include: allegations not supported by sufficient information to establish whether an assault has occurred, or allegations being retracted prior to commencement of investigation.⁶⁷

The Committee noted that according to the Critical Incident Instructions, the 'context of the individual client's behaviour or disability' is not something to be considered in the context of incidents involving staff to client assault. It is only something to be considered in deciding whether to report certain client incidents to police such as inappropriate touching or other inappropriate behaviour by a client with a disability. This discrepancy highlights the distinction between policy and implementation.

Where DHS receives a report of physical or sexual abuse, it jointly investigates allegations with police. Victoria Police and DHS have a protocol governing the different ways in which DHS interacts with Victoria Police, whether this involves investigating child abuse and neglect or responding to other criminal actions that may arise in community service organisations or other contexts.⁶⁸

64 Department of Human Services (2011) *Critical client incident management instruction*, p. 15.

65 Department of Human Services (2011) *Critical client incident management instruction*, p. 23.

66 *Transcript of evidence*, Department of Human Services, Melbourne, 3 June 2013, p. 3.

67 *Supplementary evidence*, Response to request for information, Department of Human Services, 17 June 2013. Department of Human Services (2005) *Responding to allegations of physical or sexual assault. Departmental instruction*, p. 7.

68 Victorian Government (2012) *Protecting children. Protocol between Department of Human Services Child Protection, and Victoria Police*. Melbourne, State of Victoria, p. 48.

Finding 16.3

Organisations providing services funded by the Department of Human Services are required to report all physical and sexual assault of clients by staff to the police, yet the inconsistent implementation of this requirement indicates that not all personnel in organisations have the appropriate skills and knowledge to determine suspected criminal conduct.

Schools and early childhood services—the Joint Protocol

In Victoria, schools and early childhood services are required to report criminal child abuse to police under a joint protocol with DHS and DEECD—*Protecting the safety and wellbeing of children and young people* (the Joint Protocol).⁶⁹ The Joint Protocol's objective is to ensure a 'unified and consistent approach that defines roles and responsibilities to protect the safety and wellbeing of all Victorian children and young people.'⁷⁰

Although much of the Joint Protocol assists schools and early childhood services in their reporting requirements relating to children at risk of abuse within the family, the Joint Protocol states that the following matters must be immediately reported directly to Victoria Police for investigation:

- If there is an allegation of abuse by a proprietor, staff member or visitor at a licensed children's service.⁷¹
- If there is an allegation of abuse by a staff member or visitor at a school.⁷²

Although the Joint Protocol is clear in requiring allegations of criminal child abuse involving personnel of an organisation to be reported to police, confusion may arise where reference is made to other parts of the Joint Protocol, in particular in respect of independent and Catholic schools.⁷³

In the case of early childhood services, the Committee was not aware of any oversight or guidance for developing processes to respond to criminal child abuse. The Community Child Care Association explained that services:

should report an incident to our state regulatory authority, which is the Department of Education and Early Childhood Development. So that would be investigated between the service and the department of education, but it might come down to acknowledging that perhaps some of the staff members are not aware of what indicators of abuse look like.⁷⁴

69 The protocol is between DHS Child Protection, DEECD, licensed children's services and Victorian schools.

70 Department of Human Services Child Protection & Department of Education and Early Childhood Development Licensed Children's Services and Victorian Schools (2010) *Protecting the safety and wellbeing of children and young people: A joint protocol*. Melbourne, DHS and DEECD, p. 1.

71 Department of Human Services Child Protection & Department of Education and Early Childhood Development Licensed Children's Services and Victorian Schools (2010) *Protecting the safety and wellbeing of children and young people: A joint protocol*, p. 20.

72 Department of Human Services Child Protection & Department of Education and Early Childhood Development Licensed Children's Services and Victorian Schools (2010) *Protecting the safety and wellbeing of children and young people: A joint protocol*, p. 25.

73 Department of Human Services Child Protection & Department of Education and Early Childhood Development Licensed Children's Services and Victorian Schools (2010) *Protecting the safety and wellbeing of children and young people: A joint protocol*, pp. 20, paragraph 5.4 and paragraph 6.7.

74 *Transcript of evidence*, Community Child Care Association, Melbourne, 15 April 2013, p. 4.

In regard to independent schools, the Joint Protocol states:

If the information refers to allegations made against employees in an independent school, contact should be made in the first instance with the principal of the school. If this is not appropriate, then contact should be made with the chairperson of the school's governing body. Independent Schools Victoria is able to provide advice regarding the appropriate person to contact.⁷⁵

The Committee was not able to identify any overarching procedure or guidance for independent schools on responding to allegations of criminal child abuse. Independent Schools Victoria, the representative body for Victorian independent schools, explained that it is not an oversight body. It noted:

Independent Schools Victoria is a not a system authority managing schools, but a membership organisation providing professional services to inform schools and raise quality standards. We speak to governments and the community on behalf of our membership.⁷⁶

Instead, Independent Schools Victoria advises its member schools that they should have clearly defined policies and procedures for investigating incidents including, amongst other things, sexual assault. It stated that:

Independent Schools Victoria's processes and procedures for the protection of children are closely aligned with DEECD and DHS policies and comply with government education regulations. They are informed by the advice of the Victoria Police and non-government agencies'.⁷⁷

If Independent Schools Victoria is approached by a principal who considers there might be a problem, it explained that one of its directors or managers provides guidance and depending on the circumstances suggests the following actions:

- investigate the alleged incident
- raise the matter with the family
- make a referral to Child FIRST and Child Protection
- contact police.⁷⁸

Responses to allegations in Catholic schools are overseen by the Catholic Education Office Melbourne (CEOM). The Joint Protocol states:

If the information refers to allegations made against employees in a Catholic school contact should be made in the first instance with the Assistant Director, Religious Education and Pastoral Care, Catholic Education Office Melbourne (CEOM). This action and all other procedures to be followed in this case are outlined in <http://web.ceomelb.catholic.edu.au/index.php?sectionid=445>.⁷⁹

The Joint Protocol does not address the fact that CEOM does not coordinate the process for all Catholic schools in Victoria. For example, it does not refer to other Catholic school bodies such as the Catholic Education Offices in Ballarat, Sale or

75 Department of Human Services Child Protection & Department of Education and Early Childhood Development Licensed Children's Services and Victorian Schools (2010) *Protecting the safety and wellbeing of children and young people: A joint protocol*, p. 20, paragraph 6.8.

76 *Submission S399*, Independent Schools Victoria, p. 1.

77 *Submission S399*, Independent Schools Victoria, p. 4.

78 *Submission S399*, Independent Schools Victoria, p. 4.

79 Department of Human Services Child Protection & Department of Education and Early Childhood Development Licensed Children's Services and Victorian Schools (2010) *Protecting the safety and wellbeing of children and young people: A joint protocol*, pp. 20, paragraph 6.8.

Sandhurst. Furthermore, the Committee noted that allegations involving Catholic school personnel in congregational schools are excluded from the CEOM procedures. The CEOM policy states that:

The schools of the Society of Jesus operate under a separate set of procedures, as do some other schools owned and operated by Religious Institutes.⁸⁰

A footnote explains that:

Congregational schools may choose to adopt and implement the procedures herein or follow guidelines developed by their respective or affiliated Religious Institutes. An initial point of contact regarding employees of congregational schools/colleges is Towards Healing, [and] Diocesan clergy are covered by the Melbourne Archdiocese Sexual Abuse Strategy. The initial point of contact is the Office of the Independent Commissioner, telephone (03) 9225 7979.⁸¹

The CEOM advises that there are 43 congregational schools in Victoria (1 primary school and 42 secondary). It remains unclear how many congregational schools have adopted the CEOM procedures and how many have developed and implemented other discrete and unique procedures. The Committee sought clarification about this from CEOM but did not receive any further information about congregational school procedures. However, the CEOM did advise that ‘all Catholic schools ... are subject to the same legal requirements in regards to child protection and misconduct matters, including those owned by Religious Congregations.’⁸²

CEOM procedures for ‘misconduct’ and ‘serious misconduct’

The CEOM’s *Procedures for allegations of misconduct against lay employees in Catholic schools and Catholic Education Offices* (revised in 2013) refer to two relevant procedures—one for allegations considered to be ‘misconduct’ and another for ‘serious misconduct’.⁸³ Both procedures apply ‘only to lay employees of parish primary schools and regional secondary colleges.’ Allegations involving a priest associated with a Catholic school would not fall within the CEOM procedure.

Mr Dennis Torpy, Manager, Wellbeing and Community Partnerships, CEOM told the Inquiry that:

... under our policy of allegations of misconduct against lay employees there is clear detail about what processes should be followed hand in hand with mandatory reporting. They include clear steps around maintaining confidentiality, as well as

80 Catholic Education Office Melbourne (2007) *Procedures for allegations of misconduct*. East Melbourne, CEOM, p. 1., Procedure 2.5

81 Catholic Education Office Melbourne (2007) *Procedures for allegations of misconduct*, p. 1., Procedure 2.5

82 *Supplementary evidence*, Response to Questions on Notice, Catholic Education Office, Archdiocese of Melbourne, 2 September 2013.

83 *Procedures for allegations of misconduct against lay employees in Catholic schools and Catholic Education Offices* (revised in 2013) defines ‘**misconduct**’ as including the following conduct: Sexual—inappropriate discussion of matters of a sexual nature with a student; sharing printed material with offensive/inappropriate sexual images or references; Physical—use of excessive force in restraining a student; Emotional—inappropriate isolation of a student; repeated public humiliation of a student. ‘**Serious misconduct**’ is defined to include: Sexual—sexual touching, either over or under clothing; oral sex; penetration by penis, finger or object; photographing or possession of films, photographs, or videos of children/students involved in sexual activity; kissing accompanied by some suggestion of a sexual kind; Physical—actions by another person causing physical harm to a student, e.g. bruises, cuts, burns or fractures; Emotional—a constant attitude or behaviour by another person towards a student that harms him/her emotionally and may delay or impair his/her physical and intellectual development. It can include terrorising, isolation and continued belittling of the child.

appropriate documentation, reporting, and careful listening and understanding of the allegation at the same time. So that is set out as well to ensure confidentiality.⁸⁴

However, the Committee identified that the CEOM procedures do not require allegations of criminal child abuse by a staff member to be referred immediately to police. This CEOM approach appears to be in conflict with the instructions under the Joint Protocol that require such incidents to be reported immediately to police.

The definition of misconduct includes 'sharing material of a sexual nature with a child'. This kind of conduct constitutes a criminal offence and should be reported to police, however the CEOM's procedures for 'misconduct' (as opposed to serious misconduct) do not refer to police reporting.

The procedures for both misconduct and serious misconduct state that:

Any allegation of [misconduct and serious misconduct] of a sexual, physical, or emotional nature against an employee of the school should be referred immediately (within 24 hours) to the Principal/Employer.

Contact must be made with the CEOM Senior Officer for Professional Conduct, Ethics & Investigation to report the allegation and determine the action to be taken.⁸⁵

The procedure for serious misconduct goes on to state:

After consultation with the CEOM Senior Officer for Professional Conduct, Ethics & Investigation, it shall be determined whether contact must be made with the Victoria Police. Discussion with the Police will focus on the nature of the allegation and procedures followed to date, followed by a request for advice.

The Committee noted the CEOM's efforts to create consistency in Catholic schools' approaches to handling cases of suspected child abuse by staff. It also noted the CEOM's procedures for communication and for training staff on mandatory reporting to DHS and child protection legislation. Further the Inquiry saw evidence of CEOM's commitment to training staff about child protection issues and student welfare through its comprehensive professional development calendar, specifically identifying possible child abuse or neglect in the child's home environment. However, the CEOM has an apparent lack of procedural consistency with the Joint Protocol in regard to reporting allegations of criminal child abuse to police.

The Catholic Diocese of Ballarat provided its detailed process for managing allegations of abuse of students by its employees, *Protecting students, maintaining relationships*, along with a covering letter dated 25 May 2012 addressing this to Catholic school principals. This process states that:

... after consultation with the Director CEOB [Catholic Education Office Ballarat] and the OPCEI [Office for Professional Conduct, Ethics and Investigations], the first action of the Principal may be to contact the police.⁸⁶

The policy only applies to lay employees and states that 'clergy and religious staff operate under the Towards Healing 2010 set of procedures'. Although the document is comprehensive and clear in its guidance about police reporting, there is a suggestion

84 *Transcript of evidence*, Catholic Education Office Melbourne & Catholic Education Commission of Victoria, Melbourne, 3 May 2013, p. 6.

85 Catholic Education Melbourne (Revised 2013) *Policy 2.20. Allegations of Misconduct Against Lay Employees in Catholic Schools and Catholic Education Offices*. Accessed on 10 October 2013 from <http://www.ceomelb.catholic.edu.au/publications-policies/policy/policy-2.20-allegations-of-misconduct-against-lay-employees/>.

86 *Right of Reply*, Catholic Diocese of Ballarat Education, 23 July 2013, p. 21.

that consultation with the CEOB or OPCEI following an allegation of criminal child abuse can, *but may not* result in contact with the police. This is at odds with the Joint Protocol, which requires all allegations of abuse by a staff member at a school to be immediately reported directly to Victoria Police for investigation.

Government school processes

In contrast, the Committee found that DEECD's guiding document for government schools, *Responding to allegations of student sexual assault: Procedures for Victorian government schools 2007*, offers a set of instructions that clearly outline the process for dealing with allegations of sexual assault in schools.⁸⁷ For example, the guideline states clearly and unambiguously that schools have an immediate responsibility to report allegations of child sexual abuse to the police:

All allegations that a teacher or school employee has committed a sexual assault must be reported directly to the Victoria Police SOCA [Sexual Offences and Child Abuse] Unit and the Conduct and Ethics Branch of the Department of Education which deals with serious misconduct. Principals should then follow the procedures outlined in this document.⁸⁸

The Committee considered that the DEECD's procedures for Government schools should be extended to apply to criminal child abuse other than sexual assault and that this procedure should apply to all schools regardless of whether they are a government, independent or Catholic.

One possible solution to this might be to update and modify *Responding to allegations of student sexual assault: Procedures for Victorian government schools 2007* to make them apply to the Catholic and independent school sectors as well. The Committee suggests that consultations be undertaken between DEECD, the CEOM and Independent Schools Victoria as well as other non-government schools not represented by the latter two peak bodies.

Finding 16.4

Catholic and independent schools are not expected to meet the same requirements as government schools in responding to suspected sexual assault of children and there is no clear guidance for any schools regarding other forms of criminal abuse.

→ Recommendation 16.1

That the Victorian Government review the current Department of Education and Early Childhood Development (DEECD) procedures for responding to allegations of all forms of criminal child abuse within all Victorian schools and identifies a benchmark that could be applied more broadly to non-government schools.

87 Department of Education (2007) *Responding to allegations of student sexual assault. Procedures for Victorian Government schools*. Melbourne, Student Wellbeing and Support Division, Office of Government School Education.

88 Department of Education (2007) *Responding to allegations of student sexual assault. Procedures for Victorian Government schools*, p. 11.

16.2.2. Organisations that operate services in unregulated sectors

The Committee determined that many organisations that operate services that are not subject to government regulation nevertheless include reporting to police in their processes for responding to allegations of criminal child abuse.⁸⁹

Scouts Victoria, for example, told the Inquiry it has a zero tolerance policy that requires it to report all allegations of inappropriate conduct to police:

Our policy has always been that if there is an allegation of inappropriate behaviour, even if it is not criminal behaviour, it will be reported to the police and the person will be suspended.⁹⁰

Its *Child protection—reporting policy*, dated March 2013, specifies:

Scouts Victoria has zero tolerance for abuse of any form towards children and youth members.⁹¹

However, its *Inappropriate conduct or behaviour policy*, dated August 2011, is less clear about reporting to police, stating:

If the allegation is of a nature that could be a breach of criminal law, the person reporting it should be encouraged to also report the matter to the Victoria Police. This would not necessarily preclude a Scout's investigation being conducted in regard to possible breaches of the Code of Conduct.

The Catholic Church Towards Healing guidance states that personnel should refer allegations to police, but are not required to reveal the victim's details if the victim does not wish to take the allegation to police:

In the case of an alleged criminal offence, if the complainant does not want to take the matter to the police, all church personnel should nonetheless pass details of the complaint to the Director of Professional Standards, who should provide information to the police other than giving those details that could lead to the identification of the complainant.⁹²

Although not stated in the policy, the Committee considers this approach may be more relevant to New South Wales where mandatory reporting to police has been introduced. The preceding paragraph, suggests that where reporting to police is not mandatory, reluctance by a victim to report to police may merely result in this being noted and certified by the victim:

in all cases other than those in which reporting is mandatory, if the complainant

89 For example refer to *Submission S155*, Buddhist Council of Victoria Inc., p. 6; *Submission S233A*, Jewish Community Council of Victoria (JCCV), p. 3; Jesuit Social Services (2012) *Policy and Procedure. Participants feedback and complaints* p. 8., Section 2.6; Anglican Diocese of Melbourne (2010) *Power and trust in the church. A protocol under the Professional Standards Act 2009 for responding to abuse harassment and other misconduct within the church*. Canterbury, Anglican Diocese of Melbourne, p. 17; Australian Sports Commission (2013, version 7) *Member protection policy template for national sporting organisations*. Bruce ACT, Australian Sports Commission, p. 38.

90 *Transcript of evidence*, Scouts Victoria, Melbourne, 11 April 2013, p. 12. The Committee notes a list provided by Scouts Victoria indicates not all complaints were reported to police, however this was clarified during their testimony as being instances where a report to police could not be confirmed.

91 *Submission S200A*, Scouts Australia (Victoria), p. 1, attachment 4.

92 Australian Catholic Bishop Conference and Catholic Religious Australia (January 2010) *Towards Healing. Principles and procedures in responding to complaints of abuse against personnel of the Catholic Church in Australia.*, p. 18.

indicates an intention not to take the matter to the police, this shall be recorded and confirmed by the signature of the complainant.⁹³

The Committee found that most policies do not make it clear that all staff have a responsibility to report allegations of criminal child abuse to police and some suggest that the onus is on victims to do so. Many of the policies and procedures it reviewed did not specify at what stage in the process the police report should be made, or define what constitutes a timely report.⁹⁴

Although St Luke's Anglicare uses the DHS critical incident reporting for its DHS regulated out-of-home care services, it also operates services in unregulated sectors. St Luke's Anglicare advised the Inquiry that for clients involved with the organisation who are not and have not previously been in care, it uses its general concerns and complaints guidelines. This process does not refer to police reporting. Similarly, the St Luke's Anglicare flowchart for clients, which illustrates how concerns or complaints will be handled, makes no reference to reporting allegations of criminal behaviour to the police.

While the guidelines do not refer specifically to police reporting, in response to queries regarding its processes, St Luke's Anglicare advised in correspondence to the Inquiry:

This guideline directs our process and does not preclude the need to report significant allegations of abuse or criminal activity to Police. This decision is made at a senior level within the agency and guided by an assessment of the alleged criminal nature of the complaint.⁹⁵

In its correspondence, St Luke's acknowledged that its policies do not clearly describe the 'range of pathways required for dealing with complaints/allegations in a manner determined by the funding stream of the program.' It undertook to address this complexity by ensuring that its revised policy and procedural guidelines 'reflect the departmental expectations in relation to this practice.'⁹⁶

These examples highlight the lack of consistency of organisational guidelines for reporting criminal child abuse to police.

The response process of the Catholic Archdiocese of Melbourne does not provide clear direction regarding the reporting of allegations to police. In its 2011 code of conduct, *May our children flourish*, Paragraph 100 states that 'nothing in this Code of Conduct restricts the right of any person to report any matter to the police or other authorities.' This clause is repeated in the corner of a flowchart that states that 'nothing in this document affects the right of any person to report a matter to police or other authorities.'⁹⁷ The flowchart is shown in Figure 16.1.

Further, Paragraph 108 states:

93 Australian Catholic Bishop Conference and Catholic Religious Australia (January 2010) *Towards Healing. Principles and procedures in responding to complaints of abuse against personnel of the Catholic Church in Australia.*, p. 18.

94 For example refer to Primate of the Greek Orthodox Church in Australia (2013) *Child protection policy*. Accessed on 5 September 2013 from <http://www.greekorthodox.org.au>.

95 *Supplementary evidence*, Client concerns and complaint guidelines, St Luke's Anglicare, 28 March 2013.

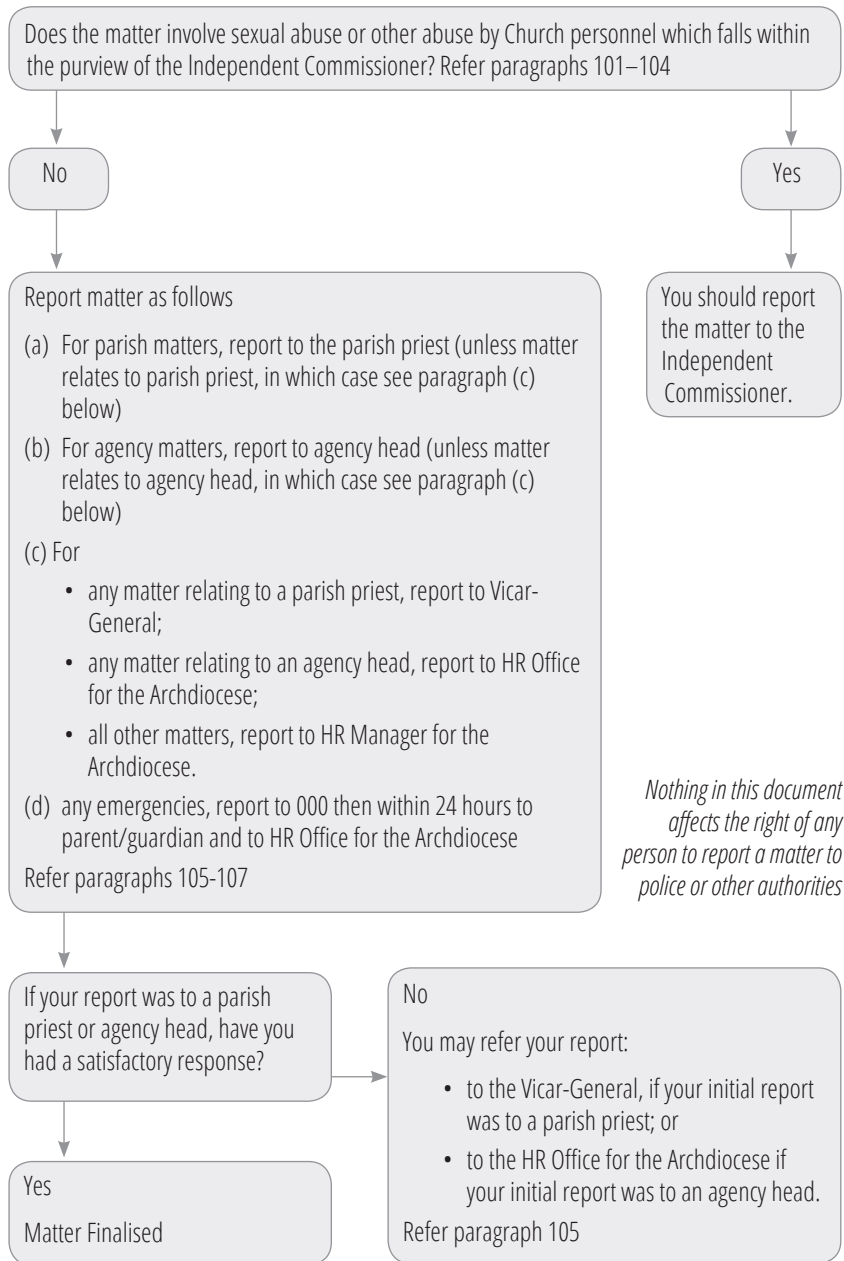
96 *Supplementary evidence*, Client concerns and complaint guidelines, St Luke's Anglicare, 28 March 2013.

97 *Submission S185*, Catholic Church in Victoria. Appendix 12, p. 18.

In some cases, it may be necessary to inform relevant authorities or others within the Catholic Archdiocese of Melbourne or the person to whom the report relates. Depending on the nature of the allegation it may be necessary to:

- (i) Inform the police, if the behaviour is or might be criminal;
- (ii) Consider whether a mandatory report must be made to the DHS under the CYF Act;
- (iii) Make or refer a report to the Independent Commissioner.⁹⁸

Figure 16.1: Catholic Archdiocese of Melbourne: May our children flourish—Flow chart for reporting breaches of this Code of Conduct.



Source: *Submission S185*, Catholic Church in Victoria, Appendix 12.

98 Catholic Archdiocese of Melbourne (2011) *May our children flourish: code of conduct for caring for children*, p. 17.

Although Paragraph 108 states that it may be necessary in some circumstances to inform the police, the process does not state that the Catholic Archdiocese of Melbourne is under an obligation to report allegations of criminal child abuse to police. Implicitly, the responsibility is placed on the victim to report to police instead.

The Committee reviewed the Anglican Church policy and found that it contains detailed provisions in regard to reporting allegations to police. In its 'statement of basic principles', the current protocol, *Power and trust in the Church* outlines that:

Where allegations of abuse involve behaviour that may constitute a criminal offence, we will support complainants if they decide to report those matters to the Police and will report serious criminal offences ourselves.⁹⁹

In addition, at paragraph 20.2 it states that:

The Director must notify the Police if the conduct disclosed may constitute an offence whether committed in or outside Victoria that is an indictable offence against a law of the Commonwealth or any jurisdiction in Australia punishable by imprisonment for not less than five years (whether or not the offence is or may be dealt with summarily).¹⁰⁰

And at paragraph 20.3:

The Director may notify the Police if the conduct disclosed may constitute any other criminal offence.¹⁰¹

However, a review of the Anglican Diocese of Melbourne files revealed that the Diocese's approach to the issue of police reporting was flexible and inconsistent. The Director of Professional Standards gave encouragement and assistance to those who wished to report, and acquiesced with the wishes of those who did not want to report. Consideration was given to reporting without complainants' consent, but ultimately this did not occur. The evidence suggested that the Diocese did not encourage complainants to report when they had already done so to no avail. There was evidence that the Diocese sometimes made an internal decision not to report a matter. Also, there were a substantial number of cases where there was no evidence that the issue of reporting had been considered.¹⁰²

The Committee was concerned by the approach that it is the responsibility of victims to report to police. It recognised that the position may be different in some organisations, depending on whether the allegation is current or relates to abuse that occurred in the past. That is, the organisation reports contemporary allegations to police, but it expects adults who were abused as children to decide whether to make a report.¹⁰³ Captain Malcolm Roberts, Territorial Legal Secretary of the Salvation Army, told the Committee that:

99 Anglican Diocese of Melbourne (2010) *Power and trust in the church. A protocol under the Professional Standards Act 2009 for responding to abuse harassment and other misconduct within the church*, p. 4.

100 Anglican Diocese of Melbourne (2010) *Power and trust in the church. A protocol under the Professional Standards Act 2009 for responding to abuse harassment and other misconduct within the church*, p. 17.

101 Anglican Diocese of Melbourne (2010) *Power and trust in the church. A protocol under the Professional Standards Act 2009 for responding to abuse harassment and other misconduct within the church*, p. 17.

102 See Appendix 9 for further details.

103 For example refer to Berry Street (2012) *Complaints—adult care leavers policy*. Richmond, Berry Street, p. 5.

Our view about that [the reporting of criminal child abuse by adult victims] is that when people are adults, those adults should have the responsibility of reporting to the police. It does not help if we report to the police when they [the victim] do not want to. It does not help if we report to the police and they choose not to proceed, so the police are left without any evidence. People should report child abuse to the police, especially when they are adults. Even if these things occurred 25, 30 or 40 years, they should report them to the police, and we would do everything to encourage them to do it, but it is not our responsibility. How we deal with the person who they have made allegations against, that is another question.¹⁰⁴

The Victorian Conference of the Seventh Day Adventists explained its perspective that a ‘one size fits all approach’ to reporting may not be appropriate:

Every effort is made to report all allegations of abuse, assault and neglect. However, it is worth highlighting that these issues are often laden with moral and ethical quandaries and a ‘one size fits all approach’ does not translate into what may be ‘best practice’.

The church recognises that there may be times that the pain and consequences for the victim to go to the police may frequently lead to the victim’s reluctance to report the abuse. At these times there may also be a concomitant constraint upon the church to abide by the wishes of the victim. For example, if the ‘child’ is now an adult and expressly states that they do not want the alleged abuse reported, and the person alleged to have committed the abuse was deceased, perhaps it may not be reported, as an investigation would (in all likelihood) be unable to be progressed.¹⁰⁵

The Committee takes the view that organisations have a duty to report allegations of criminal child abuse in the organisation to police, whether they be contemporary allegations or reports of abuse that occurred in the past. The issue of allegations of past abuse is discussed in detail in Part F and G. Recommendation 23.1 in Part G addresses the need for compulsory reporting to police of allegations of criminal child abuse.

Finding 16.5

A number of policies used by organisations that provide services in unregulated sectors do not make it clear that all staff have a responsibility to report allegations of criminal child abuse to police, and some policies suggest that the onus is on victims to do so.

16.3. Reporting allegations of criminal child abuse to other authorities

Although the Committee is strongly of the view that all allegations of criminal child abuse must be reported to police, it acknowledges that other relevant authorities may also require notification. In particular, this relates to government departments that contract non-government organisations to deliver services on its behalf and have a duty of care to clients in those services.

¹⁰⁴ *Transcript of evidence*, Salvation Army, Melbourne, 11 April 2013, p. 11.

¹⁰⁵ *Submission S258*, Victorian Conference of the Seventh-day Adventist Church, p. 45.

16.3.1. Organisations that operate services in regulated sectors

Critical incident reporting to DHS

In Victoria, funded non-government organisations that deliver out-of-home care and other DHS services are subject to service agreements and are required to comply with critical incident reporting requirements. The Secretary of DHS, Ms Gill Callister, explained to the Inquiry:

It is extremely important in such a dispersed system that cares for children across Victoria in multiple ways that we actively seek to have a process that responds to any concerns about children in care.¹⁰⁶

Ms Callister explained that funded non-government organisations that fail to meet the critical incident reporting requirements are in breach of their service agreements with the Victorian Government.¹⁰⁷

The DHS *Critical incident instruction* identifies three levels of incidents that apply to allegations of assaults in out-of-home care services and other DHS funded services (outlined in Table 16.1). Category One incidents are the most serious and require an urgent response. When an agency receives a report about an alleged assault, it is required to categorise the incident and ensure a report is made to DHS. The *Critical incident instruction* states that ‘it is expected that senior staff will use their judgement in considering the sensitivity and appropriate grading of incidents being reported.’¹⁰⁸

Table 16.1: Classifying allegations of assault as critical incidents

Category	Type of alleged assault
Category One	Sexual <ul style="list-style-type: none"> • rape of or by a client • rape or indecent assault by a staff member or volunteer carer • production of child pornography by a client, staff member or volunteer. Physical <ul style="list-style-type: none"> • physical assault of a client by a staff member or volunteer carer • physical assault of or by a client resulting in medical attention being required for the victim (for example, stitches, surgery, setting of a fracture) • physical assault of or by a client involving a weapon such as a knife, hammer or other object.
Category Two	Sexualised play of a concerning nature by a client. Physical assault of or by a client resulting in first aid being required for the victim (this does not include the assault of a client by a staff member).
Category Three	Shoving or pushing by a client that does not cause injury.

Source: Victorian Government (2005) Responding to allegations of physical or sexual assault. Melbourne, Department of Human Services, p.21.

106 *Transcript of evidence*, Department of Human Services, Melbourne, 22 October 2012, p. 4.

107 *Transcript of evidence*, Department of Human Services, p. 4.

108 Department of Human Services (2011) *Critical client incident management instruction*, p. 20.

Any physical or sexual assault of a child allegedly perpetrated by a staff member against a client is a Category One incident according to the *Critical incident instruction*:

Allegations of assault of a client by a staff member, volunteer carer or member of the carer's household must be reported as a Category One incident regardless of whether medical attention is required and regardless of the type of assault alleged (for example, alleged rape or indecent assault).¹⁰⁹

The *Critical incident instruction* also provides clarification on how to identify assault, making it clear, for example, that sexual assault includes a broad range of behaviours, including those that do not involve touching:

Sexual assault includes rape, assault with intent to rape and indecent assault. An indecent assault is an assault that is accompanied by circumstances of indecency. Examples are unwelcome kissing or touching in the area of a person's breasts, buttocks or genitals. Indecent assault can also include behaviour that does not involve actual touching, such as forcing someone to watch pornography or masturbation.¹¹⁰

Despite extensive and detailed guidance on how to report incidents to DHS, the Committee found that in practice non-government organisations can experience challenges assessing allegations of assault and determining what category to apply as part of the DHS critical incident reporting. For example, in a one-month period MacKillop Family Services incorrectly categorised three incidents of staff-to-client assault. These were initially reported as Category Two incidents, requiring a less immediate response. DHS subsequently identified that these should have been categorised as Category One incidents and reported to police as soon as practicable. The Committee suggests that this highlights the need for increased education, assistance and skill-building among personnel in organisations. While organisations might have written processes, personnel need the knowledge and skills to effectively implement them.¹¹¹

The Committee also found that several organisations funded by DHS refer to the policy guidelines provided by DHS, yet do not stipulate the process for reporting incidents to DHS clearly in their own internal policies. An example of this approach is St Luke's Anglicare.¹¹²

Different processes for different clients

The Committee identified that some services have a number of different requirements for reporting incidents. It noted that large organisations that provide multiple services may have different processes for assessing or responding to allegations of suspected child abuse depending on whether those services are government funded and depending on which department the funding is received from.

For example, St Luke's Anglicare, in its response to the Committee's request for information, explained that its processes for handling allegations of child abuse differ depending on who the client is and which government department funds the program. St Luke's Anglicare reports incidents to DHS and the Department of Health

¹⁰⁹ Department of Human Services (2011) *Critical client incident management instruction*, p. 23.

¹¹⁰ Department of Human Services (2011) *Critical client incident management instruction*, p. 23.

¹¹¹ *Supplementary evidence*, Response to request for information, Department of Human Services, 17 June 2013, p.3.

¹¹² *Supplementary evidence*, Client concerns and complaint guidelines, St Luke's Anglicare, 28 March 2013.

but has different processes for each department. In addition, DHS reporting varies depending on whether the client uses St Luke's Anglicare's disability services or its out-of-home care. St Luke's Anglicare informed the Inquiry that:

For all complaints/allegations of abuse relating to the care of young people in Out of Home Care (Foster care or Residential Care), St Luke's is bound by the DHS critical incident reporting guidelines and the Quality of Care guidelines (previously provided) ...

For all complaints/allegations that come from other clients involved now or historically with the agency, who are not in care or had not been previously in care, our process is guided by the St Luke's client concerns and complaints guidelines.¹¹³

Similarly, Berry Street Victoria has separate guidelines for responding to complaints or allegations that relate to out-of-home care and other DHS funded services, and for other service areas, including care leavers.

Anglicare Victoria appears to have tried to make its guidelines apply consistently across all services. It provided policy documents to the Inquiry which stipulate that, in addition to reporting processes for critical incidents in DHS services:

Anglicare Victoria has an expectation that all programs regardless of their funding source report to senior management all critical incidents that occur within programs. This includes Community Programs and Parish Partnerships.¹¹⁴

The Committee considered that this type of variation in reporting processes within the one organisation can make the process for reporting an allegation to the relevant authorities less clear. This highlights the value of creating a consistent process to oversee all organisations and departments, as discussed in Chapter 18.

Government schools and early childhood services—reporting to DEECD and VIT

Under the Joint Protocol,¹¹⁵ Government schools and early childhood service in Victoria are required to report serious incidents to DEECD. As described in Section 16.2.1, serious incidents include 'an allegation of abuse by a proprietor, staff member, family day carer or visitor at a licensed children's service.'¹¹⁶

With respect to Victorian early childhood services, regulatory and enforcement functions are undertaken by the Quality Assessment and Regulation Division of DEECD. DEECD responds to notifications and complaints, grants licences, determines administrative and statutory sanctions and provides advice and guidance to service proprietors and staff on compliance matters.

In relation to Catholic and Independent schools, the Joint Protocol states that matters relating to misconduct of personnel should be referred to the CEOM or in the case of an independent school to the principal/chairperson of the relevant independent school. As described in Section 16.2.1, the Committee found independent schools lacking

113 *Supplementary evidence*, Client concerns and complaint guidelines, St Luke's Anglicare, 28 March 2013.

114 *Submission S146*, Anglicare Victoria, p. 4 Appendix 2.

115 See Section 16.2.1.

116 Department of Human Services Child Protection & Department of Education and Early Childhood Development Licensed Children's Services and Victorian Schools (2010) *Protecting the safety and wellbeing of children and young people: A joint protocol*, p. 25.

in oversight. Although the CEOM has responsibility for oversight of some Catholic schools in Victoria, congregational schools and Catholic schools in other dioceses have their own procedures for responding to allegations of criminal child abuse.

The Victorian Institute of Teaching (VIT) is the registration body for the teaching profession in Victoria. Under the *Education and Training Reform Act 2006* (Vic) (the ETR Act), VIT is authorised to investigate allegations against registered teachers in the government, Catholic and independent sectors.¹¹⁷ VIT has the authority to conduct investigations into:

- complaints of misconduct, serious misconduct, serious incompetence or fitness to teach
- a teacher's conviction or finding of guilt of an indictable offence
- action taken by an employer in relation to serious misconduct, serious incompetence or fitness to teach.

Under the ETR Act, employers are subject to requirements to notify the VIT about actions taken against a teacher that include those that arise from allegations of criminal child abuse. The ETR Act requires employers to inform the VIT of any action taken against a teacher in response to a teacher's misconduct, serious misconduct, serious incompetence or lack of fitness to teach.¹¹⁸ The employer must also immediately notify VIT if it becomes aware that a teacher has been charged, is on trial, or has been found guilty of sexual offences.¹¹⁹

VIT is required to cancel the registration of a teacher if the teacher is convicted or found guilty of a sexual offence (involving a child) in Victoria, or elsewhere.¹²⁰

The Committee identified that the Joint Protocol does not refer to any obligation of employers to inform VIT of allegations of criminal child abuse involving a teacher.

Furthermore, the Committee is aware that there is an agreement between VIT and CEOM that complaints against registered teachers in Catholic schools are to be investigated by the Catholic Education Office. The Catholic Diocese of Ballarat, for example, explained that there is an agreement ensuring that any allegations made against teachers in schools of the Diocese will be investigated by an officer from the Office for Professional Conduct Ethics and Investigations (OPCEI) from the Catholic Education Office Melbourne, in order to ensure that an officer from outside the Diocese investigates the allegation.¹²¹

There is also the obvious limitation that VIT only has jurisdiction over allegations against registered teachers. Its role does not extend to other staff associated with schools.

Finding 16.6

Organisations in regulated sectors have requirements to report critical incidents to a funding or relevant body and can be subject to review if they do not handle allegations of criminal child abuse appropriately.

117 *Education and Training Reform Act 2006* (Vic) s.2.6.30.

118 *Education and Training Reform Act 2006* (Vic) s.S2.6.301.

119 *Education and Training Reform Act 2006* (Vic) s.S2.6.31.

120 *Education and Training Reform Act 2006* (Vic) s.S2.6.29.

121 *Right of Reply*, Catholic Diocese of Ballarat Education.

16.4. Organisations that operate services in unregulated sectors—no guidelines for reporting to authorities

In Victoria, non-government organisations that operate in non-regulated sectors are under no obligation to report allegations of child abuse to any authorities. The Committee sought advice from a number of peak bodies regarding the level of policies in place in their sectors and the degree to which they are implemented by non-government organisations.

Some peak groups explained in evidence to the Inquiry that they were not sure whether all of their member organisations have robust processes in place to manage complaints of organisational child abuse.¹²² For instance, the Islamic Council of Victoria is the peak body for Muslim organisations in Victoria. It represents Victoria's 90,000 Muslims through 47 member and affiliate organisations. The General Manager of the Council, Mr Nail Aykan, stated at a public hearing that the majority of the 47 groups would not have policies or procedures in place to respond to organisational child abuse.¹²³

Vicsport, the peak body for sports organisations, told the Inquiry that sports organisations are likely to have processes in place for responding to reports of suspected child abuse, but the extent to which they are implementing the processes is unclear. Vicsport represents 170 member groups, 16,000 clubs and associations and an estimated 1.8 million participants, workers and volunteers. The CEO of vicsport, Mr Mark McAllion, stated:

For the national sporting organisation to be funded by the Australian Sports Commission they need to have a member protection policy in place. It would be the same at the state level. So for the state sporting associations to receive money from the state government they would need appropriate member protection policies in place. Some sports would mandate the adoption of these policies. The problem is whether clubs are actually implementing the policy. It is a policy that is now on their website and the club has signed up to it, but are they implementing it? That is the challenge at the local level and there is no way we can answer it.¹²⁴

Finding 16.7

Organisations that provide services in unregulated sectors have no overarching requirements or oversight to ensure they report all suspected criminal child abuse to police and relevant authorities and are not subject to any external review of their responses if they do not handle allegations appropriately.

122 Also refer to *Supplementary evidence*, Child protection briefing paper for the Council of Presidents' meeting, Jewish Community Council of Victoria (JCCV), 22 April 2013; *Transcript of evidence*, Australian Camps Association, p. 7.

123 *Transcript of evidence*, Islamic Council of Victoria, Melbourne, 15 April 2013, p. 16.

124 *Transcript of evidence*, vicsport, Melbourne, 12 April 2013, p. 7.

Chapter 17

Internal processes and systemic review

AT A GLANCE

Background

Internal processes must reflect the gravity of finding that criminal child abuse has occurred in an organisation. In some cases, however, there may have been insufficient evidence to establish criminal child abuse, yet there might be sufficient concerns for disciplinary measures to be pursued within the organisation. In addition, organisations can undertake to review gaps in their systems and processes to ensure continuous learning and improvement of policies.

Key findings

- Most organisations have disciplinary processes in place for breaches of their code of conduct, but in practice find it difficult to make the decision to stand personnel aside when they are subject to an allegation of criminal child abuse.
- Few organisations indicated that they undertake systemic reviews of their systems and processes to identify any internal factors that may have contributed to an incident of criminal child abuse, and those that do are often expected to have such processes in place through contractual arrangements with funding bodies.
- Organisations contracted by government to provide out-of-home care services can be subject to external review of their systems and processes if concerns are raised about the quality of care they provide. The education, recreation, religious and other sectors are not subject to any external review of their systems and processes.

The Committee heard about the importance of effective internal processes as part of an organisational response to allegations of criminal child abuse. Internal processes must reflect the gravity of finding that criminal child abuse has occurred in an organisation. In some cases, while there may be insufficient evidence to establish criminal child abuse, there may nevertheless be sufficient concern for disciplinary measures to be adopted within the organisation. As Professor Patrick Parkinson from Sydney University told the Inquiry:

From my research I know how few cases end up in a conviction in child sexual assault matters, and when it is a long time ago there are all sorts of reasons why you cannot get a conviction. So there needs to be in any organisation disciplinary processes which determine whether this person is fit to remain in that employment in a situation where the police have not pressed charges, the person has not gone to the police, the police do not feel there is enough evidence, they have dropped the case or the DPP has dropped the case—there are a whole range of scenarios out there. They cannot just leave them in ministry; they cannot leave them having access to children. The disciplinary aspect is obviously critical to child protection—to today’s child protection.¹²⁵

There is a strong link between internal processes and systemic reviews and prevention. Review processes triggered by allegations of criminal child abuse can be the basis for reducing the situational risk of child abuse discussed in Part D. Investigation by authorities such as the Victorian Institute of Teaching (VIT) and the Department of Human Services’ (DHS) Suitability Panel should feed into the selection of staff and working with children check as discussed in Part D to decrease the risk of unsuitable personnel gaining access to children through non-government organisations.

17.1. Disciplinary processes and suspending staff

The Committee heard that it is important for organisations to consider how to appropriately respond internally to personnel who are the subject of a criminal child abuse allegation. This includes standing personnel down pending investigation and subsequent disciplinary processes.

The Committee found that many religious organisations stipulate that in serious circumstances, such as a potential criminal investigation, a staff member may be restricted in their duties or suspended from duties while the outcomes of an investigation are pending. Anglicare Victoria’s disciplinary policy states:

In some situations while disciplinary action is pending, it is necessary to place temporary restrictions on an employee’s duties, their access to parts of the workplace, their contact with individuals (colleagues, volunteers or clients) or even to require them not to attend work at all, pending the resolution of disciplinary concerns.¹²⁶

Bishop Iakovos of Miletoupolis of the Greek Orthodox Archdiocesan District of Victoria stated that if a minister of religion in the Archdiocese is involved and the matter is assessed as a potential crime, the Archdiocese reports the case to police and suspends the alleged offender from active duty. When the Archdiocese is informed of the outcome of the investigation, it either reinstates or defrocks the minister of religion.

¹²⁵ *Transcript of evidence*, Professor Patrick Parkinson, p. 6.

¹²⁶ *Submission S146*, Anglicare Victoria, p. 3, Appendix 4.

Scouts Victoria provided a sample letter (shown in Box 17.1) to the Inquiry which is used to notify personnel who have been the subject of an allegation. This provides an example of the range of responses that potentially occur if personnel have potentially breached the code of conduct or had an allegation of criminal conduct made against them.

Box 17.1: Scouts Victoria—notification of investigation

Notification of Investigation

Dear

I have been advised that you have acted in a manner, which if proven to be true, could be a breach of the Scouting Code of Conduct. It is alleged that on (date and time) at (place) whilst involved in (outline Scouting activity) as a (role at the time) you (outline of conduct or behaviour).

I have appointed (name of person) to investigate this matter and you will have the opportunity to speak with that person to explain your understanding of the circumstances and if you wish have a support present at the time. I will keep you informed of the progress of the investigation.

Until the investigation is completed you are to:*

- Remain in your current role;
- Be temporarily placed in another role; or
- Be stood down from Scouting duties.

(* insert as appropriate)

If you have any questions on this matter at any time please contact me on (Telephone Number).

Yours in Scouting

Source: Scouts Victoria, *Submission S200*, p.5, Appendix 1.

While some organisations have comprehensive policies on standing down their staff pending an investigation of an allegation of child abuse, not all organisations have a policy of ensuring action is taken to suspend personnel from their duties.

In an analysis of four months of Category One incident reports in children, youth and family services funded by the DHS, the Committee identified that, on average, only 18 per cent of staff were stood down pending an investigation into an allegation of staff to client assault.¹²⁷ This might mean that organisations need a greater understanding to ensure they take appropriate action in suspending personnel from their duties until the outcomes of any investigations are determined.

The Centre for Excellence in Child and Family Welfare highlighted the complexity of organisational decision-making in response to allegations of child abuse particularly with regard to responding to personnel in an organisation:

Some organisational members have expressed concern about the difficulties of balancing the need to ensure the child's safety and integrity of their voice and unimpeded investigation with the community service organisation's obligations as an employer to ensure transparent and respectful processes for the employee:

¹²⁷ *Supplementary evidence*, Response to request for information, Department of Human Services, 17 June 2013.

such as when required to stand down staff pending an investigation. This places the community services organisation in a position of conflicting responsibilities when a Police investigation cannot be actioned or concluded in a timely way. Some community organisations have expressed concern about the loss of experienced staff or carers in the context of allegations subsequently not substantiated.¹²⁸

The Committee heard that following a review of misconduct or an investigation into an allegation of criminal child abuse, the possible outcomes for personnel in non-government organisations include:

- No further action—the behaviours or complaint are unfounded and there is no evidence of risk or harm to children.
- Ongoing monitoring or performance review—if concern is warranted the basis will need to be outlined to the person who is the subject of the allegation, the organisation’s expectation should be clearly stated and a review period put in place. Ongoing supervision and performance management will be required.
- Disciplinary procedures—if concern is warranted a range of disciplinary procedures may be activated. If there is any risk or threat to children in the organisation, the organisation should suspend the person immediately.
- If the investigation shows no basis for concern, the organisation needs to take care if or when the person returns to work.¹²⁹

The Committee heard examples where no disciplinary action had taken place, despite significant evidence of concerning conduct or substantiated allegations of criminal child abuse. This is discussed in more detail in Chapter 7 of Part C and in Chapter 21 of Part F.

Finding 17.1

Most organisations have disciplinary processes in place for breaches of their code of conduct, but in practice find it difficult to make the decision to stand personnel aside when they are subject to an allegation of criminal child abuse.

17.2. Continuous learning and identifying systemic problems

When an organisation receives a report of suspected criminal child abuse, it is important that it reviews any gaps in its systems and processes that might have enabled the abuse to occur. This type of review contributes to continuous learning and improvement of policies and procedures in the organisation.

This process of systemic review is encouraged by the Government for organisations it contracts to provide services. For example, in its instructions to community service organisations in managing critical incidents, the Victorian Department of Human Services states that:

Where there is organisational learning and change the safety and quality of services to clients will improve ...

¹²⁸ *Submission S327*, Centre for Excellence in Child and Family Welfare, p. 9.

¹²⁹ Childwise (2004) *Choose with care: A handbook to build safer organisations for children*. South Melbourne, Childwise, pp. 118–19.

Incidents should be systematically analysed and ongoing change implemented in order to prevent similar events from occurring.¹³⁰

The DHS instructions recommend exploring the source of a problem and suggesting productive solutions in the form of preventive system changes. DHS focuses on systems and processes, not individual performance.

Most organisations, however, are not expected to undertake such reviews of their processes. The onus rests with them to take the initiative in any circumstances in which criminal child abuse is suspected in their organisation.

The Committee noted that very few organisations undertake systemic reviews. Those that do undertake reviews tend to be the larger community-sector organisations that are funded by DHS and are required to integrate systemic improvement into their processes for responding to allegations of child abuse.

In this context, the Committee noted that some agencies funded by DHS indicated they have processes for systemic improvement. For example, Anglicare has a policy of compiling a monthly summary of incident reports, in order to identify patterns. McKillop Family Services also uses monthly data for continuous improvement and has a detailed flow chart explaining how this works. St Luke's Anglicare uses incident reporting data to inform practice improvements. In its *Client concerns and complaints guidelines*, it notes 'Because St Luke's is committed to the communities, individuals and families that it services, as well as continuous improvement, the Agency is open to receiving complaints and concerns to help improve its service delivery.'¹³¹

Similarly, Berry Street Victoria advised the Inquiry that:

With each instance of complaint being received and investigated Berry Street learns more. More about our own history, about our failures and successes, about the adult lives of children we have cared for and more about resilience, determination and dignity of people that have suffered abuse or maltreatment. This is the gift that complaints give to Berry Street when they have the courage to raise painful issues of childhood abuse and neglect. Our part is to treat people with respect and dignity and provide full and fair reparation commensurate with any harm that has occurred.¹³²

The Committee observed that many organisations do not integrate systemic review into their processes for responding to allegations of child abuse. Some organisations do not regard allegations or complaints as an opportunity to learn. For example, Captain Malcolm Roberts, Territorial Legal Secretary of the Salvation Army, said:

The claims we are dealing with, they started to arise since the 1990s, and we have been dealing with those. When you deal with those and you look back, you can say yes, there was abuse and at various times in those various homes there was lots of abuse and people were really, really badly treated. The Salvation Army has not conducted a review or an investigation into what actually went on in those homes because it was 20, 30, 40 years ago. Most of the people who could give us any guidance around what happened in those homes are dead. It is not possible to make an investigation into what happened at Box Hill Boys' Home in 1950 or 1960.¹³³

130 Department of Human Services (2011) *Critical client incident management instruction*, p. 26.

131 *Supplementary evidence*, Client concerns and complaint guidelines, St Luke's Anglicare, 28 March 2013, p.3.

132 *Submission S262*, Berry Street, p. 11.

133 *Transcript of evidence*, Salvation Army, p. 11.

Similarly, Fr Greg Chambers, Provincial of the Salesians of Don Bosco, stated:

I would have to say that we have not conducted our own particular inquiry. However, we have assiduously followed up on each and every claim that has come to our attention either through Towards Healing or with the involvement of the police, involvement of the lawyers or involvement of the courts. And whilst we have not conducted our own internal study, we have been assiduous in following up all claims and trying to bring perpetrators to justice and to give proper compensation in every respect to the victims.¹³⁴

The Committee notes that internal processes are likely to be different when an organisation receives an allegation about past child abuse. This is because the person against whom an allegation is made may no longer be an employee, there may be few witnesses and there may be few remaining records from the time of the allegation. However, it is the Committee's view that systemic investigations remain an important element of an organisation's response in such situations.

The Committee considers it important that organisations undertake regular systemic reviews following any allegations of child abuse by their personnel. These may help to identify and address any underlying systemic problems and prevent child abuse from happening in the future.

Finding 17.2

Few organisations indicated that they undertake systemic reviews of their systems and processes to identify any internal factors that may have contributed to an incident of criminal child abuse, and those that do are often expected to have such processes in place through contractual arrangements with funding bodies.

17.3. Systemic oversight

The Committee did not identify any peak industry or professional bodies in Victoria that have responsibility for systemic oversight of organisations that operate services in non-regulated sectors.

In the education sector, the Committee is not aware of DEECD or VIT undertaking systemic reviews of allegations in schools and early childhood services in their capacity as oversight bodies.

For organisations funded to provide out-of-home care services, DHS has specific processes for conducting investigations concerning quality of care and suitability of carers.¹³⁵ This is in order to ensure that DHS is satisfied with the performance of the contracted organisations and can identify and request improvements for an organisation to continue to be eligible for ongoing funding.

The Committee identified that a body with responsibility for systemic reviews across all sectors is needed that is able to liaise with peak organisations and regulatory bodies and police.

¹³⁴ *Transcript of evidence*, Salesians of Don Bosco, Melbourne, 29 April 2013, p. 3.

¹³⁵ Department of Human Services (2009) *Guidelines for responding to quality of care concerns in out-of-home care*, p. 48.

Quality of care review

Responding to quality-of-care concerns is a joint responsibility of DHS and community service agencies. The aim is to act in the best interests of all children and young people in out-of-home care and also to satisfy DHS that the organisation it has contracted should continue to be funded to provide the service.¹³⁶ In instances of abuse or those involving quality-of-care concerns in community service organisations, DHS undertakes a departmental quality-of-care/support review. Figure 17.1 illustrates the process for responding to allegations relating to quality of care.

DHS has operated under documented processes for decision making, investigation and formal care reviews since November 2007. These include procedures for managing quality-of-care concerns in all out-of-home care placements, including foster care, lead tenant, residential care and kinship care.

Suitability Panel

The Suitability Panel is a statutory body created under the *Children, Youth and Families Act 2005* (Vic). Its function is:

- (a) to hear any matter referred to it by the Secretary
- (b) to determine whether or not a person should be disqualified from being placed on the register of out of home carers.¹³⁷

On the balance of probabilities, the Suitability Panel has a role in determining whether or not the allegation of physical or sexual abuse is proved. If it finds that the alleged abuse occurred it:

... will make a finding of misconduct and will then decide on the balance of probabilities whether the person poses an unacceptable risk of harm to children.

If the Panel finds that a person poses an unacceptable risk to children, the Panel must find that the person be disqualified as a carer.¹³⁸

The Suitability Panel is chaired by a legal practitioner appointed by the Victorian Government on a three-year basis. It generally comprises people with qualifications and experience in law, social work, psychology and the treatment of sex offenders.

Since 2007 the Suitability Panel has considered 69 matters referred to authorised investigators for investigation. Twenty-five of those have been referred to the Suitability Panel, which has disqualified or placed five carers on a 'negative register'. This prevents them from working in child-related employment in the community service sector and revokes their Working with Children Check card.

DHS told the Inquiry that as part of a broader departmental project examining responses to vulnerable client groups, it was considering the applicability of the *Guidelines for responding to quality of care concerns in out-of-home care*. This included

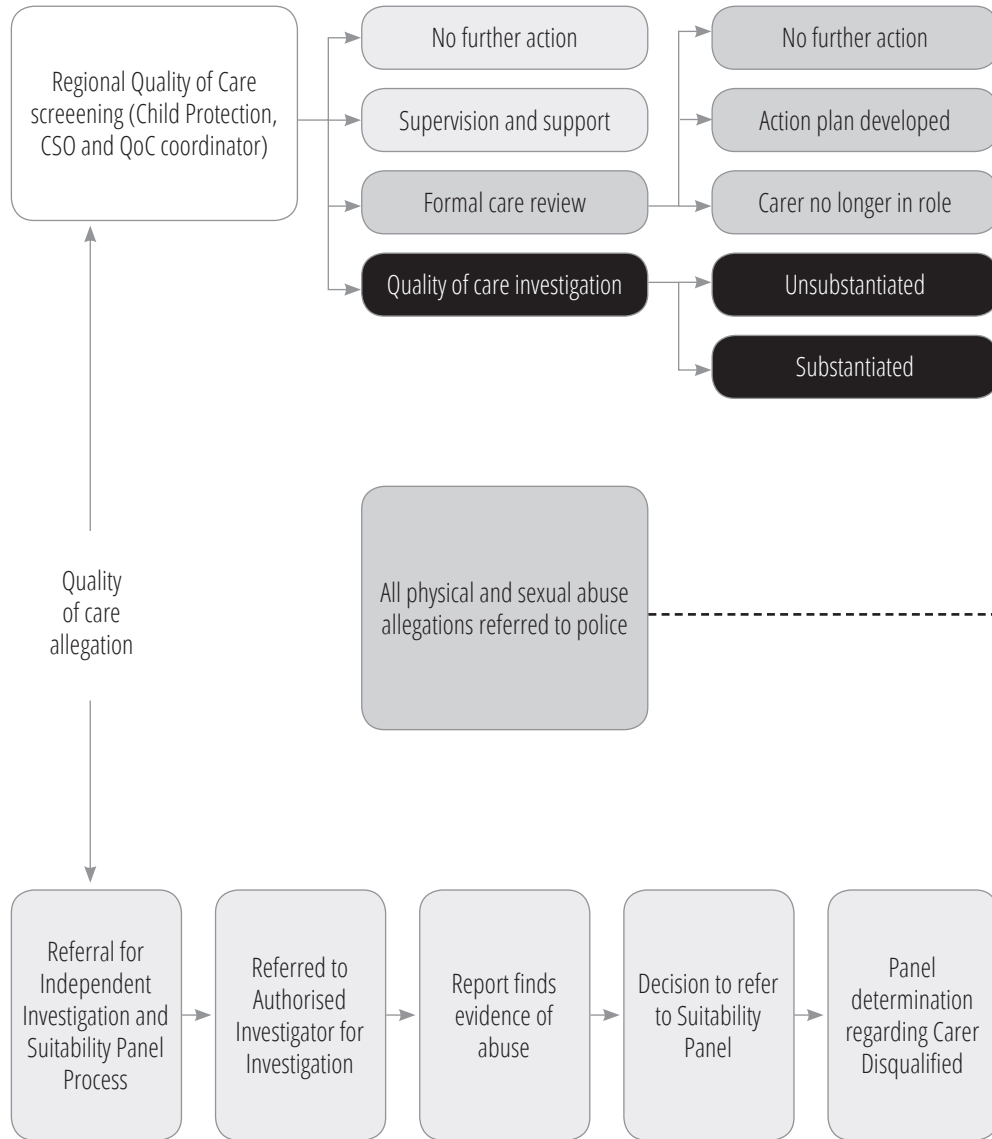
136 The guidelines were developed in consultation with the Centre for Excellence in Child and Family Welfare, the Foster Care Association of Victoria, representatives from Community Service Organisations providing out-of-home care, Aboriginal Community Controlled Organisations providing out-of-home care, the Office of the Child Safety Commissioner, CREATE Foundation and the Department of Human Services.

137 *Children, Youth and Families Act 2005* (Vic) s.101.

138 Suitability Panel Overview. Accessed on 18 October 2013 from <http://www.suitabilitypanel.vic.gov.au/index.htm>.

the roles of the carer register, independent investigation and the Suitability Panel in overseeing out-of-home care funded by Disability Services.¹³⁹

Figure 17.1: Quality of care review: Process for responding to allegations relating to quality of kinship, foster and residential care



Source: Department of Human Services, *Presentation*, Supplementary evidence received 22 October 2012.

Finding 17.3

Organisations contracted by government to provide out-of-home care services can be subject to external review of their systems and processes if concerns are raised about the quality of care they provide. The education, recreation, religious and other sectors are not subject to any external review of their systems and processes.

¹³⁹ *Supplementary evidence*, *Presentation*, Department of Human Services, 22 October 2012.

Chapter 18

Improving monitoring, oversight and capacity building regarding reports of child abuse

AT A GLANCE

Background

Many organisations indicated that they would welcome assistance and guidance in implementing appropriate preventative and responsive policies relating to criminal child abuse. There is no current independent oversight of the systems and processes used by non-government organisations in Victoria for handling allegations of such abuse. The Committee considered the model that operates in New South Wales to oversee and build the skills and knowledge of organisations.

Key findings

- There is a need for independent scrutiny of the systems and processes organisations have in place for preventing and responding to allegations of criminal child abuse and ensuring the safety of children.
- Many organisations are seeking guidance in developing the skills and knowledge necessary to respond appropriately to allegations of criminal abuse and to report to police and other authorities.
- The New South Wales Ombudsman has a system for independently scrutinising and monitoring the systems and processes of organisations in the handling of allegations of criminal child abuse. The model also provides training and assistance to personnel in building their knowledge and skills in managing allegations of criminal child abuse and has resulted in improvements in the systems and processes of organisations in NSW.

Recommendations

- That the Victorian Government authorise an independent statutory body with relevant investigatory powers and legal and operational resources to:
 - ♦ oversee and monitor the handling of allegations of child abuse by relevant government departments, religious and non-government organisations
 - ♦ undertake independent investigations into systems and processes in the context of allegations of reportable conduct and/or reportable convictions
 - ♦ scrutinise and audit the systems and processes in non-government organisations for handling allegations of child abuse
 - ♦ monitor and report on trends associated with allegations by collecting relevant data and report to Parliament on an annual basis
 - ♦ build the skills and knowledge of personnel in relevant government departments, religious and non-government organisations to ensure they have the capacity to competently handle allegations of suspected child abuse.

The Committee found that the systems and processes in place for responding to any suspected child abuse in organisations vary significantly across organisations and sectors. There were some inconsistent, complex and narrowly targeted approaches. Furthermore, organisations vary in how they move through each stage of the process. Organisations find particular stages of the process challenging, such as the initial assessment of an allegation and how to respond and report.

While these inadequacies in the approaches of non-government organisations may only be a consequence of inexperience and lack of knowledge, they can have significant implications for the safety of children.

The Committee identified that some organisations are seeking support and guidance in their assessment of and response to allegations of any suspected child abuse. In addition to the opportunity to build their skills and knowledge, organisations want ready access to technical advice from a body with the relevant investigatory expertise to assist in them to respond appropriately to allegations.

The Committee found that in order to improve responses by organisations to allegations of criminal child abuse, there needs to be a more coordinated system for monitoring and scrutinising existing systems and processes. Such a system would include:

- independent scrutiny of organisations when concerns arise regarding the handling of reported child abuse
- capacity-building for organisations in assessing allegations and in their initial response
- identifying patterns and trends across organisations and sectors.

The Committee considered approaches recommended to the Inquiry, including the NSW Ombudsman system.

18.1. Need for independent monitoring and oversight in Victoria

Many witnesses recommended stronger oversight and scrutiny of the systems and processes of organisations. For example, the CEO of the Australian Childhood Foundation, Dr Joe Tucci, stated that:

I do not think that currently in Victoria we have a tight enough regime of ensuring that organisation policies and procedures can protect children from their own staff and volunteers within those organisations ...

Child abuse is a problem that happens behind closed doors. To fight it, you need to open those doors and enable people to scrutinise the systems that are in place to protect children. In order to do that, you really need systems that have at their heart things like auditing processes and that have policies that can be matched against standards and independent scrutiny of approaches that organisations take.¹⁴⁰

Throughout the Inquiry, the Committee heard a consistent theme in respect of organisational responses to both current and historical allegations—the need for independent scrutiny of the systems and processes that organisations have in place for responding to reported criminal child abuse. The issue of independent scrutiny of the handling of allegations relating to past criminal child abuse is considered in Chapter 21 of Part F.

¹⁴⁰ *Transcript of evidence*, Australian Childhood Foundation, Melbourne, 9 November 2012, p. 4.

Ms Dianne Hadden, for example, identified the need ‘to oversight the issue of the practices, policies and protocols in religious and non-government organisations in relation to how children are treated and how any complaints about their treatment are handled.’¹⁴¹ As stated by Ms Joumanah El Matrah, Director of Australian Women’s Centre for Human Rights:

it is the government that legislates on what is legal and illegal behaviour; therefore they should have the power to monitor everything that is done to eradicate that behaviour.¹⁴²

Independent oversight is important in ensuring that people in positions of power are not immune from scrutiny. Ms Caroline Worth of South Eastern Centre Against Sexual Assault (CASA), for example, commented:

I think there has to be an oversight in some way of a non-involved organisation because one of the things is that, unwittingly, people protect very powerful men—not invariably men, it is women occasionally. I think the systems are set up to do that. You do not get into senior positions without people owing you favours. I think that is the reality of this world. And once you get there you can call in the odd favour, and that is what people do. It is just how everything seems to work. I think you need an outside oversight.¹⁴³

The evidence of some witnesses about their experience in bringing child abuse allegations to light in an organisation provides a strong case for independent oversight. They told of their disappointment that organisations did not appropriately act on their disclosures and some explained that they had felt unsupported and victimised themselves. Their stories suggested there was no avenue to appeal decisions in some organisations or to have them reviewed.¹⁴⁴ In its review of the Catholic Education Office Melbourne (CEOM) procedures, for example the Committee did not identify an appeal process.

Oversight in relation to religious organisations was called for by many witnesses to the Inquiry. Professor Parkinson, for example, stated that ‘there should be independent audits of diocesan and religious institute responses in the future.’¹⁴⁵ This was echoed by Mr Michael Holcroft, President of the Law Institute of Victoria, who stated:

we would support an oversight body to oversee the internal complaints processes of religious organisations and possibly to receive direct complaints and mediate those complaints in accordance with restorative justice principles.¹⁴⁶

Finding 18.1

There is a need for independent scrutiny of the systems and processes organisations have in place for preventing and responding to allegations of criminal child abuse and ensuring the safety of children.

141 *Transcript of evidence*, Ms Dianne Hadden, Ballarat, 28 February 2013, p. 2.

142 *Transcript of evidence*, Australian Muslim Women’s Centre for Human Rights, Melbourne, 22 April 2013, p. 4.

143 *Transcript of evidence*, Centres Against Sexual Assault, Melbourne, 9 November 2012, pp. 5–6.

144 *Transcript of evidence*, Ms Carmel Rafferty; *Transcript of evidence*, Mr Graeme Sleeman; *Transcript of evidence*, Mr Michael Crowe, Ballarat, 28 February 2013.

145 *Transcript of evidence*, Professor Patrick Parkinson, p. 8.

146 *Transcript of evidence*, Law Institute of Victoria, Melbourne, 17 December 2012, p. 2.

18.2. Organisations—guidance and scrutiny

Many organisations told the Committee that they are seeking support and guidance in establishing appropriate systems and processes for responding to suspected child abuse and for ensuring they offer a child-safe environment. A number of organisations also expressed a willingness to be open to greater scrutiny of their existing systems and processes.

The Committee received evidence from several organisations that advised they would welcome expert guidance in the design and implementation of processes for handling reports of suspected child abuse. For example, the CEO of the Australian Camps Association, Mr David Petherick, explained: ‘My view is that overwhelmingly our members want to do the right thing, and sometimes it is about getting support and help to do that.’¹⁴⁷

The CEO of the Federation of Indian Associations of Victoria, Mr Vasan Srinivasan, highlighted his community’s willingness to learn, stating:

We need to do more to bring the community’s attention to issues such as child abuse and sexual abuse.¹⁴⁸

He wanted to see ‘a platform to bring community organisations together to give us guidance so that if that happens we know what to do.’¹⁴⁹

Several organisations welcomed greater independent oversight and monitoring of their systems and processes for handling reports of suspected child abuse.¹⁵⁰ For example, Cardinal George Pell, Archbishop of Sydney, stated to the Committee:

I think it would be very good to have a general body a little bit similar to the [NSW] Ombudsman. If there are limitations which are unacceptable, I think it would be a very good thing for church bodies and all non-government, and government bodies, to have to report what they are doing to something akin to the role of the Ombudsman. It would be an insurance for the leaders that the right thing is being done and to help protect the kids.¹⁵¹

In its submission, Jesuit Social Services similarly stated that:

We firmly believe that trust and confidence will only be rebuilt when religious and other community organisations are fully transparent and allow themselves to be scrutinised by the public ...

We hope that opening ourselves up to scrutiny will allow us to restore the trust and integrity that forms the basis of our relationship with the community.¹⁵²

147 *Transcript of evidence*, Australian Camps Association, p. 4.

148 *Transcript of evidence*, Federation of Indian Associations of Victoria, p. 8.

149 *Transcript of evidence*, Federation of Indian Associations of Victoria, p. 8.

150 For example refer to the submission made by *Submission S226*, Law Institute of Victoria, p. 34; *Submission S350*, In Good Faith and Associates, pp. 45–46; *Transcript of evidence*, Federation of Indian Associations of Victoria, p. 8; *Transcript of evidence*, Greek Orthodox Archdiocesan District of Victoria, p. 5; *Transcript of evidence*, Anglican Diocese of Melbourne, p. 15; *Transcript of evidence*, Catholic Archdiocese of Melbourne, p. 53; *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 34; *Transcript of evidence*, Australian Camps Association, pp. 3–4; *Transcript of evidence*, Commission for Children and Young People, p. 5.

151 *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 34.

152 *Submission S206*, Jesuit Social Services, pp. 2, 5.

The NSW Deputy Ombudsman, Mr Steve Kinmond, explained the benefit of having an independent body to provide technical advice and support:

Having an intermediary in such a position that has police information, child protection information, experience around investigative practice and preparedness to pull agencies together to have a look at what needs to be done, has sufficiently strengthened the New South Wales system.¹⁵³

Finding 18.2

Many organisations are seeking guidance in developing the skills and knowledge necessary to respond appropriately to allegations of criminal abuse and to report to police and other authorities.

18.3. Monitoring and scrutinising systems and processes—the NSW Ombudsman model

The Committee received a large amount of evidence recommending that Victoria adopt a model similar to that of NSW in scrutinising the handling of allegations of child abuse in organisations.

In NSW, the Ombudsman is authorised to monitor and oversee responses to suspected child abuse in organisations. Inquiry participants identified four broad areas as particularly important. These are:

- the capacity to scrutinise and monitor an organisation’s response
- to investigate the manner of the organisation’s response
- to build capacity and assist organisations in appropriately responding to complaints
- to identify and monitor trends in the manner of responding to complaints to assess the adequacy and effectiveness of an organisation’s response.

The combined functions of capacity building and organisational oversight were key factors identified in evidence to the Inquiry. In regard to the NSW model, the CEO of the Australian Childhood Foundation, Dr Joe Tucci, stated:

It has worked with organisations in a capacity building way and over time increased the level of scrutiny that organisations can come under in relation to the way that they investigate claims or allegations of abuse by volunteers and employees. I cannot think of a better system in place anywhere in the world.¹⁵⁴

In May 1999, the NSW Ombudsman’s jurisdiction was expanded to include the oversight of certain types of child-related employment and organisational child abuse allegations.¹⁵⁵ The changes came about as a result of recommendations made by the

153 *Transcript of evidence*, NSW Ombudsman, p. 5.

154 *Transcript of evidence*, Australian Childhood Foundation, p. 3.

155 *Transcript of evidence*, NSW Ombudsman, p. 2.

Royal Commission into the NSW Police Service.¹⁵⁶ The NSW Ombudsman scheme is set out in *NSW Ombudsman—Child Protection in the Workplace 2004*.¹⁵⁷

The Deputy Ombudsman, Mr Steve Kinmond, explained the value of the system. He stated that in the context of responding to allegations of child abuse:

the notion that it is simply a matter of reporting these matters to the police and making sure that this is done consistently is not going to be the solution. In lots of cases, it is the work done by the agency and the continued pursuit and monitoring of matters, together with the need to pull together relevant holdings—and that is where an independent external body can play an essential role—that moves a matter from going nowhere to being in a position to make good judgement calls about the risks that might be in play.¹⁵⁸

In NSW, organisations must notify the Ombudsman about the details of any allegation that falls into the ‘reportable conduct’ category outlined in Box 18.1. The notification is to be made within 30 days of the organisation becoming aware of the conduct. This notification includes the details of the allegation or conviction, advice as to whether or not the organisation proposes to take disciplinary action or other action in respect of the employee and reasons and any written material provided to the employee regarding their view of the action to be taken.¹⁵⁹

Not all of these reportable forms of conduct will necessarily be considered criminal child abuse and reportable to police. They may, however, suggest grooming or other inappropriate behaviours in which early intervention can prevent child abuse from occurring. It is important to remember that notifying the Ombudsman does not replace the requirement to report any criminal matters to the police:

I think the obligation to report to police would have to be part of any system. It is interesting. We have in the last couple of years carried out a number of investigations which relate to the Department of Community Services — and I can mention this because it is on the public record — in terms of its failure to see that the allegations it had in front of it ought to have been reported to the police. It is essential that that be built into the system. ... My comment about mandatory reporting to police not being the solution alone does not mean that there should not be mandatory reporting to police.¹⁶⁰

18.3.1. Operation of the scheme in NSW

The NSW Ombudsman’s role in child protection is centred on the prevention and handling of allegations of ‘reportable conduct’ or reportable convictions.

156 Known as the Wood Royal Commission after the Royal Commissioner, Justice James Wood. The Royal Commission ran from 1995-1997.

157 This document, fact sheets and amendments are available at Ombudsman NSW *Child protection*. Accessed on 18 October 2013 from <http://www.ombo.nsw.gov.au/news-and-publications/publications/fact-sheets/child-protection>.

158 *Transcript of evidence*, NSW Ombudsman, p. 5.

159 Ombudsman NSW (2012) *Child protection: Responsibilities of heads of agencies. Fact sheet 5*. Sydney, NSW Ombudsman.

160 *Transcript of evidence*, NSW Ombudsman, p. 5.

Box 18.1: Reportable conduct

Section 25A of the Ombudsman Act defines ‘reportable conduct’ as:

- a) any sexual offence, or sexual misconduct, committed against, with or in the presence of a child (including a child pornography offence or an offence involving child abuse material), or
- b) any assault, ill-treatment or neglect of a child, or
- c) any behaviour that causes psychological harm to a child, whether or not, in any case, with the consent of the child.

Reportable conduct does not extend to:

- a) conduct that is reasonable for the purposes of the discipline, management or care of children, having regard to the age, maturity, health or other characteristics of the children and to any relevant codes of conduct or professional standards, or
- b) the use of physical force that, in all the circumstances, is trivial or negligible, but only if the matter is to be investigated and the result of the investigation recorded under workplace employment procedures, or
- c) conduct of a class or kind exempted from being reportable conduct by the Ombudsman under section 25CA.

Note: Examples of conduct that would not constitute reportable conduct include (without limitation) touching a child in order to attract a child’s attention, to guide a child or to comfort a distressed child; a school teacher raising his or her voice in order to attract attention or to restore order in the classroom; and conduct that is established to be accidental.

Some conduct may fall within more than one category.

Source: NSW Ombudsman Child Protection Update September 2013

Part 3A of *The Ombudsman Act 1974* (NSW) requires the Ombudsman to keep under scrutiny the systems/processes that government and some non-government agencies in NSW have for both the prevention and the handling of “reportable conduct” involving its employees. With some agencies the obligation relates to incidents of employees both in and outside of the workplace. The Ombudsman’s role is to ascertain whether the investigation by an agency has been properly conducted and whether appropriate action has been taken as a consequence of the investigation.

The role of the NSW Ombudsman is:

- to scrutinise and audit systems for both responding to complaints of and preventing reportable conduct
- to oversee or monitor agencies internal investigations of ‘reportable conduct’
- to respond to complaints of an inappropriate response of an agency to ‘reportable conduct’
- to undertake a direct investigation where necessary
- report on trends and issues associated in connection with reportable conduct matters.¹⁶¹

¹⁶¹ *Transcript of evidence*, NSW Ombudsman, p. 5.

Table 18.1 outlines the organisations to which the NSW legislation applies, and its broad requirements.

Table 18.1: Application of the NSW Ombudsman model

Feature	Type	Description
Who does the model apply to?	Designated agencies	<ul style="list-style-type: none"> government departments (including community services, tourism, sport and recreation, education and training, etc) statutory authorities (health corporations, ambulance service, etc) non-government organisations (independent schools, child care centres, health organisations, etc).
Reporting requirements	Within 30 days	<ul style="list-style-type: none"> designated agencies must notify the Ombudsman's office of all reportable conduct and convictions that arise either within or outside the employee's work.
Are all organisations subject to same level of oversight?	Class or kind determinations	<ul style="list-style-type: none"> when the Ombudsman is satisfied that a particular organisation or agency has a reasonably robust practice in place for the handling of matters relevant to the Ombudsman's jurisdiction, the Ombudsman will enter into a class or kind determination with that organisation.
How does the Ombudsman scrutinise?	Powers, functions & obligations	<ul style="list-style-type: none"> conduct investigations ability to compel the production of documents ability to interview witnesses ability to respond to complaints about a notification secrecy provisions.

Source: Adapted from NSW Ombudsman (2004) *Child protection in the workplace*.

18.3.2. Investigations

The NSW Ombudsman can undertake a range of interventions and audits. These are broadly outlined in Table 18.2.

Table 18.2: Types of investigations and audits conducted by the NSW Ombudsman

Investigation	Type	Description
Overseeing an investigation	Lowest level of intervention	<ul style="list-style-type: none"> The agency advises the Ombudsman of its proposed plan for dealing with the investigation, which appears appropriate. The agency finalises the matter and advises all relevant parties of the outcome of the investigation.
Monitoring an investigation	Active participation by Ombudsman	<ul style="list-style-type: none"> The Ombudsman may monitor the progress of an agency's investigation into an allegation of reportable conduct by an employee. This may require the agency to provide regular updates about the conduct and progress of the investigation and forward copies of any documents associated with the investigation.
Direct investigation of notification	Involvement in the investigation	<ul style="list-style-type: none"> The Ombudsman may be involved directly when: <ul style="list-style-type: none"> significant risks to children have not been identified by an agency the agency does not have the capacity to investigate the matter adequately there is a conflict of interest preventing the agency from properly investigating the final report of the agency's investigation indicates wrong conduct by the agency.
Direct investigation of complaint about organisation's handling	Review of the process for handling a complaint	<ul style="list-style-type: none"> The Ombudsman assesses the complaint to determine if it should be pursued—a number of factors may lead it to decline to review a complaint.
Auditing agencies	Scrutinising systems in place for preventing reportable conduct	<ul style="list-style-type: none"> Audits of agencies may be conducted randomly and independently of the investigation and monitoring role of the Ombudsman. The purpose of an audit is to assist an agency to improve its systems and practices for providing safe environments for children in its care. It also serves to identify and promote good practice across agencies and provide advice.

Source: Adapted from NSW Ombudsman (2004) *Child protection in the workplace*.

In responding to allegations of criminal child abuse, a number of findings are available to an organisation under the scheme.

- sustained—sufficient evidence reportable conduct occurred—referral to Office of Children’s Guardian
- not sustained due to insufficient evidence—some evidence of reportable conduct though not enough for a conclusive finding—referral to Office of Children’s Guardian
- not sustained due no weight in the evidence
- false—clear evidence reportable conduct did not occur
- conduct reported was found not to constitute reportable conduct.¹⁶²

In some instances it is necessary for the finding to be referred to other agencies, including Office of Children’s Guardian for use in employment Working with Children Checks.

18.3.3. Additional features

The NSW Ombudsman also has a proactive role in promoting child-safe environments, and in this context undertakes a number of functions aimed at preventing and identifying situations involving risk to children. Table 18.3 outlines these roles.

Table 18.3: Components of a policy for responding to allegations of child abuse in organisations

Function	Description
Training and capacity-building	<ul style="list-style-type: none"> • Training to both organisation employees and members of the public. • Training has centred on skills relevant to the handling and investigation of serious reportable conduct matters, that is, those that would constitute a serious criminal matter.¹⁶³
Engaging external partners	<ul style="list-style-type: none"> • Proactive involvement with the NSW Police, Office of Children’s Guardian and with the NSW Department of Community Services. • Ombudsman has direct access to the systems of these agencies. • Has resulted in the commencement of a number of operations and subsequent prosecutions.
Monitoring trends and patterns	<ul style="list-style-type: none"> • Collection of data, and research into trends and the factors that make organisations vulnerable to being exploited and subverted by adults who are intent on harming children.¹⁶⁴

Source: Adapted from Australian Childhood Foundation (2012), *Safeguarding children program guide*, p. 98.

162 *Supplementary evidence*, Presentation to the Victorian Parliamentary Inquiry by Mr Steve Kinmond, Deputy Ombudsman and Community and Disability Service Commissioner for NSW NSW Ombudsman, 4 April 2013, p.1.
 163 *Transcript of evidence*, NSW Ombudsman, p. 4.
 164 *Transcript of evidence*, Australian Childhood Foundation, p. 3.

18.3.4. Identified improvements in responses by organisations

Since the Ombudsman's employment-related child protection scheme began in 1999, agencies have improved their systems of prevention as well as their competence and skill in responding to allegations:¹⁶⁵

The other thing which is interesting to note is the improvements that have been made in practice since the inception of the jurisdiction. We now have over 20 class or kind determinations with agencies. We enter into class or kind determinations with agencies when we have sufficient evidence to indicate that the agencies have reasonably robust practices in place in relation to the handling of these matters ...

We have class or kind agreements because we are of the view that the quality of their handling of matters is of a sufficient standard for us to exempt certain matters from needing to be notified to us. The types of matters tend to be physical assault allegations where technically the allegation would constitute an allegation of a physical assault but is of a lower order, and we are of the view that they have the competency to deal with them.¹⁶⁶

There are also significant positive implications for the Ombudsman. At the peak of notifications in 2003–04, the Ombudsman was investigating approximately 2,500 formal notifications of reportable allegations or reportable convictions. At present, the Ombudsman oversees approximately 1,000 formal notifications of reportable allegations or convictions a year.¹⁶⁷

18.3.5. Limitations of the model

The Ombudsman must receive notification from the head of an agency within 30 days of the reportable conduct having been alleged. While this is the requirement under the legislation, it would seem more useful to ensure that a matter was reported within 24 hours, or at least as soon as practicable. This was supported by Mr Kinmond, who told the Committee:

I would much more strongly emphasise as soon as practicable, because if you are dealing with a serious criminal matter, then from the moment that allegation arises, there is a potential risk to the investigation if the matter is not moved forward and evidence is not collected.¹⁶⁸

As with many other legislative and regulatory requirements relating to non-government organisations, the NSW Ombudsman legislation does not extend the monitoring framework to religious organisations. Mr Kinmond, the Deputy Ombudsman, explained to the Committee:

Allegations against members of the clergy fall within the Ombudsman's employment-related child protection jurisdiction only if the person is either an employee of a relevant agency or is 'engaged' (by the agency) to provide services to children at the time that the allegation arises.¹⁶⁹

165 A class or kind determination is a method by which the Ombudsman exempts that organization from having to notify the Ombudsman in relation to certain matters. The types of matters that are generally exempt from notification tend to be physical assault allegations where the assault would be captured by the technical definition of 'reportable conduct' but where the conduct was of a lower order and in circumstances where the Ombudsman considers that the organization has the competency to respond to it.

166 *Transcript of evidence*, NSW Ombudsman, p. 5.

167 *Transcript of evidence*, NSW Ombudsman, p. 3.

168 *Transcript of evidence*, NSW Ombudsman, p. 7.

169 *Supplementary evidence*, Presentation to the Victorian Parliamentary Inquiry by Mr Steve Kinmond, Deputy Ombudsman and Community and Disability Service Commissioner for NSW NSW Ombudsman, 4 April 2013, p.8.

Mr Kinmond further explained that ‘Catholic schools and agencies providing out-of-home care services meet the definition of a designated non-government agency for the purposes of the Act’,¹⁷⁰ but many clergy fall outside this definition.

In this chapter of the Report, the Committee recommends that allegations of misconduct not amounting to a serious criminal offence should also be reported to an office similar to that of the NSW Ombudsman. In the context of oversight of members of the clergy in their interactions with children, Mr Kinmond pointed out to the Inquiry:

There is an interesting question as to whether more broadly those leaders of those institutions, if nothing else, should be brought within a scheme where, if there are serious abuse allegations made, those matters have to be systematically reported. One might say, ‘No, those matters are dealt with easily; you just introduce a mandatory reporting requirement to the police’. The reality is that the vast majority of matters that are reported to the police will not end up in a criminal charge and certainly a criminal conviction. That then leaves the agency in a difficult position on many of these matters, not knowing how it should deal with the matter.¹⁷¹

Another weakness in the NSW system identified by Mr Kinmond was the vulnerability of the child care sector with many different services and a number of peak bodies involved making consistency in approach difficult to achieve.¹⁷²

Conscious of these limitations in NSW, the Committee does not believe they should apply in Victoria.

Finding 18.3

The New South Wales Ombudsman has a system for independently scrutinising and monitoring the systems and processes of organisations in the handling of allegations of criminal child abuse. The model also provides training and assistance to personnel in building their knowledge and skills in managing allegations of criminal child abuse and has resulted in improvements in the systems and processes of organisations in NSW.

18.4. Improving monitoring and scrutiny in Victoria

As outlined earlier in this part of the Report, the Committee identified that responses to allegations of child abuse in organisations are often inconsistent, inaccessible, narrowly focused or overcomplicated. In Victoria, there is no overarching system to scrutinise non-government organisations’ responses to reports of suspected child abuse. While organisations funded by government have contractual requirements to report staff-to-client assaults, there is no statewide system for building capacity in non-government organisations to respond appropriately to allegations.

The Cummins Inquiry considered the oversight powers and functions of the Victoria Child Safety Commissioner as compared to those with a similar role in other states.¹⁷³

170 *Supplementary evidence*, Presentation to the Victorian Parliamentary Inquiry by Mr Steve Kinmond, Deputy Ombudsman and Community and Disability Service Commissioner for NSW NSW Ombudsman, 4 April 2013, p.8.

171 *Transcript of evidence*, NSW Ombudsman, p. 5.

172 *Transcript of evidence*, NSW Ombudsman, p. 5.

173 P. Cummins, D. Scott, OAM, & B. Scales, AO (2012) *Report of the Protecting Victoria’s Vulnerable Children Inquiry*, pp. 692 (Appendix 14, Table 5).

As a consequence of the Cummins Inquiry recommendation¹⁷⁴ the Government introduced *The Commission for Children and Young People Act 2012* (Vic) in March 2013 which set up the Commission for Children and Young People.¹⁷⁵ This is an agency independent of government and is able to table its own annual report in Parliament along with the outcomes of any systemic reviews initiated by the Commission. Chapter 8 of Part C outlined the role of the Commission in detail. Its role is similar to children's commissions and guardians in other jurisdictions, including the Office of the Children's Guardian in NSW.

The Senior Project Manager, Commission for Children and Young People in Victoria, Ms Megan Scannell, recognised the benefits of the NSW system:

... my understanding of what the New South Wales Ombudsman does, and I think does quite well, is both the monitoring of how agencies respond when complaints arise, but also some support back to organisations about how to do things well. It is that combination that is really powerful, because a lot of organisations do want to get it right but, particularly for smaller or volunteer-based organisations, it can be really hard to know what to do, particularly if a problem arises and how to go about dealing with it... I think they do it well.¹⁷⁶

The Commission went on to discuss the role of the NSW Ombudsman in the working with children system:

... when we were talking about compliance, we were talking about the working with children check, but it could be a broader compliance role, and whether that sits within a working with children check unit or some other body to both make sure that organisations are abiding by whatever requirements there are, but also to give organisations some information and assistance to enable them to comply, and to be a source of advice to help them if things go awry. It is that combination of things.¹⁷⁷

In this part of the Report the Committee has identified the need for building the skills and knowledge of relevant personnel to assist organisations to effectively handle responses to allegations of suspected child abuse.

The Principal Commissioner, Mr Geary, indicated that for such a body to work effectively, it would be necessary for relevant government departments and agencies to embrace the system and change their culture:

It is certainly a different use of an Ombudsman's office. It is a much more proactive use of an Ombudsman's office that happens in New South Wales... the challenge is, in our instance, that children impact on all of those departments that we talked about before; all of those departments with their own models of operating and with their own objectives. Some are there to educate children, some are there — as in the case of DHS — to protect them, and we even have worked, and we do work closely with police. It is not just a matter of clicking our fingers and saying 'joined-up'; it is a matter of the act of joining up that is our biggest challenge. I believe, that with the way my office is at the moment we can be useful in encouraging that, and also useful in trying to create a culture. But there needs to be a process of inculcation, because I do not think it exists at the moment.¹⁷⁸

174 P. Cummins, D. Scott, OAM, & B. Scales, AO (2012) *Report of the Protecting Victoria's Vulnerable Children Inquiry*, p. lxiv (Recommendation 89).

175 *Commission for Children and Young People Act 2012* (Vic) ss.31–49.

176 *Transcript of evidence*, Commission for Children and Young People, p. 6.

177 *Transcript of evidence*, Commission for Children and Young People, p. 6.

178 *Transcript of evidence*, Commission for Children and Young People, p. 7.

Mr Kinmond highlighted to the Inquiry that in any system of oversight relating to the handling of potentially criminal matters, it is important have a ‘solid platform of people’—staff with good legal, policing and child protection investigation backgrounds—as ‘the stakes are high for these matters. There needs to be the highest level of competency from the oversight perspective.’¹⁷⁹ There are currently 15 senior staff with extensive investigative experience working in this area in the NSW Ombudsman’s office. The Ombudsman also has Royal Commission powers¹⁸⁰ that can be invoked to obtain information not only from the public authorities and employees who are the subject of allegations, but from any person within the community.

In advice to the Inquiry about the key components for any new role for an oversight body, Mr Kinmond advised that:

If you were to set up an independent oversight body ... one would need to make sure that it has significant powers; that it has the ability to obtain the necessary information so that it can add value; that it has the ability to establish the necessary relationships, particularly with child protection authorities and also with the police ... There needs to be the powers, there needs to be the competency and there needs to be the relationships which are built.¹⁸¹

→ Recommendation 18.1

That the Victorian Government authorise an independent statutory body with relevant investigatory powers and legal and operational resources to:

- oversee and monitor the handling of allegations of child abuse by relevant government departments, religious and non-government organisations
- undertake independent investigations into systems and processes in the context of allegations of reportable conduct and/or reportable convictions
- scrutinise and audit the systems and processes in non-government organisations for handling allegations of child abuse
- monitor and report on trends associated with allegations by collecting relevant data and report to the Parliament on an annual basis
- build the skill and knowledge of personnel in relevant government departments, religious and non-government organisations to ensure they have the capacity to competently handle allegations of suspected child abuse.

179 *Transcript of evidence*, NSW Ombudsman, p. 7.

180 The Royal Commission has broad powers to gather information and assist with its investigations and inquiries. These are sometimes called coercive powers because they can compel an individual to participate in the inquiry. See for example *Royal Commissions Act 1923* (NSW) s.17.

181 *Transcript of evidence*, NSW Ombudsman, p. 7.

PART F

RESPONDING TO REPORTS AND ALLEGATIONS OF PAST CHILD ABUSE IN ORGANISATIONS



The Committee identified that through the advocacy efforts of victims groups and victims themselves, there is greater awareness of the harm caused by criminal child abuse in organisations that occurred in the past. There is also recognition that victims can take years or decades to disclose abuse.

In response to this increased awareness, many organisations have established their own processes for responding to allegations of child abuse by personnel in their organisations reported to them by victims. The Committee heard that these non-government processes for allegations of past child abuse offer four main outcomes for claimants:

- pastoral care
- counselling
- financial compensation
- an apology.

In the absence of an independent, alternative avenue of justice, these processes have often been the only option for adult victims of past child abuse to gain any form of financial or other compensation.

Victims' views on internal processes for handling allegations of past child abuse in organisations

The Committee heard that many victims of past child abuse went through internal processes established by mainly religious non-government organisations for victims of past abuse by their personnel.

While some non-government organisations gave evidence to the Committee that there were victims for whom these approaches were satisfactory, the overwhelming message in both oral and written submissions to the Inquiry was that most organisational responses do not adequately meet the needs of victims of criminal child abuse in achieving justice.

The Committee considered that some non-government approaches were designed to be an independent alternative form of justice for victims, but that victims did not see them this way. Some victims felt that these processes were the only choice available to them and opted to settle for a smaller amount than they felt entitled to. Mr Philip Nagle explained his experience:

It came down to that they had a piece of paper there, which I believe was a deed of release, and said, 'However, if you sign this, you won't need to go to court, you won't need to get solicitors and that will be it.' At that stage my family were just—it was killing all of us. So we just did; we just signed it. We just felt like we had no other choice. We were not given any other options. We did not seek any legal advice. We just did what they said, and that was it ...

It was just inadequate. I mean, it was just wrong. As you go along in life and you get a bit older, it just eats away at you. You just think, 'Well, hey, how can they do that?' That is what I am saying. They were just ticking the box. They just wanted us to go away, and we were dealt with. It is not right. So, yes, I think it needs to be on our terms, not their terms.¹

¹ *Transcript of evidence*, Mr Philip Nagle, Ballarat, 7 December 2012, pp. 2,4.

Some Inquiry participants explained that the organisational processes have been extremely difficult for victims. Dr Poznanski, for example spoke of the experience of his clients who had been through the Catholic Church's Towards Healing and Melbourne Response processes:

As a psychologist, I am often exposed to clients' despair and helplessness that comes from their experience of the Towards Healing and Melbourne Response processes as being protracted and also legally oriented rather than processes that place an expression of compassion and concern for the client at the heart of the espoused towards healing objective.²

Many victims felt that internal processes for responding to allegations of past child abuse were not independent. They called for these processes to be made more accountable. For example, Mr Saric told the Inquiry about the Catholic Church processes:

The main problem with this system is that it acts as judge, jury and executioner with no reference to secular authorities or systems. The two processes are privatised. The church is not accountable to any secular authority and there is no external review of the processes ...³

² *Transcript of evidence*, Dr Joseph Poznanski, Melbourne, 1 March 2013, p. 3.

³ *Transcript of evidence*, Mr Joseph Saric, Geelong, 15 February 2013, p. 3.

Chapter 19

Processes for responding to allegations of past criminal child abuse

AT A GLANCE

Background

As a consequence of an increased awareness of the incidence of criminal child abuse occurring within organisations, systems or processes have been adopted by a number of organisations to respond to allegations of child abuse that occurred in the past.

The Committee identified that there is a range of non-government processes for resolving claims in relation to criminal child abuse. These have usually been developed in response to a significant number of past abuse allegations. In the context of past abuse, organisations generally refer to ‘complaints’ processes and often those that use them as ‘complainants’. Alongside victims of child abuse and allegations, these terms are used interchangeably throughout this part of the Report.

The Committee heard that these non-government processes for allegations of past child abuse offer four main outcomes for claimants:

- pastoral care
- counselling
- financial compensation
- an apology.

Table 19.1 outlines some of the approaches that organisations have developed to resolve claims by victims of criminal child abuse. Some of these approaches apply to allegations of both past and current child abuse, however most apply mainly to allegations of past child abuse. A more detailed discussion of the Catholic Church, Anglican Church, Salvation Army, Berry Street and Uniting Church processes can be found in Chapters 20 and 21.

Table 19.1: Examples of processes to respond to allegations of past criminal child abuse

Organisation	Process	Outcomes
Anglican Church	<ul style="list-style-type: none"> • Focus on the pastoral and restorative nature of the process as the overriding outcome. (see Chapter 20 for further detail). 	<ul style="list-style-type: none"> • Focus on what victims need and can include, for example, counselling, an apology, payment for a specific course or charity, and financial compensation. • Professional psychological counselling organised through the Office of Professional Standards. Number of sessions is based on need and not limited.⁴
Anglicare	<ul style="list-style-type: none"> • Complaint referred to Director of Professional Standards for the Anglican Diocese of Melbourne. • If settlement reached, a Deed of Release is agreed between Anglicare Victoria, the victim and their legal representative. 	<ul style="list-style-type: none"> • Where appropriate, a verbal and written apology is offered directly to the former client. • Agreed settlements with regard to financial assistance are usually reached during discussions. • In some cases, payments for medical expenses have been made.⁵

Source: Compiled by the Family and Community Development Committee.

4 *Submission S244*, Anglican Diocese of Melbourne, p. 27; *Transcript of evidence*, Anglican Diocese of Melbourne, Melbourne, 22 April 2013, p. 14.
 5 *Submission S146*, Anglicare Victoria, pp. 20–21.

Organisation	Process	Outcomes
Baptist Union	<ul style="list-style-type: none"> • Process limited to sexual abuse. • Overseen by the Professional Standards Group. • Advisor appointed to ensure the victim receives pastoral care. • Each case determined on an individual basis. 	<ul style="list-style-type: none"> • Both monetary and other forms of compensation available.⁶ • Pastoral care. • Victims encouraged to access an independent counsellor. Baptist Union funds initial, and sometimes long-term, sessions.⁷
Berry Street	<ul style="list-style-type: none"> • Policy contains a procedure for complaints by adult care leavers. • Directors determine conduct of investigation and offer of reparation. • Designated person appointed to meet with complainant to discuss the complaint and their needs. • Process or outcome can be reviewed at the request of the claimant within one month. • Complaints procedure reviewed every three years and investigations audited every five years.⁸ (see Chapter 20 for further detail). 	<ul style="list-style-type: none"> • Reparation may include acknowledgement, an apology, assistance with support services, financial payment, actions to prevent re-occurrence of abuse. • Where no investigation required, counselling may be funded (generally up to 25 sessions or \$3,000).
Catholic Church Catholic Archdiocese of Melbourne Melbourne Response	<ul style="list-style-type: none"> • Independent Commissioner makes finding that abuse occurred. • Victims referred to a hearing before Compensation Panel. • Compensation Panel determines ex gratia payment to be offered. (see Chapter 20 for further detail). 	<ul style="list-style-type: none"> • Compensation limited to \$75,000. • Letter of apology provided with the letter advising of payment offer. • Counselling provided through Carelink. Number of sessions on a needs basis.

6 *Submission S210A*, Baptist Union of Victoria, p. 5.

7 *Submission S210*, Baptist Union of Victoria, p. 4.

8 *Submission S262*, Berry Street, p. 13; Berry Street (2012) *Complaints—adult care leavers policy*. Richmond, Berry Street, p. 6.

Organisation	Process	Outcomes
Catholic Church (other than Catholic Archdiocese of Melbourne) Towards Healing	<ul style="list-style-type: none"> Victim's first contact is with a 'contact person'. Assessors consider complaint and determine whether it is substantiated. Victims referred to facilitation and/or pastoral meeting. Victims can request a review of decision. (see Chapter 20 for further detail). 	<ul style="list-style-type: none"> Ex gratia payment offered at facilitation meeting—can include an apology or other support depending on individual's need. Guidelines state that the Director of Professional Standards can arrange for an offer of funding for counselling.⁹
Girl Guides	<ul style="list-style-type: none"> Complaints regarding a serious breach of the Girl Guides Code of Conduct may be required to follow grievance procedure and appeals process. Grievance procedure includes formal meeting between the person alleged to have breached the rules and the supervisor. Grievance procedure does not specify how a victim would be involved in the process. 	<ul style="list-style-type: none"> No provision for monetary or other forms of compensation or counselling.¹⁰
The Salvation Army	<ul style="list-style-type: none"> Generally complaints resolved through negotiation of settlement with legal representatives. (see Chapter 20 for further detail). 	<ul style="list-style-type: none"> Financial settlement negotiated. Apology letter sent to victim. The Care Leaver Complaint process refers to counselling that can be offered to victims who approach the Salvation Army directly rather than through their legal representatives.¹¹ The provision for future counselling is included in the ex gratia payment awarded to victims and it is then at the victims discretion whether they want to obtain counselling.

9 Australian Catholic Bishop Conference and Catholic Religious Australia (January 2010) *Towards Healing. Principles and procedures in responding to complaints of abuse against personnel of the Catholic Church in Australia*, Alexandria NSW, National Committee of Professional Standards, p. 19, paragraph 38.4.

10 *Supplementary evidence*, Response to request for information, Girl Guides Australia (Victoria), 8 March 2013.

11 *Supplementary evidence*, Official minutes: Care leaver complaint process, Salvation Army, Australia Southern Territory, 17 July 2013.

Organisation	Process	Outcomes
Scouts Victoria	<ul style="list-style-type: none"> Inappropriate Conduct or Behaviour Policy sets out procedure for managing allegations of misconduct. Complaints are handled directly by Chief Commissioner or his delegated nominee at the State Office. 	<ul style="list-style-type: none"> Scouts Victoria does not pay compensation to complainants. Any claims for compensation are handled by the Association's insurers.¹²
Seventh Day Adventist Church	<ul style="list-style-type: none"> Official church-conducted investigation. Support and redress offered on a case-by-case basis. 	<ul style="list-style-type: none"> Discretionary offers of compensation. Subsidy for a number of counselling sessions (initially seven, but may be expanded). Telephone support through Safe Place Services during and after church-conducted investigation. Proposal to introduce supports for congregations affected by child abuse.¹³
Uniting Church in Australia	<ul style="list-style-type: none"> Process depends on who the alleged offender is and where the abuse took place (see Chapter 15.5 of Part E). A senior person from the Synod attends mediation and settlement with the Synod's solicitor. Aim to minimise the use of bureaucratic and adversarial legal processes wherever possible. Most units or agencies have an appeal and/or dispute resolution process in place if the complainant or respondent is not satisfied with the process. (see Chapter 20 for further detail). 	<ul style="list-style-type: none"> Apology offered in person at mediation and settlement meeting. Most cases resolved through financial settlement. Victims offered support through Bethel Pastoral Centre. Church funds psychological services over a period of time.¹⁴

¹² *Submission S200A*, Scouts Australia (Victoria), p. 5.

¹³ *Submission S258*, Victorian Conference of the Seventh-day Adventist Church, p. 285.

¹⁴ *Submission S164*, Uniting Church in Australia, p. 23.

Organisation	Process	Outcomes
Wesley Mission	<ul style="list-style-type: none"> • Care leavers are linked up with support agencies such as Find and Connect and Open Place, where further support is identified or requested. • For those wishing to pursue compensation, information is provided on the process to follow. • No information provided on the process. 	<ul style="list-style-type: none"> • No information provided on the outcomes.
Yeshivah Centre	<ul style="list-style-type: none"> • No process for financial or other compensation or counselling. • Each case dealt with on an individual basis. 	<ul style="list-style-type: none"> • Not aware of outcomes for victims, other than public apology.

Source: Compiled by the Family and Community Development Committee.

Chapter 20

Case studies—processes of religious and other non-government organisations for responding to allegations of past criminal child abuse

AT A GLANCE

Background

In the mid-1990s, the Catholic Church created two systems for responding to allegations of criminal child abuse: the Melbourne Response (applicable only to the Catholic Archdiocese of Melbourne) and Towards Healing, both of which are still currently operating.

Other organisations, including the Anglican Church, the Salvation Army, the Uniting Church and Berry Street, have developed their own processes for responding to allegations of past criminal child abuse and providing financial and other compensation for the harm victims suffered while in their care.

Key finding

- The processes that have been adopted by non-government organisations to respond to complaints of criminal child abuse are varied. Some organisations have very detailed and documented policies while others are less formal. The purpose of these policies is to meet the needs of victims and to provide them support.

In order to understand how non-government organisational processes are structured, administered and operated, the Committee requested and had access to the files of a number of non-government organisations which had dealt with significant numbers of allegations of past abuse.

The files analysed by the Committee included those of the Independent Commissioner for the Melbourne Response, the relevant Towards Healing files, Salvation Army files and Melbourne Anglican Church files. Additionally the Committee was provided with copies of or access to a number of files relating to complaints of past criminal child abuse regarding members of Catholic religious organisations namely the Christian Brothers, Salesians of Don Bosco, Hospitaller Order of St John of God, Ballarat Diocese and the Catholic Archdiocese of Melbourne. Representatives of Melbourne Response, Towards Healing, the relevant parts of the Catholic Church, the Salvation Army and the Anglican Church also appeared before the Committee. Refer to list of public hearings in Appendix 14.

This section of the Report details the processes adopted by the Catholic Church, Anglican Church and the Salvation Army as outlined in the information received from these organisations and the Committee's analysis of their files. In addition the processes of Berry Street and the Uniting Church are also analysed.

20.1. Catholic Church processes

The Catholic Church operates two different processes, both of which continue to function:

- The response of the Catholic Archdiocese of Melbourne (known as the Melbourne Response) was established in October 1996, to deal with complaints about priests, religious and lay workers under the control of the Archbishop of Melbourne.¹⁵
- Towards Healing was established in March 1997 to deal with complaints that arose in other dioceses (Ballarat, Sale and Sandhurst) in Victoria and religious institutes operating in Victoria.¹⁶

The Catholic Church created these processes to formalise the way in which these two parts of the organisation would deal with complaints. They are internal mechanisms, intended to provide compensation, counselling and support, funded by the Catholic Church.

Through the Melbourne Response and Towards Healing, the Catholic Church sought to do more than the Catholic Church protocol of 1992.¹⁷ However, the Catholic Church's manner of dealing with such allegations in the past influenced:

- the way these new protocols were created and administered
- victims' preparedness to accept that the Catholic Church was genuine in its motives.

15 See *Submission S185*, Catholic Church in Victoria. Annexure 3, p.11.

16 Towards Healing related to all other dioceses and religious institutes in Australia. For the purposes of this Inquiry the relevant signatories are bishops of each diocese in Victoria and religious superiors. See *Submission S185*, Catholic Church in Victoria.

17 Discussed in Chapter 7 of Part C.

No Catholic Church representative provided the Committee with any explanation for the need to have two separate systems.¹⁸ It is important to note that victims understand that they have been offended against by a member of ‘the Church’. They do not necessarily know (or care) whether the perpetrator was a member of a particular diocese or order. The Committee was provided with information that the Catholic Church’s dual structure for responding to complaints of past abuse was confusing and disconcerting to some victims, many of whom, given the nature of the abuse they had suffered and its effects on them, doubted the legitimacy of any church-based complaints process.

The Catholic Church’s stated objective in setting up these systems was to provide healing and reparation to victims.¹⁹ But because these protocols addressed claims privately and internally, victims and others remained concerned that the Catholic Church was protecting its own interests. These doubts grew even stronger as victims became dissatisfied with the internal processes. This uneasy co-existence of the Church’s claims of altruism (to help victims sensitively, pastorally and materially) and victims’ cynicism (feeling that the Catholic Church was protecting its own wealth and reputation) is a defining feature of both systems.

The Committee believes that both processes have delivered some benefits to a number of victims of abuse. Victims have received apologies, money and other assistance, which they may not have been able to obtain by any other existing method. In general their complaints have been listened to with genuine sympathy. From the Committee’s examination of the files it is evident that a number of victims were satisfied with their experience of the process and they felt that it enabled them heal to some extent. However, the evidence before the Committee highlighted the limitations of the system and that the processes have failed many victims.

20.1.1. Melbourne Response and Towards Healing

The Melbourne Response is the complaints process set up in 1996 by the then Catholic Archbishop of Melbourne, George Pell, for victims of abuse perpetrated by religious personnel in the Catholic Archdiocese of Melbourne. As outlined earlier in this Report, the Archbishop was under pressure to provide a solution to the problem of handling complaints of criminal child abuse perpetrated by members of the Archdiocese.²⁰

The core elements of the Melbourne Response are:

- An Independent Commissioner to receive and inquire into allegations of sexual or other abuse by priests, religious and lay people under the control of the Archbishop of Melbourne.
- The Independent Commissioner also makes recommendations to the Archbishop as to how to deal with the offender.
- A Compensation Panel to recommend *ex gratia* compensation to be paid by the Archdiocese to victims of abuse. If an offer is accepted, a Deed of Release is signed by the parties.
- Carelink to co-ordinate the provision of free counselling and professional support services for victims ... and their families arising from their abuse and related issues.

18 See *Submission S185*, Catholic Church in Victoria, p. 77.

19 *Submission S185*, Catholic Church in Victoria, p. 1.

20 See Chapter 1 of Part A and Chapter 7 of Part C.

- A Pastoral Response Team to provide victims and parish communities with spiritual support and counselling at the parish level.²¹

The Catholic Church provided a comprehensive written submission to the Inquiry titled *Facing the truth*. The submission was signed by the Archbishop of Melbourne, the bishops of Sale, Ballarat and Sandhurst, and by representatives of Catholic Religious Australia and Catholic Religious Victoria. *Facing the truth* outlines the reasons given by the Catholic Archdiocese of Melbourne for creating the Melbourne Response:

Cardinal Pell established the Melbourne Response in an attempt to lessen the sufferings of the victims of abuse and their families, by enabling a prompt and independent investigation of their complaints and access to compensation.²²

The Committee received very limited written information from the Catholic Archdiocese of Melbourne about the creation of this process. It is apparent however that the Professional Standards Resource Group in the Catholic Church regarded its establishment as strictly confidential.²³ It is also apparent that there was no consultation with victims or victim groups.

Cardinal George Pell in his evidence to the Committee indicated that victim groups were not involved in setting up the Melbourne Response:

Not at that stage because there was no—we were in I am not saying uncharted territory but it was new territory ...²⁴

Cardinal Pell indicated that they were well aware of victims' perspectives:

We regularly had people doing that—for example, Helen Last and Monsignor Cudmore. We were well aware of the perspectives of victims. They were not at those particular meetings, but their approach was certainly considered as we set this up, and it was to help them that we set it up.²⁵

Mr Peter O'Callaghan QC was appointed as the Independent Commissioner in October 1996. His role was to consider allegations and determine whether child abuse had occurred.²⁶ Mr David Curtain QC, the current Chairman of the Compensation Panel, was appointed in 2004.²⁷ Ms Sue Sharkey, a registered psychologist is the Co-ordinator of Carelink.²⁸ Since 2009, the consulting psychiatrist to Carelink is Dr Susan Brann.²⁹

In Victoria, Towards Healing deals with complaints made against clergy of the Victorian dioceses of Ballarat, Sale and Sandhurst, as well as against religious orders such as the Christian Brothers, the Salesians and other religious orders, both

21 *Submission S185*, Catholic Church in Victoria, pp. 52–53.

22 *Submission S185*, Catholic Church in Victoria, p. 53.

23 Catholic Archdiocese of Melbourne, Minutes of the Professional Standards Resource Group (Province of Victoria), 29 March 1996, provided to the Family and Community Development Committee, 18 February 2013.

24 *Transcript of evidence*, Catholic Archdiocese of Sydney, Melbourne, 27 May 2013, p. 16.

25 *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 17.

26 Until 2012, other independent commissioners have been temporarily appointed if Mr Peter O'Callaghan QC was unavailable—on 1 August 2012 Mr Jeff Gleeson SC was appointed Independent Commissioner.

27 Other heads of the Compensation Panel were Mr Alex Chernov QC, Mr David Habersberger QC and Ms Susan Crennan QC. See *Transcript of evidence*, Compensation Panel, Melbourne Response, Melbourne, 3 May 2013, p. 4.

28 Ms Sue Sharkey Co-ordinator: 1996–2001; 2003–current.

29 Professor Richard Ball (1996–2006) and Dr Michelle Pathe (2006–2009) were the previous psychiatrists at Carelink.

male and female. The vast majority of allegations relate to abuse perpetrated in the 1960s and 1970s, typically in the contexts of the parish church, church schools, and orphanages. The process was adopted in March 1997 and is governed by *Principles and procedures in responding to complaints of abuse against personnel of the Catholic Church in Australia*.³⁰ This document was modified in December 2000, June 2003, and January 2010.

The core elements of Towards Healing are:

- Contact persons receive complaints of abuse, explain the procedures for addressing the complaint.
- Assessors investigate complaints of abuse, examine the areas of dispute and advise the Director of Professional Standards of their findings.
- Facilitators facilitate a communication process, which may include a meeting between the victim and the Church Authority³¹ and endeavour to mediate an agreement between a victim and the Church Authority about what the Church Authority can and should do to assist the victim to move ‘Towards Healing’.
- Consultative Panels advise the Church Authorities at significant stages of the Towards Healing process.
- Reviewers review the Towards Healing process or the findings of the assessment if requested by the complainant, accused or the Church Authority.³²

Towards Healing differs from the Melbourne Response in that a number of people are appointed to carry out the roles of contact persons, assessors and facilitators. A Director of Professional Standards is appointed to oversee the Towards Healing process in Victoria.

Both systems therefore provide:

- consideration and investigation by an organisation established by the Catholic Church that is separate from the relevant diocese or Church Authority (unlike the previous situation, in which allegations were made to the Vicar-General)
- an alternative to the courts for seeking financial compensation
- a means of apologising
- opportunities for counselling and support, including pastoral support
- a process to make recommendations to the relevant diocese or Church Authority about suspected and/or proven perpetrators.

30 Australian Catholic Bishop Conference and Catholic Religious Australia (January 2010) *Towards Healing. Principles and procedures in responding to complaints of abuse against personnel of the Catholic Church in Australia*.

31 See Glossary.

32 *Submission S185*, Catholic Church in Victoria, p. 66.

Box 20.1: Catholic Church response to complaints of criminal child abuse—how the systems work

Melbourne Response:

1. Victim making a claim is referred to the Independent Commissioner, who performs the investigation into the complaint.
2. Upon receipt of a complaint of sexual abuse the Independent Commissioner recommends to the Archbishop the alleged perpetrator be placed on administrative leave—he has a discretion in respect to other kinds of complaints.
3. The Independent Commissioner makes a finding regarding whether the abuse has occurred.
4. The Independent Commissioner refers the victim to Carelink and to the Compensation Panel.
5. The Independent Commissioner gives the victim an Application for Compensation form to sign.
6. The Independent Commissioner and Carelink (or other professional) prepare reports for the Compensation Panel. The latter report relates to the victim's condition—the treatment, counselling and support received and such other matters as Carelink and the Compensation Panel consider appropriate.
7. The victim signs a release authorising information to be obtained by the Compensation Panel.
8. The victim attends before the Compensation Panel.
9. The solicitors for the Church send a 'letter of offer' advising the victim of the amount of 'ex gratia' payment that the Compensation Panel has recommended. Accompanying this letter is an apology from the Archbishop of Melbourne.
10. If the offer is accepted, then the solicitors prepare a Deed of Release to be signed by the parties (victim and Church).
11. Counselling continues if required.³³

³³ Based on information contained in *Submission S185*, Catholic Church in Victoria.

Towards Healing:

1. Following initial contact, documentation is posted out by the Director of Professional Standards to inform the victim of the steps involved in the Towards Healing process.
2. The Director of Professional Standards appoints a contact person to follow up the victim's complaint and either receive their written and signed complaint, or assist them to prepare a 'contact report' outlining the details of the complaint to be confirmed by their signature. The contact person can act as a support person through the Towards Healing process.
3. The signed contact report is sent to the Director of Professional Standards for consideration and referred to the Church Authority for review.
4. Upon receipt of a complaint, the Director can make a recommendation concerning the funding of counselling or other such assistance for the victim, pending the outcome of the process.
5. The Director of Professional Standards may recommend that the alleged perpetrator to be placed on administrative leave pending investigation.
6. The Director of Professional Standards appoints two assessors (in some cases one) to conduct an 'assessment'. Under Towards Healing, assessors are required to investigate the facts of a case to the extent that it is possible to do so where there is a significant dispute or uncertainty as to the facts, or where there is a need for further information regarding the complaint.
7. The assessors draft a report, which contains the details of the relevant evidence, conclusions and recommendations, and provides this to the Director of Professional Standards and the Church Authority.
8. Sometimes a victim is required to undergo a psychiatric assessment.
9. The Director of Professional Standards informs the victim and the accused of the findings of the assessment report.
10. Following the assessment, the Director of Professional Standards can refer the victim to a facilitation and/or pastoral meeting.
11. The Director of Professional Standards may also recommend that the relevant Church Authority take disciplinary action with respect to the person who is the subject of a complaint.
12. A facilitation meeting can take place. Representatives from the relevant Church Authority, the victim and a facilitator attend the meeting. This process often involves an offer of an ex gratia payment to the victim.
13. A pastoral meeting can be held with the victim, representative of the relevant Church Authority and a facilitator.
14. A review of the outcome may be conducted. If any party is dissatisfied with the process or findings on assessment, a request can be made for an independent review.

Source: Compiled by the Family and Community Development Committee.

20.2 The Anglican Church

From 1994, the Anglican Church in Melbourne has established and further developed its processes and procedures to respond to complaints of child abuse.³⁴ In 2002, the protocol *Power and trust in the church* was introduced and it established a Professional Standards Committee (PSC) to appraise, investigate and make recommendations to the Archbishop in respect of complaints. A Director of Professional Standards (DPS) was also created to act as its executive officer.

In 2010 a new version of the *Power and the trust in the church* protocol was introduced to provide further guidance on procedures following the implementation of the *Professional Standards Act 2009* by the Anglican Church. It outlines procedures for responding to abuse, harassment and other misconduct within the Church.³⁵ This was published by the Anglican Diocese of Melbourne and applies also to the Wangaratta and Ballarat Dioceses. The following structures were set up:

- Professional Standards Board (PSB)—receives referrals from the PSC and has an adjudicative role in determining the outcomes of a complaint and the fitness of a church worker for service in the Church.
- Professional Standards Review Board (PSRB)—hears any application for review of a decision of the PSB.

There are various professional criteria for membership of the PSC, PSB and the PSRB, including requirements that some are not members of the Anglican Church.

The Anglican protocol commences as follows:

The Office of Professional Standards is established by the Archbishop to provide support to people who make complaints about abuse and other misconduct by Anglican clergy, church officers, church employees and volunteers in the Anglican Province of Victoria. The Director of Professional Standards is as independent as possible from the Church but is paid by the Church.³⁶

The Director of Professional Standards:

- is independent of Church administration and structures
- has investigative skills and qualifications or experience in legal practice or procedure or in counselling or an associated area
- is neither a member of clergy nor married to a member of the clergy.³⁷

Ms Claire Sargent, a registered psychologist, has served as the Director of Professional Standards since 2004. Her functions are set out in the Anglican Church submission:

109. The *Professional Standards Act* allows of the appointment of the Director (s.19) and establishes the core functions (s.20) as follows:

34 For a history of the process see *Submission S244*, Anglican Diocese of Melbourne. Appendix B.

35 Other dioceses Gippsland and Bendigo have similar though not identical protocols.

36 Anglican Diocese of Melbourne (2010) *Power and trust in the church. A protocol under the Professional Standards Act 2009 for responding to abuse harassment and other misconduct within the church*. Canterbury, Anglican Diocese of Melbourne, p. 2.

37 Anglican Diocese of Melbourne (2010) *Power and trust in the church. A protocol under the Professional Standards Act 2009 for responding to abuse harassment and other misconduct within the church*, p. 2, section 3.

- to receive any complaint on behalf of the PSC and in his or her discretion to make a complaint against a church worker
- to manage the implementation of the protocol in respect to any complaint
- to be the executive officer of the PSC
- to attend meetings of the PSC except for any part of a meeting that deals with conditions of employment, remuneration or performance of the Director
- to provide a central focus in matters involving personal ethics and behaviour including advice about appropriate standards and enforcement
- to provide or arrange care of treatment of parties to the process of any protocol
- to provide input into any education or vocational training programs for members of the Diocese, including those involved in managing or providing pastoral care and other community services
- to provide advice to complainants and Church workers about the operations of the protocol, with particular emphasis on helping Church workers in authority to understand and discharge their responsibilities under any protocol
- to keep proper records of complaints, decisions, meetings, employment screening, details, police checks and people affected by allegations of misconduct
- to consult and cooperate with Church associated organisations to promote consistency between them and Diocesan protection policies and procedures
- in cases of alleged illegal behaviour to support the complainant in making a report to Victoria Police and Child Protection Service Victoria
- to report to the PSC on any recommended changes to the Protocol and any other changes to Church processes, structures and educational programmes that would reduce the risk of abuse in a Diocese.
- Such specific functions and duties as may be prescribed in this or any other Act or as may be determined by the PSC.
- Such specific functions and duties as may be prescribed in this or any other Act or as may be determined by the Archbishop in Council.

110. The DPS meets with the PSC on approximately a six week cycle and has statutory obligations to report to both PSC and through the PSC to the Archbishop-in-Council. The DPS also reports on an annual basis to the Synod of the Diocese.³⁸

The Anglican protocol states that its focus is on outcomes for the complainant:

At all times, the process of Professional Standards must be to ensure that allegations of abuse and misconduct are appropriately and effectively resolved. For the Diocese this means a strong focus on a pastoral response to both the complainant and the respondent seeking in difficult circumstances a just and fair outcome.

In our experience dealing with allegations of past abuse can, on rare occasions lead to complainants seeking financial compensation ... While financial settlement of matters may be an outcome, the Diocese is concerned to ensure that the pastoral and restorative nature of the process is the overriding outcome. While accepting that each complaint comes in unique and difficult circumstances, in our view the focus of either the complainant or the Church should not be a monetary consideration.³⁹

38 *Submission S244*, Anglican Diocese of Melbourne, p. 23.

39 *Submission S244*, Anglican Diocese of Melbourne, p. 27.

The Anglican Church also indicated that pastoral support and counselling would be made available on an ongoing basis after the resolution of the claim.⁴⁰

Box 20.2: Anglican Church approach to claims of criminal child abuse—how the system works

1. Victims are provided with a counsellor who advises them on the process, seeks to learn what they wish to achieve, and obtains their informed consent to proceed with a formal complaint.
2. If informed consent is provided the respondent is notified of the complaint (if alive) and the matter is investigated by the PSC. There is a focus on a pastoral response to both the complainant and the respondent ‘seeking in difficult circumstances to produce a just and fair outcome’ while minimising any harm posed by the respondent while the complaint is dealt with.
3. If the PSC considers that the investigation has raised questions as to the respondent’s fitness for ministry or whether they should be subject to restrictions (if applicable), then the matter is referred to the PSB for adjudication.
4. If upon investigation the complaint is substantiated with no disciplinary ramifications for the respondent, then the DPS negotiates settlement of the matter with the complainant or their solicitors. Complainants can seek financial compensation. Regardless of whether a financial settlement results, the pastoral and restorative nature of the process is noted as ‘the overriding outcome’.
5. The PSB considers the evidence provided by the PSC and makes recommendations on appropriate next steps.
6. The complainant (through the PSC), or the respondent, may apply for a fresh administrative review of the PSB’s decision by the PSRB.
7. The PSB and PSRB’s recommendations are authorised by the Archbishop.

Source: Compiled by the Family and Community Development Committee.

20.3 Berry Street

Berry Street is a not-for-profit, non-government and non-church based organisation that has been supporting Victorian children and families since 1877. It is Victoria’s largest child welfare organisation offering a range of services including foster care and residential care for children.

Berry Street provided the Committee with a detailed complaints handling process for adult care leavers. This process is set out in its Berry Street policy: *Complaints—adult care leavers*. It noted that its approach to reparations for past abuse is guided by the *Principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law*.⁴¹

40 *Transcript of evidence*, Anglican Diocese of Melbourne, p. 12.

41 UN General Assembly (2006) *Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law*. Resolution / adopted by the General Assembly, 21 March 2006.

Berry Street also provided the Committee with its policy on handling misconduct allegations. The policy notes that ‘the outcome of an investigation will vary depending on the findings. It may include disciplinary action of an employee (up to and including termination of employment), an apology, training, changes in reporting responsibility, changes to placement arrangements, etc.’⁴²

Box 20.3: Berry Street approach to claims

1. A Designated Person (Deputy CEO/Director of Services or as determined by the CEO) meets with the complainant to discuss the complaint and what supports they require.
2. The Berry Street Board of Directors is responsible for determining the most appropriate response to the complaint and any reparations offered.
3. Claimant may request a review of the process or outcome within one month. Review is undertaken by a person appointed by Berry Street’s CEO.

Source: Compiled by the Family and Community Development Committee.

Berry Street explained that victims can achieve a broad range of outcomes from the claims process. Its submission noted that the reparations it makes to care leavers include (but are not limited to):

- acknowledging any failures in Berry Street’s duty of care
- formal apology in a format and in a manner agreed with the complainant
- assistance with access to support services
- financial payment
- remedial actions to prevent the re-occurrence of any acts of abuse against Berry Street clients.⁴³

20.4 The Salvation Army

The Salvation Army provided the Committee with policies and instructions that it considers have been designed to ensure a consistent approach across the organisation. The policy provided is the Care Leaver Complaint Process (See Box 20.4).

The Territorial Legal Secretary of the Salvation Army, Captain Malcolm Roberts, told the Committee that:

In dealing with victims of abuse, what we have found in Victoria is that most victims—and that is nearly all of them—come to us with a lawyer. Our process involves not the legal system so much. We do not expect proceedings to be issued in court. We do not carry out an investigation into what we are told. We receive a complaint, we deal with a lawyer, we reach a settlement, and that settlement is something that we believe is fair and just, which is argued with lawyers on both sides. We are not taking advantage of a person who is unrepresented, and we reach a settlement and we pay compensation that is to deal with their whole sort of position at that time and taking into account the abuse that they have suffered.⁴⁴

42 Berry Street (2010) *Policy on handling misconduct allegations*. Richmond, Berry Street, p. 4.

43 *Submission S262*, Berry Street, p. 41 (Appendices).

44 *Transcript of evidence*, Salvation Army, Melbourne, 11 April 2013, p. 12.

Box 20.4: The Salvation Army response to claims

For complaints received directly by phone, there is an internal complaint handling process which involves:

1. Initial meeting to listen to and confirm the victim's account, request a statutory declaration, explain next steps, offer counselling, and advise the victim that they can engage a solicitor and should report the abuse to police (This is not evident in the files as there are no recommendations regarding police referrals).
2. Investigation, including research into residency of care leavers and the amount of payment/other services to be offered as a final resolution to the matter (through reference to similar claims). The Salvation Army at this point can pass the complaint to their solicitors for handling.
3. Meeting with complainant to agree an outcome.
4. Preparation of a Deed of Release and sending to complainant.
5. After signed Deed of Release received from complainant, apology letter is sent to complainant with a copy of Deed of Settlement.

For complaints received by letter or through solicitors:

1. Letter to be forwarded to the Salvation Army solicitors.
2. Solicitors conduct research (statutory declaration, psychiatric/psychological/medical reports, wardship file, interviews).
3. Solicitors meet with complainant and provide the Salvation Army a summary of the complaint, evidence, assessment and recommended solution/settlement payment.
4. The Salvation Army instructs solicitors about any additional details, and maximum payment authorised for settlement of the claim. Any proposed payment over \$50,000 requires referral to Territorial Finance Committee.
5. Solicitors conduct settlement conference. Solicitors to contact the Salvation Army during a break in the conference to seek further instructions if the settlement sought exceeds the authorised amount. Solicitors advise the Salvation Army of the outcome, present a copy of the Deed of Release and provide payment instructions when available from complainant.
6. Standard letter of apology is sent to complainant at end of the process.
7. The Salvation Army finalises payment.

Source: Compiled by the Family and Community Development Committee.

20.5 Uniting Church

In its submission, the Uniting Church explained that it encourages victims to seek legal advice and to be legally represented in settlement negotiations. It explained that the process generally involves an exchange of documents, a psychiatric assessment of the victim and a meeting with the victim, their lawyers and, in some cases, the State, 'to talk about the case to explore whether settlement is possible'.⁴⁵ The Uniting Church

⁴⁵ *Submission S164*, Uniting Church in Australia, p. 21.

notes that where a victim does not wish to involve lawyers, they are encouraged to have a support person present as part of their meeting.⁴⁶

Similar to the Salvation Army, the Uniting Church told the Committee that their approach is to respond to complaints by engaging solicitors to negotiate a private settlement.⁴⁷ The Uniting Church approach is complicated by the fact that many victims were care leavers and the Victorian Government is often a party to the negotiated settlement. At least one victim told the Committee that his approach with the Uniting Church process had been a positive one.⁴⁸

The Committee notes that the Uniting Church conceded that their Culture of Safety Unit had identified gaps in internal referral systems and a lack of procedure for aftercare.

Finding 20.1

The processes that have been adopted by non-government organisations to respond to complaints of criminal child abuse are varied. Some organisations have very detailed and documented policies while others are less formal. The purpose of these policies is to meet the needs of victims and to provide them support.

46 *Submission S164*, Uniting Church in Australia, p. 21.

47 *Submission S241*, The Salvation Army, Australia Southern Territory, p. 4.

48 *Transcript of evidence*, Mr Hugh McGowan, Melbourne, 4 February 2013, p. 5.

Chapter 21

Analysis of processes for responding to allegations of past criminal child abuse

AT A GLANCE

Background

The Committee accessed the files relevant to the systems used by the Catholic Church, the Anglican Archdiocese of Melbourne and the Salvation Army. It also viewed complaint files relating to individuals within Catholic Church orders in Victoria. Its analysis and findings from reviewing these files has informed the Committee's recommendations in Parts G and H of this Report.

Key findings

- The internal systems adopted by religious organisations reviewed by the Committee revealed the features listed below, which, whether considered individually or in combination, have contributed to the ongoing dissatisfaction of victims and their families with the organisation's response to allegations of criminal child abuse:
 - ♦ the processes for responding to complaints used by non-government organisations are not truly independent of the organisations
 - ♦ there is no existing recognition of or support for secondary victims of criminal child abuse in the systems used by organisations to respond to allegations of such conduct
 - ♦ the approach to financial compensation by the organisations reviewed often did not provide a clear explanation of the basis on which an organisation makes a financial payment, how the amount awarded was determined and obligations regarding confidentiality
 - ♦ organisations rarely encourage participants in the process to seek independent legal advice before reaching any agreements that might affect their subsequent legal rights
 - ♦ organisations tend to provide generic apologies that do not focus on the specific circumstances of the individual and the role played by both the perpetrator and the organisation in regard to the damage suffered by the victim
 - ♦ not all organisations provide counselling support, and some that do tend to provide inadequate counselling due to the limited sessions offered, an approach not tailored to individuals or counselling offered through services operated internally within the organisation
 - ♦ some organisations demonstrated a reluctance to implement effective disciplinary processes for offenders in their organisation, such as standing them down from their duties, removing their title or their membership to the organisation.
- The dissatisfaction with the internal process of an organisation was influenced by the manner in which the organisation supported the perpetrator of criminal child abuse.

As indicated in the previous chapters of this Report, a number of organisations have developed mechanisms or processes for dealing with complaints of criminal child abuse relating to allegations of past child abuse. A significant amount of information regarding the workings of these processes was made available to the Committee from the relevant parts of the different organisations.

However, the overwhelming majority of information about how victims experience these organisational responses came from submissions and oral evidence given by victims involved in the Catholic Church processes, which have been operating for 15 years. From that information a number of themes have emerged that are applicable to any organisational response to criminal child abuse. These include:

- the real and perceived degree of independence of the people investigating victims' claims
- lack of recognition of secondary victims
- confidentiality and police involvement
- financial compensation—the role of the victim in this part of the process, the mechanism for seeking compensation, the amounts offered and the role of the organisation
- apology—the genuineness or otherwise of the perpetrator and the organisation
- the level of counselling and support provided by the organisation
- pastoral support
- the organisation's relationship with the perpetrator and the attitudes of the hierarchy.

It is important to note that these issues cannot be looked at in isolation. A combination of such matters has contributed to a general feeling of dissatisfaction with how the Catholic Church has dealt with complaints of abuse. We need to consider this dissatisfaction in the context of the whole of the Catholic Church response, particularly the Catholic Church's treatment of perpetrators once allegations are proven. This issue is the responsibility of the Catholic Church and not part of either Towards Healing or the Melbourne Response.

Victims involved in these processes are often very damaged and fragile. Many do not trust the Catholic Church to set up a system that will help them and focus on them, when they attribute responsibility for some of the harm they have suffered to the Catholic Church in addition to the individual perpetrator.

One issue to consider is the reason for the higher level of dissatisfaction with these particular processes compared with others, such as the Anglican Church response. Why is it that the Catholic Church processes, purportedly designed to achieve a fair and just outcome for victims, have resulted in such anger by some of its participants?

21.1. Actual and perceived independence in the investigation phase

This section of the Report considers the actual and perceived independence of the processes for undertaking investigations relating to claims. It reviews those used by the Catholic Church (the Melbourne Response and Towards Healing) and also those processes used by the Salvation Army and the Anglican Diocese of Melbourne.

21.1.1. Independence—Melbourne Response and the Independent Commissioner

All of the Melbourne Response files are located in the chambers of Mr Peter O’Callaghan QC and the Committee was provided with full access to them. The files clearly show that in the vast majority of cases Mr O’Callaghan QC genuinely believed the victim’s account and made a concerted effort to work with the victim to clarify the details of abuse. He attempted to assist and encourage the victims, rather than challenge their claims, so that they could receive some recognition, counselling and money if desired. There was an acceptance of most claims even on the basis of minimal information or only a basic verification of the facts. Mr O’Callaghan QC told the Committee:

... there is very little fakery in respect of sexual abuse. At the time of my appointment, because money was involved, I had the perception that there may be a number of bogus applicants, and that has not occurred at all. I have no doubt as to the veracity of the complaints which have been made. People do not, for obvious reasons, simulate or make up that they have been sexually abused, but, ... of course I hope I have been solicitous of these people, whom I have seen in all sorts and sizes.⁴⁹

The Committee received evidence containing criticisms that the Melbourne Response lacked independence. It acknowledges that a number of witnesses representing the Catholic Church and the Melbourne Response, including Mr O’Callaghan QC, strongly refuted this suggestion.⁵⁰ The Committee acknowledges that there were no indications in its review of the Melbourne Response files that the Catholic Church leadership influenced the findings of Mr O’Callaghan QC. However, the Committee considers that in order to meet the needs of victims, perceived independence is as critical as actual independence.

Given the circumstances that existed at the time of the creation of the Melbourne Response⁵¹ it was in the interests of both the victims and the Catholic Church to provide this alternative system. It could be argued that because of the many barriers to civil litigation (discussed in Part H of this Report) victims would have got nothing if the Catholic Church had not instituted the Melbourne Response and Towards Healing.⁵² However, by creating the Melbourne Response, the Catholic Archdiocese of Melbourne created a mechanism by which it could control or limit the damage to its finances and its reputation while continuing to rely on technical legal defences to deflect legal claims in the courts, as described in Part H of the Report. The financial exposure and damage to the reputation of the Catholic Church would conceivably be much greater if the Melbourne Response had not been in place. The Melbourne Response solved the significant problem facing the Catholic Church and the necessity for action to be taken, as discussed in Chapter 7 of Part C. The Committee considered that the role of Independent Commissioner is part of an internal process which was established, and has been implemented, for the dual purpose of providing compensation to victims and minimising damage to the Catholic Church. It determined therefore that it could not be seen as independent.

Mr O’Callaghan QC and Mr Jeff Gleeson SC were appointed by the most senior Catholic Church member in Melbourne, the Archbishop of Melbourne. They are

49 *Transcript of evidence*, Melbourne Response, Melbourne, 30 April 2013, p. 12.

50 *Transcript of evidence*, Melbourne Response, pp. 6, 8–10.

51 See Chapter 7 of Part C.

52 See Part H regarding barriers to litigation.

paid to perform that role by the Catholic Archdiocese of Melbourne. Each person who has acted in that role is a senior and respected member of the Victorian Bar.⁵³ Mr O’Callaghan QC spoke of his role as follows:

On independence, I am a member and have remained a member of the Victorian Bar and barristers necessarily are independent of their appointers. They are independent of their clients. They often advise clients about things which the client does not want to hear. Similarly, royal commissioners are often appointed by governments. I am not a royal commissioner. I never said I was, but I was akin to a royal commissioner in the sense that a government appoints a royal commission—take the present Victorian government for instance. The analogy is that the government appointing me was the Archdiocese of Melbourne. Now use of the words ‘independent commissioner’ was to convey just simply that. I do not accept that there has been as much puzzlement as is being put forward about what people, or victims, thought I was or what I was doing. Your legal advisers have seen my files. As I say, there are some excerpts in this submission and I will be also submitting other files which make clear my independence.⁵⁴

In regard to where he receives payment from, Mr O’Callaghan QC stated that:

... of being paid by the appointor does not—and it is a grave allegation against me when it is made—destroy my independence. That is, I am allegedly a cat’s paw of my appointor. Now, if there has been a conflict of interest, I have not perceived it and I do not think anyone rationally should and what is more, if I am covering up—if that is what I am accused of—I have found 97 per cent of complaints which have come to me established. That does not appear to be anything other than the exercise of an independent assessment of the matters that have come before me.⁵⁵

Victim dissatisfaction with the role of the Independent Commissioner is somewhat surprising when 97 per cent of complaints were accepted. However, victims involved in the Melbourne Response process perceived the role of the Independent Commissioner as a much broader one than was in fact the case. The Committee accepts what Mr O’Callaghan QC said in evidence:

Let me make this very clear: there is no doubt about my abhorrence of child sexual abuse, sexual abuse generally, and I have to say this, that no matter how solicitously a complaint is handled, how adequate compensation might be, or [an] apology might be, the provision of free counselling and psychological support, the one thing that cannot be eradicated in many cases is the indelible imprint which the fact of the sexual abuse has left upon the person and which has blighted his or her life from the time it happened and which continues to do so. I do not want to repeat that often, but you can please accept that this is the acceptance of how I have seen paedophiles and their activities and the degradation that they wreak upon their victims.⁵⁶

Although this statement recognises the significant damage suffered by victims of abuse, it touches on some of the other issues relating to the Melbourne Response that have been raised by victims. Clearly Mr O’Callaghan QC was not influenced to favour the Catholic Church when considering whether abuse occurred. But the question remains: why is there such a level of dissatisfaction with the process when so many claims were accepted or findings were made against members of the Catholic

53 Others who have fulfilled the role of Independent Commissioner are Mr Paul Guest QC, Mr Paul Lacava QC and Mr James Elliot SC.

54 *Transcript of evidence*, Melbourne Response, pp. 6–7.

55 *Transcript of evidence*, Melbourne Response, p. 9.

56 *Transcript of evidence*, Melbourne Response, p. 4.

Church? Mr O'Callaghan QC and Mr Gleeson SC did not accept that there was a high level of dissatisfaction with the process.⁵⁷

When questioned regarding the creation of Melbourne Response, Cardinal Pell refused to accept that it was 'in-house'. He stated:

It was hardly in-house. We held a press conference to announce the institution of these three measures. They were publicised in every parish and school in the diocese. The sort of implication that this was somehow done under the table by half-reputable bishops who wanted to keep everything quiet is totally misleading, and that is evidenced by the quality of the people who consented to work on our committees ...

It was in no sense an in-house matter. I would once again request that I be given permission to explain the role of Mr O'Callaghan in that because he was given the almost total responsibility of doing the day-to-day handling of those issues, and the suggestion that somehow he was not independent is, I think, totally misleading and unfair to one of the most senior members of the bar who is constrained by the principles of the bar to be independent. No-one would suggest that the judges are not independent because they are paid by the government when they sit on and judge cases to do with the government. Mr O'Callaghan was given complete independence. There is no evidence that either myself or Archbishop Hart interfered in any way in his decision making, and the suggestion that somehow he was not independent I totally reject.⁵⁸

Such a response misunderstands the criticism made as to the 'independence' or the system being 'in-house'. The dissatisfaction with Mr O'Callaghan QC and the Melbourne Response is not on the basis of his findings of abuse. Rather it stems from him being the person 'who has total responsibility for the day-to-day handling of ... issues',⁵⁹ the only person who is able to keep a victim informed of the progress of their case, and being the face of a system with an inherent tension. Even if it is accepted that victims are the number one priority, that does not change the essentially problematic character of the system that benefitted its creators, by limiting its financial exposure and protecting its reputation.

The point can be illustrated as follows. A very detailed written and oral submission was provided to the Committee by Mr Anthony and Mrs Chrissie Foster. One of the many issues raised by them was their perception of the role of the Independent Commissioner through their involvement with Melbourne Response.⁶⁰ It is important to set out some undisputed facts and dates to understand the concerns they expressed. Mr O'Callaghan QC provided the Inquiry with his lengthy file regarding the Foster family.

- Mr O'Callaghan QC found in his role as Independent Commissioner that Ms Emma Foster was a victim of abuse (3 October 1997).
- Ms Emma Foster was offered \$50,000 (the maximum amount) by the Compensation Panel. This offer was made as a 'realistic alternative to litigation which would have otherwise been strenuously defended'⁶¹ (8 June 1998).

57 *Transcript of evidence*, Melbourne Response, p. 7.

58 *Transcript of evidence*, Catholic Archdiocese of Sydney, pp. 10–11.

59 *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 11.

60 *Submission S037*, Mr Anthony and Mrs Chrissie Foster, pp. 5–6; *Transcript of evidence*, Mr Anthony and Mrs Chrissie Foster, Melbourne, 23 November 2012, pp. 14–15.

61 This wording was used in the Melbourne Response letters of offer prior to November 2002. See Section 21.4 regarding letters of offer from Melbourne Response.

- Ms Emma Foster accepted the offer however due to her age (under 18 years) it was necessary for her parents and the Catholic Archdiocese of Melbourne to enter a Trust Deed regarding the funds. The Trust Deed was provided to the Fosters on 8 February 1999.
- Ms Katie Foster (Emma's sister) also revealed abuse. Mr O'Callaghan QC met with the Foster family regarding Emma's claim (the Trust Deed had not yet been signed) and verbally indicated that he would make a finding of abuse in respect of Katie (6 May 1999).
- Solicitors for the Fosters requested a written finding from Mr O'Callaghan QC that Katie was a victim of abuse (9 February 2000).
- Mr O'Callaghan QC wrote to the solicitors for the Catholic Archdiocese of Melbourne inquiring whether it was appropriate that he should contact the Foster family to 'flush out' their intentions. At that stage, the Trust Deed regarding Emma had not been signed and no written finding regarding Katie had been provided.

A portion of a letter sent by Mr O'Callaghan QC to Mr Richard Leder, at Corrs Chambers Westgarth (solicitors for the Catholic Archdiocese of Melbourne) on 23 February 2000, was read to Mr O'Callaghan QC by the Committee:

I would like your views as to whether it is appropriate in effect to try to flush out the real intention of the Fosters. A reading of the correspondence only reinforces the possibility that they may have another agenda and my oblique reference to other information is reflective of that. On the other hand, if they write back and say they insist upon my making a finding in relation to the complaint which has been lodged, I will feel obliged to do so. They would say we will decide what we are going to do when we have the finding, and such an option is contemplated by the archdiocese system.⁶²

In evidence to the Inquiry, Mr O'Callaghan QC explained:

I have expressed time and again my sympathy for the Foster family. You have got the Foster file, where this has no doubt come from. So if you have any worries about how I handled the Foster complaint, I suggest you go back to the file. But in this context, as it appears from the file, I was wanting to know whether they were coming to see me merely to get a finding so that they would go on to take proceedings, and I expressed to their solicitors that they were perfectly entitled to do what they wished. It was only in respect to Katie that I was asked for a finding, and I said, 'What is the reason for it?', and there it was. But with respect to Emma, if you go to the file, you will find I think a 50-page report which I made to the compensation panel ...

And that was because I perceived the imminence of legal proceedings, which I think in a letter to William Winter and Higgs I said:

In the light of the above and also because of other information I have received, my query is whether Emma proposes to reject the offer and presumably pursue other remedies. Let me hasten to say that whether or not this occurs is not a matter which concerns me in my capacity as independent commissioner. I do not, as I cannot, discourage or encourage any course of action decided upon by Emma and her advisers.⁶³

When asked if he went through this process with others:

If I did, it was on rare occasions. The justification for this is because of what appeared

⁶² *Transcript of evidence*, Melbourne Response, p. 15.

⁶³ *Transcript of evidence*, Melbourne Response, p. 15.

to be the position of going outside my role. Can I say that when Mrs Foster mistakenly says I went out to get Emma to sign, I did not. I was going out to see Katie and also Emma, but to tell them about the trust deed, because Emma had signed her acceptance and she was to turn 18, and it was obvious that if they were going to accept that money, then it was desirable that there be a trust deed before she turned 18.

My concern to talk about the trust deed was that I said, 'If she is going to sign it, she should do it quickly before she turns 18, because once she has turned 18 the essential rationale of the trust deed goes.'⁶⁴

This explanation does little to explain 'whether it is appropriate to flush out the real intention of the Fosters.' It was an attempt to ascertain for the Catholic Archdiocese of Melbourne solicitors whether the Fosters were going to accept the offer made to Emma and their intentions in respect of the finding regarding Katie. This appears to be beyond the role of investigator—he had already made a detailed finding in respect of Emma and a verbal finding for Katie.

This also reflects the inherent tension in the system—the Catholic Archdiocese of Melbourne lawyers had indicated if the offer regarding Emma, the maximum \$50,000, was not accepted, that litigation would be 'strenuously defended'.⁶⁵ Presumably the same applied to Katie's claim. It was against the financial interest of the Catholic Archdiocese of Melbourne and a threat to its reputation for the Fosters to go outside their system.⁶⁶ The Foster family issued claims against the Catholic Archdiocese of Melbourne and settled their claim for a global figure of \$750,000.

Despite Mr O'Callaghan QC maintaining that he did no more than carry out his role and that the Fosters were entitled to use his finding outside the Melbourne Response process, he does not appear to be acting only in the role of the Independent Commissioner investigating complaints in this example.

One issue raised by victims regarding the Melbourne Response procedure was the circumstances of their first contact with Mr O'Callaghan QC. For many victims this was the first time that they had revealed their abuse and some felt intimidated by meeting a senior legal counsel in his chambers in the city. Victims expressed concern that they were not given support (or made aware that they could have support) at this first meeting. This lack of support was especially significant given the legal and formal status of the Independent Commissioner and the fragile and frequently damaged state of the victims. Some victims reported concerns about their accounts being tape-recorded but did not feel that they were able to object.

One victim wrote to Mr O'Callaghan QC expressing her concerns after her first meeting with him and read the letter to the Inquiry:

While I accept that the Diocesan powers that be [sic] probably chose the venue as a symbol that they were taking these matters seriously it had the reverse effect on me. As a victim, whether you accept that or not, the venue and excessive decor turned me off as I got out of the lift. It spoke of power, money, and opulence and had the effect of making me feel ... inferior. The common waiting room with no privacy also suggested that the selectors of the venue had no concept about the huge amount of

64 *Transcript of evidence*, Melbourne Response, pp. 15–16.

65 This wording was used in the Melbourne Response letters of offer prior to November 2002. See Section 21.4.1 regarding letters of offer from Melbourne Response.

66 *Transcript of evidence*, Mr Anthony and Mrs Chrissie Foster, Melbourne, 23 November 2012.

courage it takes to get to the venue, if they had then a quiet space to prepare oneself would have been provided.

The first image of you sitting behind the desk and the view behind is another intimidating factor. The most disturbing action was that you leant back to switch on your tape recorder without even introductions so I could speak my name into the tape like a criminal. I know this is common practice for you, but not a thing I would ever do to a person I was counselling and whose trust I wished to obtain.

Then there were the questions. I know you are a kindly person. You would not even realise the legalistic way you ask questions. The questions you asked me on our first meeting, when I had stated that I was not there to make a complaint, I found very distressing. They were more intrusive than my counsellor had asked after three sessions ...

I cannot tell my family, and have never been able to do so, even though my sister once told me that my mother suspected the abuse ... why couldn't I tell her ...

It was because of the ... shame.

So I came to you with only my counsellor's knowledge and no-one to turn to ...

I realise that there needs to be legal involvement in this process. I would argue, however, that you should not be the first contact person. It needs someone with expert counselling skills. Then having established the story in a calm and gentle manner can perhaps accompany the person to talk with you.⁶⁷

Another victim said:

That year, I rang Peter O'Callaghan QC to begin the process of the Melbourne Response. I found this meeting in his imposing chambers a daunting experience. I didn't have a support person during the interview which he was taping and I was not advised to when I made the appointment. He asked questions and I answered them ...⁶⁸

Fr Kevin Dillon is the parish priest at St Mary's Basilica in Geelong and has had experience working with victims of criminal child abuse. He told the Inquiry that the Melbourne Response process is adversarial and lacks support and follow-up. He suggested that the introduction of a Queen's Counsel (QC) at the beginning of the process was 'fairly intimidating', and that he had been denied permission to support victims through the process. He commented: 'It is an adversarial approach—certainly in the perception of the victims—that lies very close to the heart of all that has been so bad.'⁶⁹

Others felt overwhelmed and did not understand all that was being said to them by Mr O'Callaghan QC.

Basically because they were asking us questions there that—I will go back. I had a couple of conversations with O'Callaghan also. I am not the world's smartest person, but he is a lawyer and that sort of stuff. This basically bamboozles us. I did not have a lawyer.⁷⁰

Sometimes victims were confused about matters such as confidentiality. At the initial interview, and in subsequent conversations with Mr O'Callaghan QC, what is said is confidential, unless the victim desires otherwise. The confidentiality restrictions of

67 *Submission S456*, Name withheld.

68 *Submission S484*, Name withheld.

69 *Transcript of evidence*, Fr Kevin Dillon, Geelong, 15 February 2013, p. 3.

70 *Submission S478*, Name withheld.

the Melbourne Response are complicated and do not remain the same through all stages of the process,⁷¹ so some victims became confused about the confidentiality restrictions placed on them, believing that they were subject to more severe restrictions than those stated to them. This aspect of confidentiality is considered in the context of the Compensation Panel.⁷²

Criticisms of Mr O’Callaghan QC arose most often when the role of investigating a claim was extended or changed. It is not surprising that there is such role confusion as the Independent Commissioner is the only person available to inform victims about the process. Many victims mistakenly thought he was there for them and relied on him for support and assistance through other parts of the process. While this may be a positive for some victims, it has misled others, so they have misunderstood or misinterpreted his role in the Melbourne Response process.

The confusion became more evident for a victim who was required to attend a hearing and the role of Mr O’Callaghan QC shifted to being like that of a judge. Hearings can be a traumatic experience for victims. They add an adversarial and legalistic flavour to the process which both victims and the Catholic Archdiocese of Melbourne were trying to avoid.⁷³

Mr Jeff Gleeson SC indicated to the Inquiry:

The majority of the contested hearings, certainly in recent times, have been conducted at the County Court facilities in a private and secure room ... It has some formality so that there is not the intimacy that might add to or compound the apprehension that the victim has ... As counsel assisting, my job was to make all of those arrangements and make sure that on the day nothing went wrong, so I would be shuttling between rooms and saying, ‘You stay there until they’re in the lift’, and so on ...

I do what I can to humanise the legal representation ...⁷⁴

In my former role as counsel assisting I would typically have a discussion with the complainant about legal representation pretty early on in our discussions. I would like the committee to understand that with contested hearings I have many, many discussions with the victims. I go on the journey with them over days, weeks and months. We email each other, we speak together on the phone, they come into my chambers and we talk about the case and about a lot of things. One of the very early things they say is, ‘Do I need a lawyer?’. I say, ‘You’re perfectly entitled to have a lawyer. It would make my job a lot easier if you did, but it’s up to you. You don’t need one. I will assist you, but you must understand that I am not your lawyer, so that if you tell me something’—and I try to give them a good example.

What the commission needs is balance—both sides of the story. So in the cases, which are the majority, where the respondent—the accused—has legal representation and

71 Different parts of Melbourne Response are subject to different confidentiality restrictions and dependent upon what stage of the process you are at e.g hearings are always confidential, though the results of a compensation hearing are not confidential, after a victim has accepted the proposed settlement offer.

72 See section 21.4.

73 Archbishop Denis Hart of the Catholic Archdiocese of Melbourne, for example, told the Inquiry that he believed the Melbourne Response was ‘established precisely to provide an alternative to the burden and the struggle and the difficulty of the legal process’ *Transcript of evidence*, Catholic Archdiocese of Melbourne, Melbourne, 20 May 2013, p. 48.

74 *Transcript of evidence*, Melbourne Response, p. 31.

they cross-examine the complainant, the role of counsel assisting tends to be much more as an advocate for the victim, in the interests of balance. I would then typically not cross-examine the victim but try to get clarification if there is uncertainty, but I would cross-examine the respondent. I have to say that that can happen in a reasonably robust manner ...

It has got a lot of similar aspects to a private closed court hearing, yes.⁷⁵

When challenged by the Committee that this approach to contested hearings did not appear to be conciliatory and that it was quasi-legal, Mr O'Callaghan QC responded:

Can I just say this: I appreciate that in the limited number of cases in which there is a denial and the claimant wants to continue through the Melbourne Response, he or she meets in, I submit, a fair and compassionate way the same situation that he or she would meet when standing on the floor of the Magistrates Court.⁷⁶

Mr Gleeson SC also responded:

The first thing to note is that there have been I think 16 contested hearings in total. That is 16 out of over 500, so they are a very small minority. We sincerely wish that we never had to have a contested hearing, but unfortunately there are occasions when there is no alternative ...

What we have is a situation a little like democracy: the process of a contested hearing is the worst way of determining facts, apart from all the others. It is the only way that we can do it. Given that we have to do it, we then try to do it in a very sensitive way, where there is certainly not this raging cross-examination where a victim is subjected to ridicule and abuse. Mr O'Callaghan would not tolerate it for a moment. It is conducted properly but fairly.⁷⁷

The potential for further damage to be caused to a victim engaged in this process is obvious and it is questionable whether it would ever be appropriate to set up this quasi-legal system to determine disputed complaints, particularly in circumstances where the individual victim has chosen to avoid the civil and criminal litigation path. For example, one victim reported feeling disempowered in the process and explained that she was given limited information regarding the process that was to be adopted.⁷⁸

As part of the Melbourne Response, Mr O'Callaghan QC is required to interact with the Catholic Archdiocese of Melbourne for various legitimate reasons, such as referrals, to ascertain the details of a perpetrator's history, to ascertain a perpetrator's current status and whereabouts, and to make recommendations about a particular perpetrator. Mr O'Callaghan QC does assist victims both during and after the Compensation Panel process, and refers them to Carelink for counselling. In some cases, victims who complain to the Melbourne Response need urgent financial assistance or other aid and this is often arranged through Mr O'Callaghan QC in conjunction with the Catholic Archdiocese of Melbourne and/or its solicitors.

Some victims came to rely on Mr O'Callaghan QC and seemed genuinely grateful for the assistance he personally provided. While this is a positive thing, it does conflict with the fact that he is not, and can never be, a victim's personal legal representative. Providing assistance is outside the terms of his appointment to 'enquire into

⁷⁵ *Transcript of evidence*, Melbourne Response, p. 32.

⁷⁶ *Transcript of evidence*, Melbourne Response, p. 33.

⁷⁷ *Transcript of evidence*, Melbourne Response, pp. 33–34.

⁷⁸ *Submission S485*, Name withheld.

allegations of sexual abuse'.⁷⁹ While it is not suggested that Mr O'Callaghan QC would abuse the goodwill he garners, this conflict of roles could mislead a victim to misunderstand, or misinterpret, his role in the Melbourne Response process.

Some victims were satisfied at the end of the investigatory process but became disgruntled during other stages of the process. Some victims viewed Mr O'Callaghan QC as the 'face' of the Melbourne Response, so they directed their dissatisfaction with the process as a whole at him, even if some aspects of the process were not in fact his responsibility or within his control. While many people showed their appreciation for the Melbourne Response and, in particular, Mr O'Callaghan QC's assistance throughout the process, some victims (particularly after meeting with the Compensation Panel and receiving an ex gratia payment offer) had a more cynical and negative view of the process:

We were referred to Carelink by Mr Peter O'Callaghan. I found Mr O'Callaghan to be kind and easy to talk to about this distressing subject. Overall Carelink have been fine for us and I have no complaints. Professor Ball was very good to my husband and treated him holistically with great respect. My husband received \$22,000 compensation and I am 100% certain that we were told it was a confidential settlement and that at no time in the future could we seek further compensation if we accepted this one off grant. Our correspondence is files [sic] away and I do not have the mental strength to go look for the documents which we signed at that time.

To this day I think the amount we received for the devastation caused to my husband, myself and my children, is an insult. We have survived but only just. During the worst of our turmoil, our GP was convinced that XXX would suicide one day and I expected this also.⁸⁰

Arguably, Mr O'Callaghan QC, in trying to assist everyone and being adviser and helper to all, potentially eroded the appearance of his being independent, and the legitimacy and fairness of the Melbourne Response as perceived by victims. For this reason, the Independent Commissioner should not offer assistance to or be called upon by the Catholic Archdiocese of Melbourne or their solicitors, to answer a variety of questions and liaise. He should become, and be seen to be, truly independent.

21.1.2. Independence—Towards Healing: contact, assessment phase

In referring to Towards Healing, in the Catholic Church submission to the Inquiry, which it titled *Facing the truth* states that 'independence is critical to any Church process dealing with people who have been abused'.⁸¹ Despite this assertion, many aspects of Towards Healing are not independent and are the cause of some victims' dissatisfaction with the process. Towards Healing is a system set up by the Catholic Church to investigate the Church. The victim has no control or influence over who is appointed as their contact person or assessor.

Sr Angela Ryan said in evidence to the Committee, regarding victims' perception of Towards Healing:

I am very sad that there is dissatisfaction. I accept that. We are listening very carefully to what the complaints are so that things can be sorted out. I believe, too, that not all

79 *Submission S185*, Catholic Church in Victoria. Annexure 3.

80 *Submission S063*, Marita van Gemert, pp. 1–2.

81 *Submission S185*, Catholic Church in Victoria, p. 64.

victims who come through Towards Healing are dissatisfied, but I think we are dealing in an area where it is very difficult for people who have been abused. Somebody said to me perhaps even our term ‘Towards Healing’ sets an unrealistic situation, that people may believe that if they come to Towards Healing, it will all go away. Abuse is not in that vein; it is not with that sort of effect on people, so we really cannot do that. I think people first want their complaint validated, want to be believed, want to know what has happened to the person who is the abuser, but especially want to know what has been done so that it will not happen again. ...

I think that any time that people who are victims are in a situation where they need to bring out what has happened to them and go back to those times, that that will re-traumatise them. I am really sorry, and I am so sorry for those victims.⁸²

In commenting on the independence of the process Sr Ryan said:

Let us define what is independent about it and what is not. I am part of the Church, obviously, and we do have people who are from the Church at various stages. The part that is an independent assessment is that it is not the church authority, the diocese or the congregation that investigates the complaint. It is outside that. It is the director of professional standards who organises the assessment of the complaint, and that part is definitely an independent assessment.⁸⁴

Sr Ryan understood why some victims may not see the process as independent:

I do understand that. In the office I answer my phone as ‘Angela’. But if it is a victim, within two or three sentences, as soon as I know it is a victim, I make sure they know I am a nun and I say to them, ‘I am a nun. Would you like me to get somebody else to talk with you?’ So I certainly do not try to force that on them. I would have to say that I do not recall anybody who said, ‘Well, I want to stop now.’ In fact some have said, ‘They say you are all right’.⁸⁵

The Committee determined that there is more flexibility in the appointment of assessors and contact people in Towards Healing than under the Melbourne Response. The real issue for the assessment stage of Towards Healing is the substantiation of claims and a lack of consistency in the approach of assessors. Assessors use the civil standard of proof or the *Briginshaw* test in considering a claim.⁸⁶ It is therefore no easier to prove a claim under this process than it is in the civil courts, and in some cases it is more difficult. At the very least, it would be preferable for assessors to have the option that, where the arguments of the victim and the accused are equally balanced, the matter should proceed to facilitation (on the positive basis that the victim’s claims are believed).

The **standard of proof** in *Briginshaw*⁸³ is different from the criminal standard, beyond reasonable doubt, the civil standard, on the balance of probabilities or to the reasonable satisfaction of the tribunal. But reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved.

The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding, are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. Before accepting the truth of evidence of a particular allegation, the tribunal should give consideration to the nature of the allegation and the likely consequences.

82 *Transcript of evidence*, Towards Healing, Melbourne, 3 May 2013, p. 3.

83 *Dixon J in Briginshaw V Briginshaw* [1938] HCA 34; (1938) 60 CLR 336.

84 *Transcript of evidence*, Towards Healing, p. 3.

85 *Transcript of evidence*, Towards Healing, p. 4.

86 The standard of proof has evolved over time with changes in December 1996, December 2000, January 2010 and in 2012.

Some victims complained more generally about the attitude of assessors, being concerned that some assessors were not properly qualified to deal with victims.

One victim said:⁸⁷

But I will say this process came as a shock compared to the previous stages. Here were two men, after several months without a word, expecting me to be available in the middle of the morning with only three days notice. The communication by telephone was awkward. I was put on the spot. This appointment should have been arranged through the administrator. They came full of questions. They were critical that my memory was not linear, detailed and certain. This challenge shut me up. Again I was not heard. In hindsight the meeting should have been conducted elsewhere. Two older men challenging me in my home left me somewhat vulnerable and defensive.

Finally, the assessment summary that was provided contained the following comment: ‘proof of allegations on the balance of probabilities requires there to be something that tips the balance in favour of the allegations being proven’; I have got no problem with that. But ‘The more serious the allegation the more that is required to tip the balance’ does not make sense. It is illogical, and reading it confirmed to me how poorly skilled these personnel were. I felt as if the whole process was half-hearted in terms of seeking a sophisticated, professional outcome. I felt as if I was not taken seriously. I came for help and left feeling even more frustrated.⁸⁸

In regard to her brother, one witness said:

XXX did make contact with the Catholic Church earlier than that. He did go through the Professional Standards Towards Healing program. He was interviewed—I felt more like he was interrogated—by two gentlemen in Carlton. They produced a report for the church which stated that because of lack of corroboration and lack of further evidence it would go no further. They sent him for a psychiatric assessment with a Dr Kornan, who stated that XXX did certainly show signs of post-traumatic stress and that he was very reliable in his recollection, but then so was the person who XXX had claimed had committed the assault. That was sort of left at that. On psychiatric advice XXX let it go.⁸⁹

21.1.3. Independence—Anglican Church

The Anglican Church’s submission to the Inquiry includes the following statement:

The experience of this Diocese and other church communities around the world in responding to complaints of abuse is that the handling of complaints should be, and be perceived to be independent of and as far removed from the influence of the clergy hierarchy (except insofar as care of respondents is concerned).⁹⁰

The Anglican Church process is structured so that roles are strictly defined, reducing the potential for confusion. The whole response is overseen by the Director of Professional Standards. However, in contrast to the Independent Commissioner of the Melbourne Response, the Director of Professional Standards does not have an investigative role.⁹¹

87 *Dixon J in Briginshaw V Briginshaw* [1938] HCA 34; (1938) 60 CLR 336.

88 *Transcript of evidence*, Mr Jim Commadeur, Melbourne, 23 November 2012, p. 3.

89 *Transcript of evidence*, Mrs Mary Doyle, Melbourne, 15 March 2013, p. 4.

90 *Submission S244*, Anglican Diocese of Melbourne, p. 13.

91 See Section 20.2 for further details about the functions of the Director.

The structure of the Professional Standards Committee (PSC) and Professional Standards Board (PSB) ensures that the deliberative and decision-making process is separate from the appraisal and investigative process.

It was difficult for the Committee to assess victims' satisfaction with the Anglican Church response because few submissions were received from victims who had engaged with the Anglican protocol. The lack of evidence could be due to the comparatively low number of claims against members of the Anglican Church in the Diocese of Melbourne. The Committee viewed 32 claims during its review of files from the Anglican Diocese of Melbourne. The files reviewed did not indicate dissatisfaction by victims with the overall process.

21.1.4. Independence—the Salvation Army

Captain Malcolm Roberts told the Inquiry that the Salvation Army does not dispute the claims of victims, but instead takes them at face value:

I will just say there that we do not investigate those claims, we take the word of what is given to us. All we expect in dealing with claims is that we have virtually a stat dec which sets out the facts. We check the facts, we make sure that they were in the home and that the person that they say abused them was in the home, but we do not actually investigate those homes. We do not put those people through any sort of adversarial process.⁹²

The Salvation Army told the Committee that it responds to complaints by engaging solicitors to negotiate a private settlement.⁹³ This approach was confirmed through the Committee's review of the Salvation Army files, which showed that the majority of complaints were directed to and managed by the lawyers representing the Salvation Army. This was certainly true in cases where the complainants engaged the services of a legal representative to handle the claim.⁹⁴ In these circumstances, the complainant's lawyers contacted the Salvation Army's lawyers directly and sent all documentation relating to the claim to them. The Salvation Army's lawyers then investigated the complaint, met with the complainant and their legal representative and made a recommendation to the Salvation Army regarding the appropriate settlement amount. Once the Salvation Army confirmed the amount it was willing to settle for, the lawyers held a settlement conference with the complainant and their legal representative to negotiate the settlement.

If the Salvation Army receives a complaint, and the complainant does not have legal representation or indicates that they do not want legal representation, the Salvation Army can decide to handle the complaint internally or pass the handling of the complaint to their solicitors. Although the Salvation Army states its lawyers are instructed to act independently in investigating the complaint and assessing a quantum of liability, it is unlikely that a complainant would perceive them to be acting independently.

The Committee received few comments regarding individual victims' views about their involvement in this process. Mr Brian Cherrie informed the Inquiry that the

⁹² *Transcript of evidence*, Salvation Army, p. 13.

⁹³ *Transcript of evidence*, Salvation Army, p. 13.

⁹⁴ Of the 50 files reviewed 78 per cent of complainants engaged the services of a legal representative to assist in the handling of the claim.

settlement process is all handled by lawyers, indicating it is a very legal process. Ms Angela Sdrinis from Ryan Carlisle Thomas Lawyers explained that from a solicitors perspective, the Salvation Army were willing to negotiate but within a limited settlement process.

However, victims advocate group, Broken Rites indicated otherwise in its submission:

Victims have had, and continue to have, serious difficulties when they approach the Salvation Army. This religious organisation projects a public image that emphasises compassion and community service, and this is emphasised in its regular campaigns for financial support from the public. In our experience, its response to victims has often been secretive, uncooperative, mean-spirited and legalistic.

The Salvation Army appears not to have any response protocols and instead each claimant must resort to legal process. Many victims have been unable to get any documents covering their time in institutional “care”. Often the person is told that the documents cannot be found, do not exist or have been destroyed because of fires, floods etc. We consider the Salvation Army’s willingness to have claims contested in the courts is a ploy, with its representatives knowing that many people will not have the financial means to access the court system.⁹⁵

Finding 21.1

The processes for responding to complaints used by non-government organisations are not truly independent of the organisations.

21.2. Approach to secondary victims—Melbourne Response and Towards Healing

Under the terms of Melbourne Response, the Independent Commissioner does not recognise the claims of secondary victims, although some have received counselling through Carelink. The basis of this is explained in correspondence from the Independent Commissioner to Mr Anthony and Mrs Chrissie Foster, who had made an application for compensation to the Compensation Panel:

I, as the Independent Commissioner, make findings in respect of those persons who have been victims of sexual abuse, and which findings are accepted by the Compensation Panel.

I must advise you that I have made no finding that either or both of you were victims of sexual abuse within the meaning of the terms and conditions of my appointment. The only persons who can be classified as victims of sexual abuse are those who have been actually abused. In a limited number of instances when another person such as a parent, has been so proximate in point of time and place that person is also classified as a victim.

For instance, the parent who witnessed the assault upon his or her child.

However, in yours, as in many other cases, whilst the discovery of the abuse is a traumatic and distressing occurrence, this does not make that person a victim within

⁹⁵ *Submission S218*, Broken Rites (Australia) Collective Inc., p. 18.

the meaning of the terms and conditions of my appointment.⁹⁶

Victims affected by the actions of criminal child abusers need assistance, an apology and compensation from the Catholic Church. Some may argue that the floodgates will open if compensation is given to secondary victims. But at present a vast array of 'passively abused' victims are excluded from receiving compensation or a satisfactory resolution to their pain. Many link this grievance to the operation of the Melbourne Response and Towards Healing.

The parents of a victim told the Inquiry:

Our hearts are heavy with pain and sadness. The ripple effect is a life sentence for victims and their families. As the victims suffer, so do the families. The list of suffering is long and different for each member of the family. As parents, the sense of failure is overwhelming ...

As for getting help when we thought that the children were being abused, I rang Towards Healing, this great big program that was set up by the bishops.

... but it was hard work to get XXX to a counsellor, because we rang Towards Healing wanting help and advice. We said, 'Please help us. Our children were at XXX school when XXX was there. He has now been put in jail for XX years for crimes he committed on other children. We are concerned about ours'. Towards Healing said to us, 'We're not here to help the parents; it's only for the victims'. No help ...

That is why we are here today to speak about the ripple effect. Some victims still cannot come out.

So you have this great ripple effect of the parents, the children, the wives, then the children. Then you have society ...

No, we cannot make it sound any worse than what it is, actually.

The one thing I really do want to emphasise is that it is not just the victims; it is the ripple effect that will go on forever.

As XXX said, the ripple effect on the whole family just continues. Here I am, I am one of the toughest blokes around and I am a blubbing idiot ...

I rang Towards Healing to say, 'Please could you help us. What can we do as parents?'. They said, 'We don't do that'. That is important. I would have liked that help then.⁹⁷

Another couple indicated:

When our children needed us most, we were not there.

We were always looking after them.

We were there, but we did not know the situation. I cannot add any more to that ...

So then he used to visit periodically, maybe once or twice a fortnight. But it always seemed to be when I was working night shift. My hours were 7.00 pm to 7.00 am, so I was away. He would always come after the 7.30 pm of that evening.

So to find out what was going on was gut-wrenching to me when it all came out and surfaced. It took a while to sort of come to terms with it, and, did this really happen? Of course I believed the children, of course I did; but I still could not get it into my mind that this was actually happening and a person in his position committing these acts.⁹⁸

96 Letter to Mr Anthony and Mrs Chrissie Foster dated 17 November 1998 from Peter O'Callaghan QC, Independent Commissioner, Melbourne Response.

97 *Submission S451*, Name withheld.

98 *Submission S482*, Name withheld.

Another witness told the Inquiry:

I suppose I partly came to talk about mum and dad's trauma too. Mum never really got over the fact that she felt that she did not protect Anthony, that she did not respond at the time. And that was her deepest hurt. And of course being a mother myself, and also being a teacher of 35 years, it is unbelievable that people that you look after and protect— you feel you have not done your job.⁹⁹

In contrast, the Catholic Archdiocese of Melbourne has on occasion awarded funds to a different kind of secondary victim or 'whistleblower'. This has been done outside the Melbourne Response process, although Mr Peter O'Callaghan QC has been instrumental in resolving these cases. Although Mr O'Callaghan QC's assistance in respect of these other individuals was well intentioned and generous, his helpful approach may have served to confuse other secondary victims who were 'outside' the Melbourne Response and the role of the Independent Commissioner. These claims (those of Ms Carmel Rafferty, Mr Graeme Sleeman and Mr Phil O'Donnell) related to Fr Peter Searson and his activities in Sunbury and Doveton parishes.¹⁰⁰

These individuals had raised their concerns with the Catholic Archdiocese of Melbourne at the time that they arose, but the Archdiocese had taken no action. As a consequence they raised them again, with Mr O'Callaghan QC in his capacity as Independent Commissioner for Melbourne Response when that process had commenced. Mr Sleeman was principal of the parish primary school in Doveton and raised complaints with the Catholic Archdiocese of Melbourne regarding Fr Searson, but nothing was done. Mr Sleeman ultimately resigned from the school and suffered significant emotional harm and financial loss, which he attributed to his treatment by the Catholic Church when his complaint was made. He told the Inquiry:

I have to say here that although I have mixed feelings about Mr O'Callaghan, he actually gave me support that I believe nobody else got. He paid me for eight years when I could not work. He said it was out of his pocket. When I challenged him about it he said, 'The Church knows nothing about it. I will get into trouble if they find out about it'. I believe in his own way he saw that some injustice had been committed. He interviewed me. He was also the one who approved my getting psychiatric care from my doctor ...

In about 2005 a payment was made to me, which gave me a chance to put a deposit on a house. I have heard all the references to the fact that we had to sign deeds of release, and I was in the same boat. As far as I am concerned I will go to my grave. I had a gun held to my head; we were virtually bankrupt, we had nothing. If someone came to you and offered you a price that was equivalent to the deposit on a house and the only condition was to sign a piece of paper, what would you do? I think I would have been certified if I had said, 'No, I am not going to do that'. It is probably the only time that I have perhaps compromised my values a little bit. I never thought that something like this would happen, so if the Church wants to sue me, let it, because I reckon it would make a good story.¹⁰¹

99 *Transcript of evidence*, Ms Anne Murray, Ballarat, 28 February 2013, p. 9.

100 *Transcript of evidence*, Ms Carmel Rafferty, Melbourne, 23 January 2013; *Transcript of evidence*, Mr Graeme Sleeman, Melbourne, 23 January 2013, p. 6; *Transcript of evidence*, Mr Phil O'Donnell, Melbourne, 23 January 2013.

101 *Transcript of evidence*, Mr Graeme Sleeman, p. 6.

Payments were similarly made to another teacher who had complained about Fr Searson, with Mr O’Callaghan QC being instrumental in securing funds from the Catholic Church.¹⁰² These payments were kept as quiet as possible through the use of confidentiality clauses within the terms of the Deeds of Release.

Under Towards Healing, secondary victims are not part of the facilitation process and do not receive payments from the relevant Church Authority. On discussing the assistance to secondary victims under Towards Healing, Sr Angela Ryan said:

I myself have sat down with many parents, especially mothers, who have been very distressed. On Sunday I am travelling to country Victoria to meet a mother who has just found out that her child, now a man, was abused. I have said I will go and talk with her so that we can work out what happens from there. So we would try to do that. The director of professional standards—especially when it comes to the end of the process with the facilitation, that would be part of what can be done. We probably have not done it well in a lot of cases. I apologise and I am sorry where we have not done it well. We should be trying to help people.¹⁰³

No information was available to the Committee about the treatment of secondary victims by the Salvation Army or the Anglican Church.

Finding 21.2

There is no existing recognition of or support for secondary victims of criminal child abuse in the systems used by organisations to respond to allegations of such conduct.

21.3. Confidentiality and police

An issue that has arisen during this Inquiry relates to the confidential nature of a complaint and the necessity or desirability of the organisation contacting the police to report the incident. The Committee were informed of the dilemma facing organisations which is set out as follows:

At its heart, this difficult matter requires a balance to be struck between:

- the rights of a victim
- the responsibility of society to protect its citizens and punish offenders
- the right to the presumption of innocence.¹⁰⁴

This issue of confidentiality and police reporting is considered in detail in Chapter 23 of Part G of the Report.

21.4. Compensation

This section of the Report considers the approaches to financial and other forms of compensation used by the Melbourne Response, Towards Healing, the Salvation Army and the Anglican Diocese of Melbourne.

¹⁰² *Transcript of evidence*, Ms Carmel Rafferty.

¹⁰³ *Transcript of evidence*, Towards Healing, p. 5.

¹⁰⁴ *Submission S185*, Catholic Church in Victoria, p. 112.

21.4.1. Compensation—Melbourne Response

Within the Melbourne Response, the Committee considered the following components relevant to financial and other forms of compensation:

- Compensation Panel
- cap on financial compensation and its justification
- approach to legal advice
- approach to apology.

Compensation Panel

As outlined in Chapter 20, the Committee found that Inquiry participants who participated in the Catholic Church protocols did not feel their needs were adequately met. One of the criticisms was that compensation payments were low compared with what might have been available through successful civil litigation. The relatively modest amount of compensation was acknowledged by the Catholic Church in its evidence to the Committee. Mr David Curtain QC, Chairman of the Melbourne Response Compensation Panel, for example, acknowledged that the amount awarded through the Compensation Panel ‘is a lot less than you would get from the court if you could prove your case.’¹⁰⁵ Similarly, Cardinal George Pell indicated that ‘the compensation side of Towards Healing is quite underdeveloped.’¹⁰⁶

In regard to the Melbourne Response, Archbishop Denis Hart of the Catholic Archdiocese of Melbourne told the Inquiry that:

I do believe that our system is established precisely to provide an alternative to the burden and the struggle and the difficulty of the legal process.¹⁰⁷

However, a number of Inquiry participants told the Committee that they felt that the Melbourne Response process, and in particular the Compensation Panel, was too legalistic.¹⁰⁸

The Melbourne Response Compensation Panel, for example, appeared to operate as a determinative form of alternative dispute resolution, whereby a dedicated body hears and decides the amount of compensation to be awarded to a victim. However, the Committee found that the members of the panel are appointed by the Catholic Archdiocese of Melbourne itself, and the victim has no power of veto over the members of the Compensation Panel. In this way, the Melbourne Response Compensation Panel lacks an impartial facilitator, which is a necessary feature of alternative dispute resolution processes.

Under the Melbourne Response process, once the Independent Commissioner has found that abuse has occurred, the victim can apply for an ex gratia payment from the Compensation Panel. However, this is not a compensation payment—it does not accurately reflect the level of harm suffered by a victim or serve as an admission that the Catholic Archdiocese of Melbourne is legally liable to compensate the victim.

105 *Transcript of evidence*, Compensation Panel, p. 10.

106 *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 55.

107 *Transcript of evidence*, Catholic Archdiocese of Melbourne, p. 48.

108 *Transcript of evidence*, Dr Joseph Poznanski, p. 3; *Transcript of evidence*, Mr James Boyle, Melbourne, 15 March 2013, p. 8; *Submission S188*, Ms Robin Henderson.

These conditions were recognised by the Chairman of the Compensation Panel, Mr Curtain QC, in evidence to the Inquiry:

This is not suggested to compensate, and I tell victims, ‘This is a financial recognition of the wrong that’s done to you. You will also receive, unless you wish not to—and some expressly wish not to—a letter of apology from the archbishop. You will also have access to counselling. It’s a package. The money is a part of it’. Quite interestingly, some people focus on the money and some people who have got the most hideous abuse are very grateful for the apology. People have different approaches to it, and that is the human condition.¹⁰⁹

And later:

No, it is not suggested to give full compensation. If I said compensate, I meant it does not give full compensation. I think I have explained that clearly ...

Of course it is compensatory, but it is not full compensation ...

That is my point: it is never full compensation. So when you talk to me about full compensation, please understand I accept fully it is never enough, but I never suggested that this was full compensation in the Melbourne Response.¹¹⁰

The use of the term ‘Compensation Panel’ to provide *ex gratia* compensation is confusing to those who do not understand that the payments are not full compensation for their suffering. Similarly, the Melbourne Response labelling of compensation as ‘*ex gratia*’ emphasises that in making such payments the Catholic Archdiocese of Melbourne admits no legal responsibility for failing to take reasonable steps to prevent the abuse of victims, or for its contribution to any damage suffered.

The Committee noted from evidence to the Inquiry that victims felt they had been ‘grilled’ by the Compensation Panel. They perceived it as a panel of professionals lacking the pastoral care they had hoped for in seeking redress. One victim, whose perpetrator had already been convicted of the abuse said:

You are sitting in front of all these people who would just basically stare at you, asking you questions which were totally irrelevant to what I was feeling.

‘Were you really raped then?’. No, I was not—it is in court. It is on the documents — the whole works. I cannot remember too much more on that, but I just came out with this horrible feeling. Actually I do remember a little bit.¹¹¹

Victims reported that they did not feel involved as active participants in the process, which operated as an adjudication rather than a negotiation of settlement. The Compensation Panel does not give victims information about the amounts awarded in previous cases, or how it arrives at each decision. For example, one victim stated:

Yes, it was like I had put my case again. I had four people on the opposite side. You are a victim anyhow, and I can assure you ... did not make a victim feel any better. In fact it was more of a power play on his behalf, basically saying, ‘There have been other people who have been abused a great deal. We are quite conscious of what you have been through but the fact is that not everybody gets the top amount of money’. And that is fine, but it was just that not caring, you know. You have come to a compensation panel, they have read your file of what has gone on in your life, and I could not believe it ...

109 *Transcript of evidence*, Compensation Panel, p. 6.

110 *Transcript of evidence*, Compensation Panel, pp. 8–9.

111 *Submission S478*, Name withheld.

it was just cold, callous, calculating. I felt like he and the others just wanted to get out ... that is exactly how I felt. That is it ...

They were questioning my worth ...

I felt, and this is a feeling— it was like they have seen so much abuse and I, personally, have read so much abuse of these poor people, that what has happened to me was not as significant as others. That is what compensation is about, but to be so blunt in his decision making and his way of speaking to me, and how— I do not know whether you have heard from others, of his manner, but it is nowhere near appropriate for people. It is nowhere near appropriate ...

I was not happy with the process at all ... asked to provide me with written documentation on how the compensation panel arrived at this amount. He stated he would not give me any written or oral reason for his decision. He suggested that I take civil action if I wanted more compensation ...

I have read so much of victims suing the church, and how the church went to great lengths to elongate the process to make it more costly, financially, mentally and emotionally difficult for the victim. Realistically, a victim does not have much choice when the facts are laid out. The church knows this. I believe the ex-gratia payment, or compensation, given to a victim is to stop the church being sued further. As a victim, I believe that compensation given just means that I have given up my rights to sue the church. I feel many other victims feel this way.¹¹²

Mr Curtain QC did not recognise these victims' perception of the operation of the panel's operations, as the following comment to the Inquiry demonstrated:

But can I stress this: it is not just that. We tell the victim also that counselling is available—that is important to many of them—and we tell the victim that that counselling will be available as long as it is of some benefit to them. We also tell the victim that they do not have to tell us anything about the case—they do not have to repeat anything; they do not have to re-prove it. I feel very strongly about that, because coming from a common-law background I know that it is difficult for victims, say, in an accident or an assault, to repeat the circumstances, but in this situation, as in many others, that is the only way we can find out about it, so we have to do it. We usually do it by the paperwork, by the interview with the psychiatrist. I say, 'We've read all the material. If there's anything glaringly wrong that you think might give us the wrong impression, please let us know. But if it's just the name of your pet puppy or something like that, we don't care'. Then we say, 'If you'd like to say anything, to correct anything, to change anything, to add or subtract anything, please feel free to, but you don't have to say anything'.¹¹³

Victims who are dissatisfied with the amount of compensation offered are not able to negotiate a different outcome or appeal the decision. The only avenue appears to be to contact the Chairman of the Compensation Panel.¹¹⁴ When questioned about the review or appeal process, Mr Curtain QC said:

If you mean a body outside the Church, I believe no. I believe the Church would be looking at what is paid out and have details of that, and if that is a review, then I am sure that has happened, but I have never been subject to scrutiny or anything like

112 *Submission S485*, Name withheld.

113 *Transcript of evidence*, Compensation Panel, p. 5.

114 See also Section 21.7: Review and/or appeal.

that. I am in a position where if anybody felt they had a complaint about me, they would be welcome to make it. Everybody knows my number.¹¹⁵

Section 21.7.1 discusses the appeal process in greater detail.

Cap of \$75,000 and justification

In the Committee's examination of the files, it identified settlements in the Melbourne Response process that ranged from \$15,000 to \$50,000. It was informed that the limit for an ex gratia payment from the Compensation Panel has been increased to \$75,000. Mr Curtain QC indicated that average awards were between the upper \$50,000s and \$75,000.¹¹⁶ The Committee heard that the Melbourne Response compensation cap was based on the maximum award available to victims of crime through the Victorian Victims of Crime Compensation Tribunal (VOCAT).¹¹⁷ Cardinal George Pell made the following remark to the Inquiry regarding the setting of the cap:

It was certainly based on justice. I would remind you that the cap that the Melbourne Response put on those payments was paralleled by the cap on the government's offer to the victims of crimes, which was then \$50,000. I have seen the list, right across Australia, of the caps that governments put on these compensation payments. I am not sure if there are any today that are much above \$50,000. In other words, our response was comparable to what was done right across the nation.¹¹⁸

Cardinal Pell was challenged on the grounds that the critical difference between state compensation and the Melbourne Response is that the State is not responsible for the crimes in respect of which awards are made under VOCAT, whereas the Catholic Church was partly responsible for abuse perpetrated by its personnel. In response, he disputed that the Catholic Church was always responsible for the crimes:

Once again, that needs to be clarified. I am not responsible in law for the crimes that someone, say, a priest or an employee of the Catholic Church, has committed—technically. I am technically responsible if I was warned about this person and did nothing ...

In that case the bishop is clearly guilty. But let me say, if a crime was committed by a Melbourne priest when I was archbishop, before my time, technically we might not have been liable, but we always paid compensation because we acknowledged the moral obligation that followed.¹¹⁹

However, there were many instances where the Church clearly had a responsibility and it was not just a situation of moral obligation. Additionally the amounts paid out are difficult to reconcile with the Church's recognition of the level of damage suffered by victims and a moral responsibility to provide funds, where funds are not commensurate with the damage suffered.

Mr Curtain QC from the Compensation Panel said:

The maximum that can be awarded now is \$75,000. It used to be \$55,000 and we suggested some years ago that it be increased. It was, as I understand it, historically related to what victims of crime could be awarded by the court, and it is an interesting parallel because victims of crime are awarded money not by the perpetrator but by another person. In

¹¹⁵ *Transcript of evidence*, Compensation Panel, p. 5.

¹¹⁶ *Transcript of evidence*, Compensation Panel, p. 10.

¹¹⁷ See Chapter 27 of Part H regarding compensation schemes through VOCAT.

¹¹⁸ *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 18.

¹¹⁹ *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 18.

this case, the money does not come from the perpetrator; it comes from the Church which accepts a moral responsibility but does not have a legal responsibility.

I might come back to that later, if you like, and I know that people have different views about it, but every person who has come before our panel is in a circumstance where I believe they would be unable to successfully bring a claim, either because of the impecuniosity of the perpetrator or the death of the perpetrator or because they would not be able to establish the requisite link between the Church and the perpetrator. Can I say I understand completely that people think that should not be the case, but that is what we are dealing with here.¹²⁰

The significant legal and practical barriers that prevent victims from succeeding in a civil claim against religious and other non-government organisations including the Catholic Church are considered in Part H of this Report. These barriers contribute to the sense of hopelessness that many victims experience, and their feeling that they have no option but to accept the Compensation Panel's offer as there are no viable alternatives. The Committee challenged leaders of the Catholic Church on their preparedness to review some of the decisions, the funds granted and the amount of compensation.

When questioned by the Committee about the amount of compensation, Cardinal Pell indicated:

What is important and is to repeat, [sic] I think: we are always ready to pay whatever the law of the land says about compensation, and we want to do that, in an Australian context, like any other Australian group.¹²¹

When asked if the Catholic Church would do that retrospectively he responded:

Yes, we have. We have tried to do that since we have paid the compensation.¹²²

In responding to a Committee query as to whether payments would be revisited he indicated that 'if there were a good case. I can only speak for Sydney.'¹²³

When challenged about the morality of paying victims of abuse \$75,000 Cardinal Pell stated:

The church has never claimed that it would be unable to pay appropriate compensation. Our compensation is low in comparison with the United States. I suspect that with the vast majority of the world we would compare quite favourably, but whatever about that we are prepared to—it goes without saying: we will pay whatever the law recommends as appropriate compensation.

Also, if I could just repeat, and as you said, many of the victims are not particularly interested in money. The more important thing is due process, justice and help with getting on with their lives ...

The church will continue to fulfil its obligations as they are defined in Australian society and will continue to try to help the victims ...

I do not believe we have a moral obligation to match the unusual figures from the United States. I myself, in my bailiwick, certainly in Sydney I would— in Sydney I do not have an inflexible cap ...

We do not need to sell investments at the moment to pay our damages. Whatever

120 *Transcript of evidence*, Compensation Panel, p. 6.

121 *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 28.

122 *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 28.

123 *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 28.

damages and compensation there are, we will be fully able to do so.¹²⁴

The Committee considers that basing levels of church-funded compensation on a state-funded scheme to help victims of crime fails to acknowledge the Church's responsibility in allowing the abuse to take place and its contribution to damage suffered by victims as a consequence of the actions of its representatives. The State's acceptance of a social obligation to assist a victim of crime is an entirely different matter from that of a religious organisation which has contributed to the offence through its own deficiencies of process or otherwise.

Confidentiality

Mr David Curtain QC from the Compensation Panel did not accept that the application for compensation contains a confidentiality provision that was legalistic and difficult for victims to understand:

Not at all. I tell each victim who appears before our panel that the proceedings are confidential. I explain that by that I mean that no member of the panel will ever discuss what happens in that meeting outside the room—and we never do. However, I make it clear to each victim who appears that that does not impose any confidentiality on them, that they are free to say whatever they wish about the process and about the panel. I tell them they can sing it from the rooftops after they leave the building and I say to them specifically, 'I tell you this' because it has been said that their silence has been bought, and that is not the case. I particularly emphasise that there is no confidentiality imposed upon them, and they could not possibly think it was a legalistic approach ...

From time to time I have had a victim contact me afterwards—and they regularly contact me before, as well as after, because I give them my direct line to do it—expressing dissatisfaction with the amount. I cannot think of an instance where it was not confined to the amount. There are not many of them, but I am not surprised that people are disappointed if they do not get the maximum.¹²⁵

Contrary to this view, Inquiry participants told the Committee that they perceived compensation received through the Melbourne Response as 'hush money'. This was due to the inclusion of confidentiality clauses in documents that victims were required to sign, namely the Application Form for Compensation, which reads:

I, XXX ...

Apply for ex gratia compensation from the Archbishop and Archdiocese of Melbourne in respect of sexual abuse committed against me as found by the Independent Commissioner appointed by the Archbishop, and I make this application on the following basis: ...

(d) neither I nor any person acting on my behalf, or any member of the Panel or the Archbishop or any person acting on behalf of the Archbishop or the Archdiocese will (save as required by law)

(i) disclose to any person;

(ii) rely or seek to rely in any arbitral or judicial proceeding (whether or not such proceeding relates to the subject matter of the application) on

Any communication statement or information whether oral or documentary made or provided in the course of the Panel's deliberations; ...

¹²⁴ *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 29.

¹²⁵ *Transcript of evidence*, Compensation Panel, p. 2.

(f) I and each member of the Panel and the Archbishop and his advisers will, unless otherwise compelled by law, preserve total confidentiality in relation to all matters arising in the course of or in relation to the Panel's deliberations, whether documentary or oral, that may be provided to the Panel or to me.¹²⁶

Although the Committee is not aware of any cases of a victim being prosecuted for a breach of these confidentiality clauses, the perception of victims nevertheless remained that they were not to talk about the abuse if they wanted compensation.

The Committee noted that the correspondence to victims offering compensation makes it clear that the victim is not bound by confidentiality.

Legal advice

The Melbourne Response process does not include the provision of independent legal advice to victims at any stage. Mr Curtain QC commented:

Criticism is made of the absence of provision by the Church of legal support. In my opinion, this is to misunderstand the process. It is not adversary but conciliatory and victims do generally not perceive a need for legal representation. It is understood that a lawyer would say that lawyers should be present in all forms of compensation, but that is not a complaint made by victims. What is important to the panel is meeting the victim and making an informed assessment of the victim and his or her circumstances. Our task is to help the victims articulate their positions and the effect the abuse has had on them. The process has parallels with that involving victims of crime in that the compensation is not paid by the perpetrator.¹²⁷

Melbourne Response claims are finalised by the signing of a Deed of Release. The terms of the Deed of Release used by the Melbourne Response process are shown in Box 21.1. Given that signing the Deed of Release settles any potential legal claim/s the victim has against the Catholic Church (and often the alleged perpetrator) in respect of that abuse, the need for independent legal advice is obvious.

However, requests for the Melbourne Response to pay for legal costs of a victim involved in the process have been refused by the Chairman of the Compensation Panel. In a letter to Father Kevin Dillon regarding costs, Mr David Curtain QC indicated:

I believe the process is set up so that the opposite is true, that is that victims do not need to seek legal counsel.¹²⁸

126 Pro forma—example of Portion of Application for Compensation Form Melbourne Response.

127 *Transcript of evidence*, Compensation Panel, p. 18.

128 *Submission S325*, Father Kevin Dillon. Attachment 5.

129 Pro forma—Deed of Release.

Box 21.1: Terms of Deed of Release—Melbourne Response

1. In consideration of matters aforesaid, and subject to paragraph 6, the Applicant hereby releases and forever discharges the Archbishop, any person who has in the past been the Archbishop of the Catholic Archdiocese of Melbourne from all actions, claims, demands, causes of action and costs howsoever arising or of whatsoever nature arising out of, connected with or in relation to the abuse ...
5. In consideration of the matters aforesaid, the Applicant agrees and warrants that subject to paragraph 6 he will bring no action and make no claim for damages or compensation howsoever arising or of whatsoever nature arising out of or connected with the Abuse ...
8. This deed does not affect any entitlement that the Applicant may have to the services of or to services supplied through Carelink, nor does it oblige the Archbishop or any person who may in the future be the Archbishop of the Catholic Archdiocese of Melbourne to cause any such services to be supplied ...
7. This deed may be pleaded by the Archbishop and by any person who was is or becomes the Archbishop of the Catholic Archdiocese of Melbourne in bar to any action, claim or demand now or hereafter commenced or made by any person arising out of or connected with the Abuse.¹²⁹

Source: Melbourne Response Pro Forma Deed of Release, provided to the Family and Committee Development Committee by the Catholic Archdiocese of Melbourne.

Victims also expressed concern about the terms of the letter of offer. They felt obliged to accept this because if they did not take the offer they would get nothing. The letter of offer used wording indicating that achieving an outcome outside the process would be difficult for victims. An example of the wording used in letters of offer prior to November 2002 is shown below.

Dear XXX ...

The Compensation Offer together with the services that remain available through Carelink, are offered to XXX by the Archbishop in the hope that they will assist XXX recovery and **provide a realistic alternative to litigation that will otherwise be strenuously defended**. Importantly, it is also hoped that XXX will in time be able to put the abuse XXX has suffered behind her, and focus on the future. Enclosed is a personal letter to XXX from the Archbishop ...

If XXX rejects the offer now, XXX will remain bound by the terms of the application for compensation form and in particular, may not disclose or rely upon this offer which is, of course, put on a without prejudice basis.¹³⁰

One victim described his reaction to reading the letter of offer from the Melbourne Response:

My offer of a \$30 000 ex gratia payment was something that I could not appeal!! Also, I was firmly instructed by the Archbishop of Melbourne, George Pell, that they would 'strenuously deny' any further attempts for financial recognition, for the lifetime of emotional pain, suffering, shame, guilt, humiliation, time spent in counselling, time

¹³⁰ Pro forma letter of offer pre November 2002. [Committee emphasis] Refer to Appendix 11.

away from my family and work, post-traumatic stress, anxiety ...¹³¹

In response to a request by the Committee for further clarification, the victim indicated:

It was not said to me; it was just a standard letter that came out. Unfortunately I do not have it with me anymore. I was fairly vigilant in keeping a lot of things, but the absolute letter which came out with the offer I do not have still. The thing was it was a standard letter that I have seen other victims receive. The only thing that was different was the name and the dollar amount, but they all had 'We will strenuously deny this in court', or 'strenuously defend our situation'...

Well, I knew I could not do anything else, because we had been fighting for so many years. The different lawyers that I had been with had been trying all kinds of angles and in the end they just said, 'Look, we don't know who we can sue; they just don't exist as a legal entity'.¹³²

Another victim indicated:

Yes, Pell— I should not say anything else. He decided to put this commission together, I think the Melbourne Response is what they were calling it. XXX and I were together with these lawyers, and at the end of the day it was just costing us, costing us and costing us. At the end I think it cost me about 12 grand, even without leaving work, flying from Perth to Melbourne and that sort of stuff. I was basically going broke. That is basically what it came down to at the end of the day. I thought I had tossed everything away, but I found these about two weeks ago. I got a lawyer there. This is basically between my lawyer and this horrible mob of lawyers called Corrs Chambers Westgarth. There is a bloke called Mr Leder— Richard Leder or whatever his name is. From there, because we were basically going broke and running out of money, we were forced to go to a panel. Actually, I will just give you another quick one here. This paragraph here— that is what we are against.

This is through— I am not too sure. It is either Cudmore or O'Callaghan via Pell, because it is from Pell. The second last thing there is basically saying, 'Listen, we will give you compensation, but if you try to take us to court, we are going to strenuously defend any actions there', which they have been doing for the last four years.

... so basically we still could not take them to court because they were going to make us go even more broke. I might go through the response part of things. When I saw Mr O'Callaghan I said to him, 'You got all the documents there. If we put a bloke in jail, what more do you want?'. That sort of thing, you know? They then went to this other panel, and they asked me all these stupid questions there. A bloke is in jail, so they knew exactly what happened to this bloke there.¹³³

This approach was consistent with that adopted prior to the introduction of the Melbourne Response.¹³⁴

The Committee noted that the language of the letter of offer of compensation changed in 2002. However, a large number of victims had already received a letter expressed in the terms quoted above. Given the significant legal and practical

131 *Submission S458*, Name withheld.

132 *Submission S458*, Name withheld.

133 *Submission S478*, Name withheld.

134 See Section 7.5.3 in Part C.

barriers to an individual succeeding in a civil claim against the Catholic Church, victims understood that if they did not accept the Church's offer they would face a legal battle in pursuing their claim. This approach is relevant to the issue discussed later in this chapter regarding victims' views of the actions of the Catholic Church in Section 21.10.5.

Apology

The Committee found that the way in which victims received an apology through the Melbourne Response process caused some victims to doubt whether the apology was genuine. For example, a number of victims criticised the practice of the Melbourne Response sending a letter of apology in conjunction with a letter of offer for compensation which stated that if a claim were taken to court it would be 'strenuously defended'. Accompanying the letter of apology, such expressions in a letter from solicitors for the Catholic Archdiocese of Melbourne created a perception that the apology was not genuine. Although the terms of the letter of offer have changed, it remains an issue for victims that an apology is only forthcoming after an offer of compensation has been made, rather than as soon as a finding of abuse has been made.

Blaming the offenders has been a core feature of the apologies the Catholic Church has issued for the abuse, frequently described as a 'rotten apple' problem. People criticised the terms of the apology as not recognising the Catholic Church's role or contribution to the damage suffered by the victim:

On behalf of the Catholic Church and personally, I apologise to you and to those around you for the wrongs and hurt you have suffered at the hands of XXX. Whether or not you choose to accept the enclosed offer, I offer you my prayers.¹³⁵

The many Ridsdale and O'Donnell victims and their families would have received little comfort from this type of apology, as it fails to acknowledge in any way the Church's role in their offending. The focus of the apology is on the offender's conduct and behaviour rather than the responsibility of the Catholic Church for the conduct of its personnel. It is not surprising that this kind of limited apology was not accepted as genuine, and arguably contributed to further distress for the victim, particularly those who suffered at the hands of a perpetrator who was at the time of the abuse known to the Catholic Church.

Refusal to acknowledge the Catholic Church's culpability remained the Church's position until this Committee called its senior representatives. Initial apologies were expressed in terms of the actions of the priest or religious as opposed to any recognition of the culpability of the organisation.

Archbishop Denis Hart acknowledged that the first time he apologised for the Catholic Church's role in covering up abuse and its contribution to the damage suffered by victims of abuse was before the Committee:

I acknowledge that our incapacity to see and to react to this situation in a timely way has given rise to the need for this Inquiry. I understand that the community is looking for someone to take responsibility for the terrible acts that occurred. I take responsibility.

I am appalled by the actions of these criminals against the weakest and most

¹³⁵ Pro forma apology.

defenceless in our community. I renew my apology on behalf of the Church, and I apologise to the children who were the victims. No-one can know the pain that their families have suffered, and I apologise to them too, as well as apologising to the community.

I apologise unreservedly for one of the darkest periods in our Church's history. We failed to recognise that abuse was occurring. We failed to recognise that we had paedophiles in our midst. We failed to really listen to people when they came forward to complain. We failed to do what is right. For these failings and the hurt and suffering that followed, I apologise.¹³⁶

Ultimately, in their evidence to the Inquiry, officials admitted that the Catholic Church had effectively facilitated the commission of offences. Notably Cardinal Pell conceded to the Committee that:

There is no doubt about it that lives have been blighted. There is no doubt about it that these crimes have contributed to too many suicides, and that is an ultimate tragedy.¹³⁷

21.4.2 Compensation—Towards Healing

The Towards Healing processes that the Committee considered in its provision of financial and other forms of compensation include its facilitation process, its approach to providing apologies to victims and its advice regarding legal representation.

Facilitation

Towards Healing offers victims financial assistance, which is negotiated in a facilitation meeting between the victim and the Church Authority. Towards Healing does not have a monetary cap, and is more similar to a civil settlement. Facilitation is described as a 'communication' between the Church Authority and the victim. However, it really is mediation, organised in order to settle a victim's case.

A facilitator appointed under Towards Healing has little influence over the proceedings, as this person merely 'facilitates' communication between the two parties. It appears that the facilitator usually, if not always, expressly informs the parties that any discussions are confidential and conducted on a without-prejudice basis.

Facilitation occurs either after the substantiation of a complaint or if a Church Authority decides to proceed straight to facilitation. If a victim's complaint is found to be unsubstantiated, the victim is often referred to a pastoral meeting.

The Committee, after examining the files, found that facilitations generally seemed to proceed quite well, and the overall feeling was one of usefulness and positivity, rather than complaint.

The facilitation usually involves:

- the Church Authority apologising for the abuse perpetrated by one of its members
- negotiation of an ex gratia payment in exchange for the victim signing a Deed of Release that extinguishes any future liability of the Church Authority.

¹³⁶ *Transcript of evidence*, Catholic Archdiocese of Melbourne, p. 51.

¹³⁷ *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 14; *Transcript of evidence*, Catholic Diocese of Ballarat, Melbourne, 29 April 2013, p. 14.

Apology

In regard to the apology, one victim told the Inquiry:

The other thing that I got which really upset me was a very generic apology, a legally safe apology and one which I have since found out was almost like one that is photocopied and they just change the name here and there. I have pushed for a more sincere apology that really related to what actually happened but never got that.

I kept asking the same thing. I told you about how it all started with me. A priest abused my brother, who then started abusing me almost identically. I found all this out later, and I put two and two together. I have done a bit of track work on that priest, who was sent back to the USA, and I have got where he has been since he was ordained until he supposedly died. He has been shifted around so many times, name changes and everything, but I cannot find anything much more about him.¹³⁸

As with the Melbourne Response, many victims doubted whether the apology they received from the Catholic Church through Towards Healing was genuine. Mr Russell Clark, for example, felt that he had received a ‘run-of-the-mill’ apology, which did not help him to deal with the abuse he had suffered.¹³⁹

Legal representation and insurance

The Committee noted the following in regard to Towards Healing and its approach to legal representation by victims:

- Solicitors, support persons and other interested parties (such as Catholic Church Insurance (CCI) or the Church Authority’s insurance representative) can be present at the facilitation.
- Victims were not necessarily aware of an insurer’s involvement until they attended facilitation. Consequently, the exact nature of an insurer’s involvement was unknown to the victim until this point, or if the insurer organised a psychiatric assessment of the victim.
- The involvement of CCI and whether the victim is legally represented, seem to influence the level of ex gratia payment awarded. The outcome is also highly dependent on the attitude of the relevant bishop or religious superior, with some of these individuals being more defensive than others. This has led to inconsistencies in approach.

The Committee found that after December 2012 the Church gave victims a small amount of money to seek legal advice relating to the Deed of Release. Before this time, similar issues arose as with the Compensation Panel—victims did not necessarily receive legal advice before signing Deeds of Release. The Committee noted that some Church Authorities include a denial of liability in the Deed of Release. As to legal representation and the facilitation process one witness told the Inquiry that:

[the Provincial leader] came in with a solicitor. I was there by myself—actually, I had my brother with me. We were there together. We had no representation. They proceeded to tell us how what happened was not that bad and very much tried to play down that we had any right to even be talking to them about a claim. It came down to that they had a piece of paper there, which I believe was a deed of release, and

¹³⁸ *Submission S464*, Name withheld.

¹³⁹ *Submission S078*, Mr Russell Clark, p. 2.

said, 'However, if you sign this, you won't need to go to court, you won't need to get solicitors and that will be it'. At that stage my family were just—it was killing all of us. So we just did; we just signed it. We just felt like we had no other choice. We were not given any other options. We did not seek any legal advice. We just did what they said, and that was it ...

It was just inadequate. I mean, it was just wrong. As you go along in life and you get a bit older, it just eats away at you. You just think, 'Well, hey, how can they do that?'. That is what I am saying. They were just ticking the box. They just wanted us to go away, and we were dealt with. It is not right. So, yes, I think it needs to be on our terms, not their terms.¹⁴⁰

Many victims told the Inquiry they had no choice but to accept the compensation offered through Towards Healing. For example, Mr Russell Clark told the Committee that when he expressed dissatisfaction with the amount offered, he was told 'you either take it or you get nothing.'¹⁴¹ Like many victims, Mr Clark needed medical treatment and had little money, so he accepted the compensation amount offered. He was not told that the decision could be appealed.¹⁴²

One victim described his involvement in the Towards Healing process as follows:

My life since the age of 12 has been qualified by the internal conflict of silence yet knowing. All my endeavours in life have been compromised by a fear that the forward steps would expose the past—a past that I was told never to speak about. I have tried to speak, and it is on my initial submission that I focus when I say the Towards Healing protocol has had an adverse healing impact; it was as if 'they' did not let me speak—'they' did not listen.

Could I say, too, to the well meaning who say they speak for me when they say I will be further traumatised by this or any other inquiry, to be told what I will feel, for me, strips me of a sense of self. Do not tell me what I will feel. Listen, and let me speak.

I would like to elaborate a little on my earlier submission by addressing in more detail my experience with Towards Healing and how it left me feeling. The first complaint I made in 2003 resulted in the home visit of a quiet, encouraging and patient man who took my statement without imposing himself in any way. He listened, and he spoke only to clarify my words. I found this a most rewarding experience. I then received a telephone call to advise that, as my complaint had been accepted, the matter would proceed directly to facilitation. My written submission to this inquiry details my experience here, but perhaps it does not convey how it left me feeling. Can I say here the paedophiles in my case imposed themselves on me physically and verbally. I cowered, subordinated. The actions of this Towards Healing facilitator were, I think, designed to keep me subordinated and certainly on the back foot. A loud person in a noisy cafe, he imposed, told me what would be good for me and told me what not to expect. He spoke; I did not get the opportunity ...

He tried to win me over. Again he did most of the speaking. He tried to draw me into his life. It left me feeling like I had no place other than if I was to accept his way. He had no understanding of the fundamental devastation caused by the physical sexual imposition of an adult man on a 12-year-old boy in the early stages of puberty. If he

140 *Transcript of evidence*, Mr Philip Nagle, p. 4.

141 *Submission S078*, Mr Russell Clark, p. 3.

142 *Submission S078*, Mr Russell Clark, p. 3.

did, he would have just stopped and listened. As it was, he thought he had the answer for me. He tried too to defend the actions of the paedophile. I felt like a battery toy hitting a wall, trying to climb, falling back and going again, going again, trying over and over ...¹⁴³

Another victim told the Committee

The reason we agreed to a settlement and got the release signed was that I wanted someone to apologise to my parents ... We wanted them to meet my parents ... We were just sick of it. Ninety per cent of our wider social group were Catholic. We lost enormous numbers of our people. We had people coming to us and saying, 'Why don't you just forget it? It happened so long ago. What are you dragging the church through this for? Not all of the church is like that. They are good men. They do good things. How dare you besmirch the church', and all those sorts of things.¹⁴⁴

A review of the Towards Healing files confirmed that although some claims appeared to have been resolved satisfactorily, there were many others where a level of dissatisfaction was evident. This was despite evidence showing that the process had accepted the accounts of the majority of victims.

As with every other part of the Towards Healing process, facilitation meetings and their purpose have been refined over time. Generally the changes that have taken place since the inception of Towards Healing have been regarded as positive.

21.4.3 Compensation—the Salvation Army

Lawyers for the Salvation Army are involved in the settlement of claims for compensation. Many of these claims are against both the Salvation Army and the State Government, because the Salvation Army provided care for wards of the State. Resolution of a claim therefore generally involves a number of parties and retains a legalistic approach to compensation. If the Salvation Army receives a complaint from someone without legal representation, the Committee's file review indicated that the Salvation Army can choose to handle the complaint internally or pass it to their solicitor for handling.

If it chooses to handle the complaint internally the complaint is sent to the Professional Standards of the Personnel Department and an internal investigation into the complaint is completed and a preliminary decision regarding appropriate settlement is made.

If the Salvation Army passes the complaint to its solicitors for handling, the complaint is handled in the same way as if the complainant were legally represented.

Legal representation

The Committee's review of the files confirmed that the majority of victims who approach the Salvation Army were legally represented.

Although the Care Leaver Complaint Process states that the Salvation Army will encourage self-represented complainants to obtain independent legal advice, it is not clear in the files reviewed by the Committee if this always occurred.

¹⁴³ *Transcript of evidence*, Mr Jim Commadeur, p. 2.

¹⁴⁴ *Submission S454*, Name withheld.

For those who do not engage legal representatives, the files revealed that the amount of financial compensation offered during internal negotiation of settlement with the Salvation Army was considerably lower than compensation offers negotiated with Salvation Army's legal representatives.¹⁴⁵

For example, in one claim where a settlement of \$10,000 was reached, a memo was sent by the Salvation Army to the Secretary of the Territorial Finance Committee stating that the settlement was complete but it was in the lower range of settlements previously approved in these matters. A further example of diminished monetary compensation was a settlement where a complainant received just \$500 to enable him to pay his airfare interstate.

Apology

The Committee established from the files reviewed that a generic apology was provided to the victim after completion of their settlement. It heard that some victims felt the Salvation Army's apology was inadequate. Mr Brian Cherrie, for example, provided the Committee with the apology he received from the Salvation Army, which stated:

I wish to express the Salvation Army's apology for the sexual and physical abuse which you say occurred.¹⁴⁶

He explained that, instead of providing a genuine acknowledgement of the abuse, this wording suggested that the Salvation Army questioned whether the abuse took place at all. He told the Inquiry:

I was pretty disgusted. Part of the deal was the written apology, but the written apology in my view is ridiculous; it is just the way it is written. It is like doubting what happened, and there are just too many claims.¹⁴⁷

The Committee found in its review of the Salvation Army's files that this was the standard response provided to victims. The Salvation Army does not investigate instances of abuse, but neither does it appear to really accept that the abuse occurred. An example of the Salvation Army apology is provided in Appendix 11.

21.4.4 Compensation—Anglican Church

The Anglican Church can and has provided financial payment as part of its process. However, as previously indicated, financial compensation is not the focus of this system. As explained in evidence to the Committee:

Yes, we have; that is the short answer. But not all of those people and not all of those 46 people who have made a complaint about child abuse have wanted a financial settlement. There are many different things that people seek as a result of coming forward, and we should not assume that a financial settlement is what everybody is looking for. We try to tailor our Response to what the person is looking for, so we actually ask them. Your Committee has asked, 'What does justice look like?' We ask people, 'What do you need? What are you hoping to achieve? What would help you towards your future?', and all sorts of different things come out of that. Any figure that we might talk of as a financial settlement does not include significant, for example, counselling costs that we offer.

145 For further detail about compensation, refer to Appendix 9.

146 *Transcript of evidence*, Mr Brian Cherrie, Melbourne, 4 February 2013, p. 7.

147 *Transcript of evidence*, Mr Brian Cherrie, p. 6.

As soon as somebody rings up, I offer them counselling from an independent, professional, registered psychologist, and we undertake support for that person while they are in the decision-making process about whether they are going to make a complaint. There are many things that people might want. They might want to [sic] apology. For example, someone might want an apology, some counselling and payment of a specific education course or payment to a specific charity. We would assist people in that way, and that would not show up in our figures of financial reparation ...

We have had settlements that have exceeded the cap of \$25,000, without doubt ...

We have a very longstanding relationship with our insurers, Ansvar, who I believe have appeared before the Inquiry. We believe we have a very open and engaging relationship with them, particularly on this matter, where of course they, like us, are very interested in managing risk going forward. So they have been particularly useful to us in providing ideas about how we appropriately manage risk in these important areas.¹⁴⁸

Finding 21.3

The approach to financial compensation by the organisations reviewed often did not provide a clear explanation of the basis on which an organisation makes a financial payment, how the amount awarded was determined and obligations regarding confidentiality.

Finding 21.4

Organisations rarely encourage participants in the process to seek independent legal advice before reaching any agreements that might affect their subsequent legal rights.

Finding 21.5

Organisations tend to provide generic apologies that do not focus on the specific circumstances of the individual and the role played by both the perpetrator and the organisation in regard to the damage suffered by the victim.

21.5. Counselling and therapy

The Melbourne Response, *Towards Healing* and the Anglican Church's response all include an element of counselling and therapy for victims of criminal child abuse, as outlined in Table 21.1.

¹⁴⁸ *Transcript of evidence*, Anglican Diocese of Melbourne, p. 13.

Table 21.1: Counselling—Melbourne Response, Towards Healing, Anglican Church and Salvation Army

Organisation	Counselling
Anglican Church	Professional psychological counselling organised through the Office of Professional Standards. Number of sessions is based on need and not limited. ¹⁴⁹
Catholic Church Melbourne Archdiocese	Counselling provided through Carelink. The number of sessions is on a needs basis. ¹⁵⁰
Catholic Church other than Melbourne Archdiocese Towards Healing	Guidelines state that the Director of Professional Standards can arrange for an offer of funding for counselling. ¹⁵¹
Salvation Army	The Care Leaver Complaint process refers to counselling that can be offered to victims who approach the Salvation Army directly rather than through their legal representatives. ¹⁵² The provision for future counselling is included in the ex gratia payment awarded to victims and it is then at the victims discretion whether they want to obtain counselling. ¹⁵³ Little evidence of counselling was present in Committee's analysis of the files. ¹⁵⁴

Source: Compiled by the Family and Community Development Committee.

As noted in Table 21.1, the Salvation Army process limits the offer of counselling to those who approach it directly and go through its internal process. Given that the Committee identified that limited counselling was made available to victims in the Salvation Army files it examined, its approach to counselling is not discussed in this section of the Report.

21.5.1. Counselling—Melbourne Response

In the Melbourne Response, ongoing counselling is provided through Carelink.¹⁵⁵ The Independent Commissioner supports victims to receive Carelink counselling services at any stage of the Melbourne Response process, including before he has made any determination and if a victim decides to cease involvement with other parts of Melbourne Response. There does not appear to be any limit on the amount of counselling offered.

In each case where the Independent Commissioner makes a finding in favour of the victim, the victim is referred to Carelink, typically for the purpose of obtaining a psychological report to aid the deliberations of the Compensation Panel. Carelink

149 Anglican Diocese of Melbourne (2010) *Power and trust in the church. A protocol under the Professional Standards Act 2009 for responding to abuse harassment and other misconduct within the church*. Section 1.5(b).

150 *Submission S185*, Catholic Church in Victoria. Appendix 1.

151 Australian Catholic Bishop Conference and Catholic Religious Australia (January 2010) *Towards Healing. Principles and procedures in responding to complaints of abuse against personnel of the Catholic Church in Australia*, p. 19, paragraph 38.4.

152 *Supplementary evidence*, Official minutes: Care leaver complaint process, Salvation Army, Australia Southern Territory, 17 July 2013.

153 *Supplementary evidence*, Letter from Nevett Ford to the Chair of the Family and Community Development Committee, 17 July 2013.

154 Refer to Appendix 9 of this Report.

155 See for example *Transcript of evidence*, Dr Joseph Poznanski, p. 5.

also decides on a treatment plan for the victim, and either arranges for experts to carry it out or offers counselling itself, with the aim of assisting the victim (and their family). Carelink appears to be reasonably flexible and makes a genuine effort to accommodate each victim's particular needs, including requests for treatment by the victim's own psychiatrist or psychologist, or other outside treatment. The Catholic Archdiocese of Melbourne has little or no control over the counselling a victim receives (other than controlling the purse strings generally).

Criticisms of Carelink relate to a complaint that the costs are borne by private insurance and Medicare rather than by the Catholic Church. People have also criticised Carelink as being too closely affiliated with the Catholic Church. This criticism is linked to the view of victims that the Catholic Church is part of the Melbourne Response process and their difficulty accepting the assertion that the process is independent of the Church.

In its review of the files, the Committee found that most victims indicated that they were satisfied with the services Carelink provided, although some reported having difficulties with, and a dislike of, Carelink and its representatives.

The Committee found that overall, despite some negative reports, the organisation of Carelink and the work it does are a beneficial part of the Melbourne Response process.

21.5.2. Counselling—Towards Healing

The Towards Healing guidelines state that the Director of Professional Standards can arrange for counselling to be funded as part of the compensation offer made at facilitation. However, despite the provisions of Towards Healing,¹⁵⁶ the process rarely included counselling—certainly less often than under the Melbourne Response.

Generally, it appears that the monetary award was also meant to meet the costs of any counselling that the victim might need. In practice very few of the facilitated awards specified an amount for counselling. Typically, when counselling was provided, between five and ten sessions were included in the offer, and victims had to approach the Church Authority to request additional sessions.

One witness said:

... these families are people of the highest integrity. They are not in it just to receive some sort of compensation. I think they have exhibited immense bravery. I do not know how they live out their lives, because they have just been trashed. It is the indifference that they are treated with. All they want is for their pain to be acknowledged—for recognition of it—and not to be treated with indifference. To think you could have six counselling sessions and just go on and get over it. There has to be more. It has to be an ongoing, lifelong commitment to them, like you would give to any other person

¹⁵⁶ Upon receipt of a complaint, the Director can make a recommendation concerning the funding of counselling or other such assistance for the victim pending the outcome of the process. The Church Authority will also 'strive to assist in the psychological and spiritual healing of those persons who, as well as the victims, have been seriously affected by incidents of abuse'. In the event the Church Authority is satisfied of the truth of the complaint, 'the Church Authority shall respond to the needs of the victim in such ways as are demanded by justice and compassion. Responses may include the provision of counselling services or the payment of counselling costs'. The Church Authority should also consider 'what steps need to be taken to assist affected people through the provision of counselling or other pastoral support.'

with a disability. They have to be protected right through their lives ...¹⁵⁷

Mr Peter Blenkiron argued that the premise of Towards Healing was flawed. He explained that one of the significant problems is the lack of ongoing support:

People who did not understand it tried to run it. There were five sessions of counselling, and they said, 'Sign on the dotted line, take the money, go and have a binge and destroy yourself. You can't come back and talk to us about it anymore.'¹⁵⁸

Of the files reviewed by the Committee, only one case provided counselling for a secondary victim. The parents of a victim remarked:

Another point that I would actually like to make ... is the counselling. The counselling ... has done XXX the world of good. But Towards Healing works from 9 to 5. You ring up Towards Healing at 3 o'clock in the morning, you get a recording, and they will ring you back. So if you are trying to maintain a normal life and working, you do not want a phone call back from Towards Healing at 11 o'clock in the morning when your boss is doing whatever, to take — —

I rang Towards Healing ... several times on a Friday and they rang back on the Monday. So you have got the whole weekend. So what does a young guy do on a farm on the weekend? We have removed the guns from our household many a time in fear of what could happen. To me if they cannot do counselling 24/7, at least they need to do it from 6 to 6, because that is when these people need the most help. It is not in the middle of the day when everybody else is around; it is when they are home alone or when they have been drinking too much. That is when they go to these Lifelines, not in working hours ...

The other thing that I think is important is that counselling services are made available to them for not necessarily emotional but for financial advice, advice on planning their life, marriage advice, and for the whole family, not just for them. In the compensation package the boys demanded that each member of the family had continuous counselling, which the church accepted. But one of the wives wanted to go to a counsellor recently, so I rang up and organised it for her, but it has to go before the bishop. It does not just automatically happen. There is not a list saying, 'Yes, they are eligible', or whatever. Before she can say yes to me, she has to go to the bishop again and ask the bishop, 'Is that okay?', and then she has got to come back to me. A fortnight later the crisis point that they might have been having is gone. They need to have it then and there, not a fortnight later.¹⁵⁹

Further, only in the odd, rare case was the victim immediately offered counselling to assist them to complete the Towards Healing process.¹⁶⁰ This is despite some victims clearly needing emotional assistance during the process and having to request this assistance themselves.

Unfortunately, where counselling was provided, victims had virtually no control over the choice of counsellor or type of therapy. The Church Authority decided those matters. In the Committee's study of the Towards Healing files one victim complained that he did not like the counsellor or the sessions but these concerns were ignored by

157 *Transcript of evidence*, Ms Carmel Moloney, Ballarat, 7 December 2012, p. 4.

158 *Transcript of evidence*, Mr Peter Blenkiron, Ballarat, 28 February 2013, pp. 5–6.

159 *Submission S451*, Name withheld.

160 Committee's study of files shows 3 individuals were offered counselling through the process—prior to facilitation.

Towards Healing causing the victim to drop the counselling after only two sessions. No further assistance or encouragement was given to him by Towards Healing to attend counselling.¹⁶¹

On occasion, the Church Authority offered a victim assistance even though their claim was not substantiated.¹⁶²

21.5.3 Counselling—the Anglican Church

Anglican Church representatives told the Committee that counselling was paid for by the Anglican Church and was organised through the Office of Professional Standards. They also stated:

The counsellors are not employed by the church or a church organisation ...

We have two sorts of psychologists. We have people who are absolutely independent of the church, and they just send their invoices to my office and I send them, de-identified, through to be paid. We also have some psychologists who are also affiliated with a denomination—it might be Anglican or some other denomination—and if the person specifically wants somebody that they would consider to be a Christian psychologist, then I would give them the option of a couple of those choices as well. Mostly people want the independent psychologist, and that is whom they will be offered.¹⁶³

There is no set number of counselling sessions. The Independent Director of Professional Standards in the Anglican Diocese of Melbourne, Ms Claire Sargent, responded as follows to the Committee's enquiry about the duration of counselling:

The question is 'How long is a piece of string?' The criteria is based on need. So somebody might want 1 session; somebody else might want 3 sessions; somebody else might 20 sessions. It just depends. Particularly if the matter is going through the Church process—for example, it is taking quite some time, the police have not taken it up, and it is getting back to Church process, then those people have a need to be supported throughout that process. There is no number of sessions that will be appropriate. What I do is get in touch with the psychologist who is providing the care and I would authorise X sessions at a time—six, something like that.

I would say after that, 'Please get back in touch with me. Let me know how your client is going'. I am not asking for confidential information. I am not asking to be involved in that client's process. I am just saying, 'Are you the right person for them?' Do we need to think of anything else? Has something come up that we need to do something more about? I am thinking, does a psychiatrist need to be involved? How are we going? What do you think? How long do you think we are going to go? For example, I might be asking those questions at a stage when the person has yet to make a decision about whether they are going to make a complaint: 'Is this person going to make a complaint? Let's just keep in touch' ...

It is up to the individual. They might decide that once they have got an outcome maybe they are satisfied with that. They might say, 'Okay, I'm out of here', or they

161 Determined from the Committee's analysis of the Towards Healing files. See Appendix 9.

162 Where complaints are unsubstantiated, pastoral meetings involve the Church Authority offering support to a victim, whilst not admitting liability, apologising or offering compensation. They are effectively a way for the Church to say 'we're sorry that you're hurt but we do not admit that we are responsible for your problems.' By nature, therefore, pastoral meetings exclude the majority of the victims' needs. Many victims rejected Towards Healing's offer of a pastoral meeting.

163 *Transcript of evidence*, Anglican Diocese of Melbourne, p. 13.

might need some additional care. I have people who have gone through a process quite some time ago. I am thinking of a fellow who rings me probably three or four times a year and just has a chat for an hour because he wants to have that little bit of contact, and he wants to know that his information is safe, that it has not been forgotten and that there is somebody he can call.¹⁶⁴

Finding 21.6

Not all organisations provide counselling support, and some that do tend to provide inadequate counselling due to the limited sessions offered, an approach not tailored to individuals or counselling offered through services operated internally within the organisation.

21.6. Pastoral and other support

The Committee considered the approaches of the Melbourne Response, Towards Healing and the Anglican Church in their offer of pastoral support to victims who engage in internal dispute resolution processes.

21.6.1 Pastoral support—Melbourne Response

The Melbourne Response includes a *Parish Pastoral Response*, which aims to offer support to parish communities and parish priests at times of crisis following disclosure, or at the prospect of imminent disclosure, of misconduct by Church personnel or parish clergy. The Committee received little information about this aspect of the Melbourne Response, although the Committee heard evidence that victims perceived a lack of pastoral response in their community.

Before the implementation of the Melbourne Response, the Catholic Church's Pastoral Response Group held forums for the purpose of providing support to parishioners where abuse allegations had surfaced. The Committee asked Cardinal George Pell why these did not continue once the Melbourne Response commenced, given that victims saw them as a good mechanism to come forward and seek assistance from the Catholic Church. Cardinal Pell responded:

The first thing is that according to my recollection that particular form of pastoral response was not recommended in the document ... I was not keen to continue them precisely because of the bad experience at the third meeting, which I have already recounted, where people were condemning priests here, there and everywhere, and I said, 'That has to be established'. I took the decision, just myself personally, that I thought it was much better for me, as distinct from my representatives or staff—that is an entirely different thing—to meet only with the victims after the situation had been adjudicated in some way or another. To meet with them beforehand, there is a possibility that they either regard you as rude, or, if you are too ingratiating, that you are somehow encouraging them not to go to the police.

What the pastoral response certainly envisaged was teams that would go out to the parishes to explain what was happening, to organise for counselling and help and to deal with special groups. They were not wedded irrevocably or essentially to that, and

¹⁶⁴ *Transcript of evidence*, Anglican Diocese of Melbourne, p. 14.

in the light of especially that third meeting, where I explained what I had to say—people were cross—it did not contribute to making things better.¹⁶⁵

When challenged that such forums provided a perfect opportunity for parishioners to express their concerns about the actions of a parish priest and the effects of his behaviour on the parishioners, Cardinal Pell responded:

There are a number of factors there. If you are talking about the measures that have to be put into place to protect children, an acrimonious public meeting is not the best way to do it. Secondly, on many occasions, less controversial figures than the head of the Church are much better placed to be able to talk with these people and help them. I think that it is useful to have somebody—I have been blessed with somebody who is very good at this, a priest, in Sydney—to go out and talk to these people in these circumstances. Generally, though, it is better done in small groups or in a family or individually than in big groups, where things can deteriorate quickly.¹⁶⁶

In regard to implementing the alternatives, he stated:

In Melbourne I am pretty certain I met—for the first part, with any victim who wanted to meet with me. Secondly, Maria Kirkwood was in charge of the pastoral response project, and she carried that out. I know that—for example, when Searson was stood down I wrote to the parish, and we put out a press release that he had been stood down. The team went out to help and to talk to people. I believe that basically the other elements of the pastoral response went forward. I would not preclude the fact that perhaps more needs to be done on that.¹⁶⁷

Cardinal Pell was asked why he did not, on his own initiative, proactively seek to engage with parishes where there had been known offenders. The Committee raised the particular example of Fr Ronald Pickering at Gardenvale. The Catholic Archdiocese of Melbourne did not contact parishioners until 2002, even though it had been told in 1994 of concerns that there were allegations of serious criminal child abuse, and Fr Pickering had gone to England:

I did not initiate action myself. You would be aware that in that letter, as you yourself said, Little said they were allegations. I do not know whether they were established at that stage. We probably should have sent out a letter, as we did to the other parishes. I am a bit unsure about the chronology of who dealt with what or to what extent we knew, but it is certainly true that I did not go out, as my successor did so commendably, to ask for other ...

It was far from perfect.¹⁶⁸

The impact of abuse and the need for some victims to have pastoral support cannot be disputed. As explained by one victim:

This secondary abuse, if you like, has been compounded by an unforgivable spiritual neglect and abandonment. The image of penguins caught in an oil spill springs to mind where the church is the responsible party and refuses to accept responsibility for damage or repairing it. As I said, there are so many layers to our story and the biggest fear I have in describing it is that I have bits of paper everywhere. I have been drowning in it, but I will just try to read at least some of it. I know there will be lots of stuff that I won't get a chance to say.¹⁶⁹

165 *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 38.

166 *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 38.

167 *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 38.

168 *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 40.

169 *Submission S479*, Name withheld.

Professor Chris Goddard, Director of Child Abuse Prevention Research Australia indicated to the Committee:

I was talking there particularly about the impact, and I do not think that we still fully understand that impact. But I will come back to what you said; I just wanted to emphasise that. There is one particular victim I know, who is a woman now perhaps in her 60s, who would still describe herself as a hostage to the religious abuser. I really do believe that it is that spiritual disorientation that is catastrophic. Some people say that in order to help people heal you actually have to help heal their souls as well ...

I am not saying that one form of abuse is worse than another. I have, however, a firm opinion that the abuse of children and young people in religious organisations is truly diabolical because of the lasting and terrible spiritual damage. This is supported by the literature. The abuse of children by adults always rests on a power imbalance. The large number of offences by Catholic priests reflects an extraordinary power imbalance. The religious authority they possess allows them even to turn parents and families against their own children. This has meant that many victims have had to attempt to deal with the abuse on their own, magnifying the impacts.¹⁷⁰

Another victim said:

Any abuse is dreadful, and sexual abuse is worse, but when it happens within the context of the Christian community it damages your soul. If you want to help people get into a better place, then you have to look at all aspects. It is family, especially for people who are really embedded in the church. It is abuse within the family, and it attacks your meaning of life. Certainly for me as part of a spiritual community, because that is how I get my sense of meaning in life, so it needs a very holistic approach. I do not know how else to say it really.¹⁷¹

The Committee heard that there was a lack of follow-up with victims who had gone through the Melbourne Response process. Fr Kevin Dillon, compared the Melbourne Response with the Department of Veterans Affairs (DVA) response to claimants. He noted that while the DVA has organised group gatherings where people can discuss 'how they are going', Melbourne Response has no such follow-up:

When I have spoken to victims, I have asked, 'Have you had any follow through? Has anybody ever rung you up to ask how you're going? Have you got through this all right? Are you still okay?' and whatever, but there is never a phone call, never a follow up ... No effort whatsoever has been made to bring together victims of Church-related abuse, who have a lot in common, to give each other support within what should be the comforting arms of the Church.¹⁷²

21.6.2 Pastoral support—Towards Healing

Towards Healing requires the relevant Church Authority to consider how to assist other affected people, through counselling or other pastoral support, following the conclusion of the process. This suggests that Towards Healing should assist secondary victims and communities. However, the Inquiry received no evidence of any Church Authority undertaking such measures.

170 *Transcript of evidence*, Professor Chris Goddard, Child Abuse Prevention Research Australia, Monash University, Melbourne, 19 October 2012, p. 10.

171 *Submission S486*, Name withheld.

172 *Transcript of evidence*, Father Kevin Dillon, p. 4.

Some victims complained that the facilitation process focused on monetary concerns, especially when solicitors were involved. Many victims complained that pastoral sensibilities, propagated as part of the facilitation process, were simply lost in the face of monetary concerns.

So to draw some sort of a line under it so we could get on with our lives without this becoming an all-consuming passion, we drew a line under it, but it was never finished. I have been waiting for this sort of thing or the royal commission or something to happen for 15 or 18 years, and that is part of why I went to see the Bishop's representatives. And money is not the thing. What we need is pastoral support and care for families.

My parents made enormous sacrifices to send us to that school. The church could not care less about them. The hardest thing I have had to in this whole process was tell my kids. At the time I had a 16-year old son and a 13-year old daughter, and I had to say, 'When Dad was your age he was abused by a Christian Brother'. That just devastated my daughter.

There is no support for my family. They have just drawn a line under us— 'You're in that little box over there, and we won't worry about you again'. But we are not going away until they do something concrete.¹⁷³

The victim indicated he would not have been resentful of the Catholic Church offering pastoral care. In describing to the Inquiry what pastoral care would look like the victim said:

I am not sure what it will look like. I do not profess to be an expert in this area, but to me—and this is a given, I would have thought—it should be orientated towards the victim and the victim's family. It should not be about the cost of it or the time it consumes. It should be whatever it takes for however long it takes until the victim feels satisfied. For some victims it may take a couple of weeks, a couple of months or a couple of years; for other victims it will be ongoing. Some people are very, very damaged by this; it has split some families in Ballarat where parents no longer talk because one parent has taken the son's side and the other parent has taken the other side ...

I think the problem with the church is what they did was they consulted a lawyer before they consulted anybody else. I am betting this is Minimise Damage 101, and it has backfired big time because they should not be doing it. I do not know how many of you are lawyers, but they need to take them out of the equation and put some counsellors or some people who care in the equation.

It is devastating the Catholic community. I know parishioners who are devastated by their reaction. A lot of them did not understand what the reaction was ... They have spoken to some of the clergy, and they are just astounded at the reaction of the clergy. George Pell's press conference is a classic example of that; he is somebody who has just not got it. I would be very surprised if he makes any more announcements. I know that the bishops of Australia have muzzled him. But that does not mean the attitude has changed. The man spent \$15 million on a chapel in Rome but will not spend a couple of hundred thousand dollars sorting out some pastoral care or some counselling for victims ...

I am still involved in this process, because I think the church does really good things. I think there are really some enormously good people in it. Personally I would not

173 *Submission S454*, Name withheld.

care if it burnt down tomorrow, but I would hate to see those people lose everything they have worked for in their lives and I would hate to see the really good things that the Catholic Church and Catholic institutions and Catholic lay people do gone. I think they do enormously good stuff, and that is the only reason I am still in this.¹⁷⁴

When asked for further clarification the victim explained:

I would have said, 'You need to do pastoral care'. I have had meetings with a couple of representatives of the Catholic boards in Ballarat and they said, 'We'll wait and see what this inquiry does'. I said, 'I will be amazed, I will go to the moon if this inquiry recommends pastoral care to you, because this is what you should be doing. This is your nuts and bolts stuff. You do it for bereavement, you do it for refugees, you do it for everything else under the sun, but the one thing you don't do it for is for victims of your own church'.¹⁷⁵

Mr Joseph Saric asserted that the Catholic Church's response processes can never compensate victims for their loss of faith and innocence and that encounters with church representatives have been inadequate:

The fact is that the Church's credibility, trust and respect from its parishioners has been lost on a scale more damaging than any financial compensation the Church has to deliver. The question becomes: can any amount of money ever compensate for the destruction of the personal innocence and personal faith of so many victims who carry the scars of their experience for a lifetime?¹⁷⁶

They report bruising encounters, being intimidated by bishops and solicitors ... Not one speaks of a positive, healing, Jesus-like response from the Church protocols.¹⁷⁷

Inquiry participants criticised the Towards Healing process for combining pastoral care with legal and adversarial negotiations of settlement. For example, Dr Joseph Poznanski, a psychologist, gave an example which he noted was 'not uncommon':

One of my clients waited almost three years for his Towards Healing process to be completed. On the day of his much awaited mediation he was offered a pastoral session from a Marist provincial, who came along with his lawyer. After this pastoral session had finished the lawyer acted in an adversarial, bullying manner towards my client and my client's advocacy team. The lawyer stated that there would be no more negotiation and that he was not going to miss his lunch.¹⁷⁸

The parents of a victim indicated their disappointment that pastoral care was not forthcoming:

The other thing I want to say too is: I honestly did feel ... that I would get a knock on the door from a nun or from a priest or from somebody from the pastoral care to say, 'Now, XXX, you know, we're just looking into this, and we're going to help you, but I notice that your boys were altar boys at XXX in such and such, and there's been some allegations. Are you having any trouble? Do you think there might be an issue?'. When that didn't come, I thought, 'Oh, this is good; my boys aren't affected— lucky me'. As time goes on— no help at all from the church.¹⁷⁹

Similarly, another witness said:

174 *Submission S454*, Name withheld.

175 *Submission S454*, Name withheld.

176 *Transcript of evidence*, Mr Joseph Saric, pp. 2–3.

177 *Transcript of evidence*, Prof. Michael Parer, Melbourne, 25 March 2013, p. 4.

178 *Transcript of evidence*, Dr Joseph Poznanski, p. 3.

179 *Submission S451*, Name withheld.

The girls yesterday were so welcoming and kind, whereas with that lot there you would think we were aliens from Mars or something like that. It is not just me, and I am not here just for me. I want things done for the other victims. It is just deplorable what has happened to so many victims. I want them to sort this out and acknowledge that they must work toward justice and compassion. It is not just about money; they must do something about follow-up pastoral care. They do not even bother giving you a phone call after you have been through the process and you have had your settlement. Sexual abuse affects you for the rest of your life. You can forgive, but it is really hard to forget. It bruises your soul. It certainly affected the way I relate to males. It has affected my life.¹⁸⁰

21.6.3 Pastoral support—the Anglican Church

Some victims request a Christian psychologist, presumably to deal with spiritual as well as other issues. As part of the Anglican Church protocol the Director of Professional Standards and the Professional Standards Committee will, where appropriate, develop a pastoral response for the care of any Anglican Church community or congregation affected by a matter. The Committee did not receive any information about how the Anglican Church put this into practice.¹⁸¹

21.7 Review and/or appeal

The Committee considered the extent to which the Melbourne Response, Towards Healing and the Anglican Church have a review or appeal process regarding the outcomes of any complaints of criminal child abuse.

21.7.1 Review/appeal—Melbourne Response

There is no formal procedure for a victim to initiate an appeal against any Melbourne Response decision, most notably those of the Compensation Panel. There is no mechanism for a victim to express any grievance about the process, other than approaching the Independent Commissioner or the Chairman of the Compensation Panel. This would be a difficult process if the grievance is about one of these same individuals.

Fr Kevin Dillon commented, for example:

There is no appeal. This is what we do; this is our decision—take it or leave it. If you do not like it, you can pursue it through the courts. We know how successful that can be; there are all sorts of ties and escape clauses.¹⁸²

The Catholic Church Submission, *Facing the truth* indicated that Cardinal George Pell and Archbishop Denis Hart regularly reviewed the Melbourne Response since its inception. However, no documentation regarding any formal review was provided by the Catholic Archdiocese of Melbourne. Further, the Committee noted that the brochure published by the Archdiocese of Melbourne regarding the Melbourne

180 *Submission S452*, Name withheld.

181 Anglican Diocese of Melbourne (2010) *Power and trust in the church. A protocol under the Professional Standards Act 2009 for responding to abuse harassment and other misconduct within the church*, p. 16.

182 *Transcript of evidence*, Father Kevin Dillon, p. 3.

Response and the terms of appointment of the Independent Commissioner have been updated once since 1996, and that was in 2011.¹⁸³

Additionally, there is no set process for reviewing the operation of the Melbourne Response. The Committee notes, however, that the Catholic Archbishop of Melbourne has indicated that the Archdiocese of Melbourne is willing to submit to the establishment of an office with independent oversight of Church processes, such as that of an ombudsman.¹⁸⁴

21.7.2 Review/appeal—Towards Healing

Each stage of the Towards Healing process has an avenue for appeal, but few victims seem to know about these avenues, let alone initiate an appeal. Appeals are subject to time limits.¹⁸⁵

The Catholic Church instituted Towards Healing in December 1996. It modified Towards Healing processes in December 2000, June 2003 and January 2010 in accordance with the recommendations of independent reviews involving Professor Patrick Parkinson from Sydney University (who gave evidence to the Inquiry).

But in May 2009 Professor Parkinson wrote to the co-chairs of the National Committee for Professional Standards (NCPS) of Towards Healing, expressing his concern about matters relating to the Salesians that had been reported in the press and discovered by him when he was undertaking a Towards Healing review. This dispute raises the broader issue of the effectiveness of Towards Healing if signatories do not follow its process and protocols.

Professor Parkinson's criticism was about the Salesians' lack of action when they were aware of historical complaints of criminal child abuse perpetrated by three of their members: Fr Frank Klep, Fr Jack Ayers and Fr X.¹⁸⁶ The allegations related to these three Salesians, who had been responsible for the care of boys at Rupertswood College during the 1970s. At the time the complaints were made to police, the priests were living in Salesian ministries overseas.

Professor Parkinson's principal concern was with the Salesians' treatment of Fr Frank Klep and the failure to ensure that he returned to Australia to face criminal charges. Professor Parkinson's concern arose in these circumstances:

- During June–July 1986 a complaint had been made regarding the conduct of Fr Klep at Rupertswood College during the 1970s. This was investigated by the Provincial of the order but was not substantiated.
- Fr Klep was convicted of four counts of indecent assault relating to two individuals (victims G1 and G2) on 2 December 1994. These offences occurred in 1976 and 1979 at Rupertswood College. Fr Klep was sentenced to three months imprisonment to be served by way of an Intensive Correction Order.

183 *Submission S185*, Catholic Church in Victoria, p. 63; *Submission S185*, Catholic Church in Victoria. Annexures 1, 2 and 3.

184 *Submission S185A*, Catholic Church in Victoria, p. 5.

185 It is unclear to what extent victims are aware of the possibility that they can apply for a review of the Towards Healing process.

186 For legal reasons this priest is not identified.

- Fr Klep was interviewed in respect of sexual abuse of victim T in June 1996. The allegations of victim T related to sexual abuse in 1973 at Rupertswood College.
- From the time that Fr Klep was interviewed regarding the allegations by victim T until he went to Samoa in April 1998 the following occurred:
 - ♦ civil claims of victims G1 and G2 were settled and Deeds of Release were signed (February and August 1997 respectively)
 - ♦ victim T issued civil proceedings sometime prior to August 1997
 - ♦ in the application for a permit to enter Western Samoa a declaration was made that Fr Klep was of good character and never convicted of a criminal offence was signed by Fr Klep and witnessed by Fr Murphy on 20 January 1998 (the document was dated 1997, although it is apparent that is a mistake and should have been 1998)
 - ♦ Fr Klep was assured by solicitors acting for him in the criminal matter relating to victim T that criminal action would probably not be forthcoming (letter 20 March 1998)
 - ♦ between June 1996 and August 1998 police took no action in regard to the victim T allegations against Fr Klep.
- After Fr Klep went to Samoa on 6 April 1998:
 - ♦ the police brief for the victim T matters was authorised and police attended at a Salesians' residence in Lysterfield on 10 August 1998 to serve a summons relating to those charges
 - ♦ the victim T civil matter settled soon after the mediation on 28 May 1998
 - ♦ Fr Klep was placed on the PASS system by police which would have notified them of Fr Klep leaving the country, however that expired on 7 December 1998.
- On 17 February 1999, correspondence was sent to Fr Klep's solicitors that revealed:
 - ♦ his knowledge that police had attended at Lysterfield and his contact with Fr Murphy regarding that police visit
 - ♦ a request that his solicitors ascertain if Fr Klep could return to Australia without police attention in regard to victim T.
- In response to this correspondence Fr Klep was informed:
 - ♦ that his solicitors have had discussions with police regarding the victim T allegations and that the police understood that there was an arrangement with Fr Klep's superiors that they would be contacted if Fr Klep returned to Australia
 - ♦ in another letter from his solicitors Fr Klep was informed that his solicitors will ascertain if victim T is prepared to make a statement of no complaint or if the police would treat the matter as 'low priority'.
- Fr Klep was able to travel to Australia on three occasions between 2000–2004 without police being notified.
- A further complaint against Fr Klep by victim B was subject to the Towards Healing process in 2000 but was not completed until after review in September 2003. This related to allegations of sexual abuse by Fr Klep in 1977 at Rupertswood College.

- Around this time the Salesians were informed by a visitor to Western Samoa that Fr Klep was the celebrant at mass in the Apia Cathedral. Concern is expressed as the visitor was aware of Fr Klep's 1994 convictions.
- On 6 October 2003 formal notification of limitation on ministry was provided to Fr Klep. That letter refers to previous discussions regarding his limitation on ministry.
- In June 2004, the Samoan government became aware that Fr Klep had signed a false declaration regarding his criminal history and began proceedings to deport Fr Klep.
- Prior to formal deportation, Fr Klep made arrangements to return to Australia on 25 June 2004.
- Fr Klep was committed to stand trial on 1 April 2005. On 13 December 2005 Fr Klep pleaded guilty to 14 counts of indecent assault against 11 victims. Each of them was a student at Rupertswood College between 1975 and 1977. Some of the counts were representative, meaning that the offence occurred on more than one occasion. Fr Klep was sentenced to imprisonment for 3 years, 2 years suspended for a period of 3 years.
- On 19 April 2006 the Court of Appeal allowed an appeal by the Department of Public Prosecutions (DPP) and increased Fr Klep's sentence to imprisonment for a period of 5 years 10 months with a non-parole period of 3 years 6 months.
- Decree of dismissal process in regard to Klep commenced by Salesians 19 May 2006.¹⁸⁷

In regard to the Salesians actions in response to Fr John Ayers, Professor Parkinson's principal concern again relates to their lack of action to have Fr Ayers return to Australia when they were aware that allegations of sexual abuse had been made. He raised the following concerns:

- Fr Ayers was sent to Samoa in 1992.
- A formal complaint was lodged by S regarding sexual abuse by Fr Ayers in June 2000 and accepted by Towards Healing. S was a student at Rupertswood College and the allegations related to the period between 1965 and 1967.
- There is no documentation to suggest that Fr Ayer's ministry was restricted after the Towards Healing process was complete.
- Upon S becoming aware that Fr Ayers had returned to visit Australia after the Towards Healing process, he indicated that he wanted to confront Fr Ayers. By that time, Fr Ayers had returned to Samoa and the Salesians were not prepared to assist in the return of Fr Ayers until a police complaint was made.
- In correspondence between the Provincial and Fr Ayers in September 2009 Fr Ayers was informed that the Province was under investigation and having to answer the question:
 - ♦ did any past officeholders (i.e. Provincials of the order) allow men who have been accused of child sexual abuse and whom it might reasonably be expected

187 *Supplementary evidence*, Response to request for information from the Salesians of Don Bosco, Catholic Archdiocese of Melbourne, 31 January 2013; *Complaint files* provided by the Salesians of Don Bosco to the Family and Community Development Committee; *Submission S015*, Professor Patrick Parkinson.

that Victorian Police would want to interview, to return to Australia without informing Victoria Police?

- It is indicated by the Provincial that there is no cause for alarm and he thinks he has the situation covered.
- When police did become involved the Salesians assisted the police with their inquiries, although Fr Ayers was deemed unfit to travel. Fr Ayers died on 4 April 2012.¹⁸⁸

Professor Parkinson gave evidence to the Inquiry that suggests the Salesians were not prepared to act on his advice as an independent reviewer in these instances. Both of these instances illustrate the difficulties that can be encountered within the Towards Healing independent review process. The attitude of the Salesians is indicative of an inclination to protect the organisation and its members.

21.7.3 Review/appeal—Anglican Church

The protocol of the Anglican Church includes a process for reviewing decisions made by the Professional Standards Committee (PSC). Appeals are heard by the Diocese's Professional Standards Review Board. This Board is required to include non-Church representatives.

The Anglican Church has commissioned a number of independent reviews of its processes across Australian Anglican dioceses.¹⁸⁹ It has also made improvements to the process as a result of internal reviews. For example, the Anglican Diocese of Wangaratta explained how a recent review of the process resulted in the Church adopting a new right to appeal recommendations made under the protocol.¹⁹⁰ This led the Church to draft a model professional standards ordinance, which has been adopted with modifications by the Dioceses of Melbourne, Ballarat and Wangaratta.¹⁹¹

As is evident from the gradual development of this protocol, it is always under review with significant changes being adopted over time. At the end of the process there is a requirement to seek participants' views on how to improve the process.

The Committee considered that the willingness of the Anglican Church to review its protocols and make changes to its processes may contribute to the perception of independence of its process.

21.8 Scrutiny and monitoring of internal processes

As discussed in Chapter 18 of Part E, the Committee has determined that there is a need for a body similar to the New South Wales (NSW) Ombudsman to monitor and

¹⁸⁸ *Supplementary evidence*, Response to request for information from the Salesians of Don Bosco, Catholic Archdiocese of Melbourne, 31 January 2013; *Complaint files* provided by the Salesians of Don Bosco to the Family and Community Development Committee; *Submission S015*, Professor Patrick Parkinson.

¹⁸⁹ Archbishop Philip Freier noted the Kohl and Krowley report in 1998 in Tasmania, O'Callaghan and Briggs in 2003 in Brisbane, Olsson and Chung in 2004 in Adelaide and Parkinson in 2009 on a range of Anglican Dioceses.

¹⁹⁰ *Submission S225*, Anglican Diocese of Wangaratta, pp. 2–3.

¹⁹¹ *Submission S225*, Anglican Diocese of Wangaratta, p. 3.

oversee the processes that organisations have adopted for the handling of complaints and the preventative measures that are in place.

In evidence to the Inquiry, the NSW Ombudsman indicated that this role extended to the treatment of historical allegations as well as those that were current. However, his role was limited to the employment context with a requirement that the person the subject of a 'reportable conduct' was still working in the relevant field.

In regard to historical allegations, NSW Deputy Ombudsman, Mr Steve Kinmond indicated:

I am glad you have raised the issue of historical allegations. It is an extremely difficult area of practice, let me say. Yes, we often receive matters that relate to historical allegations. The test under our legislation is whether at the point of allegation the person is a relevant employee in a relevant field. If they are, the matter may well relate to something that occurred 20 or 30 years ago and yet it will come within our jurisdiction ...

Clearly if there has been any criminal allegation made, the fact that that allegation has been made ought to be kept by an agency and then all the relevant actions following on from that ought to be recorded. I think we both know when we are dealing with historical allegations that that will not be the case ...¹⁹²

Mr Kinmond also commented on the Towards Healing system operating in the Sydney Archdiocese:

If, for example, you take the Sydney Archdiocese, which is where it is located, it is in a position where it can have expert advisers that assist it in relation to matters. I would suggest that is of enormous benefit in terms of the way in which they handle matters. If one were to look at particular dioceses that are in more remote areas or in rural areas, it would not be unreasonable to assume that you are going to get variations in practice. One challenge for the church is to seek to identify where its potential risks might be, and in the areas where on a reasonable assessment one could say that the practices are not as strong, which might be for a whole range of reasons— location might be one— to seek to strengthen the system.

The interesting issue of course is the hierarchy of the church and the bishops, and of course you have the provincials as well, and their right to make decisions that they believe are appropriate decisions to make. As a layperson and a non-Catholic I would make the point that a system that encouraged much more peer review and the obtaining of expert assistance and that welcomed decisions being challenged would be a good way forward for the church. In making that comment I note that there is a national professional standards office, and in relation to matters that we oversight they can play an important role in relation to matters involving the clergy and in relation to other matters as well.

However, at the end of the day bishops have a great deal of power, and I do not want to present the picture that one should simply form the view that bishops who deal with matters poorly must be bishops who are poorly motivated. Sometimes matters are dealt with poorly because the necessary skills are not being brought to bear. The Catholic Church in New South Wales has a system where bishops can get good advice from the child protection officers and the national professional standards office, but from my review of a number of matters, on that test as to whether the right balance has been struck between pastoral responsibilities and broader responsibility to the community, I

192 *Transcript of evidence*, NSW Ombudsman, Melbourne, 4 April 2013, p. 8.

would have to say that there are occasions where one would feel uncomfortable.¹⁹³

Given the indications by the Catholic Archdiocese of Melbourne that it would be willing to submit to a process with independent oversight of its processes, a similar model as that considered in Chapter 18 of Part E could cover historical allegations of abuse and monitoring of processes to respond to complaints of that nature, as well as providing assistance in preventative measures for such organisations to adopt.

21.9 Recommendations about perpetrators and Church treatment of perpetrators

In this section of the Report, the Committee considers the response of the Melbourne Response, Towards Healing and the Anglican Church to perpetrators.

21.9.1 Perpetrators—Melbourne Response

Under the Melbourne Response the Independent Commissioner, after investigating a complaint, can make a recommendation to the Archbishop on how to deal with the offender. When misconduct is alleged against a priest in active ministry he is placed on administrative leave. The Committee understands that the Archbishop has accepted the Independent Commissioner's recommendation in every case.¹⁹⁴

21.9.2 Perpetrators—Towards Healing

Under Towards Healing, when a complaint is received the accused is often required to stand aside from ministry, employment or volunteer service. At any time the Director of Professional Standards may recommend to the Church Authority that it ask the accused to stand aside from a particular office or from all offices that the perpetrator holds in the Church, pending investigation. Such recommendations take into account the gravity of the allegations and the risk of harm to others if the allegations are true. Towards Healing also requires the Church Authority to seek the advice of the Consultative Panel, unless immediate action is required.

Once an offence has been substantiated or admitted the Church Authority 'must evaluate the situation and recommend an appropriate Response'.¹⁹⁵

21.9.3 Perpetrators—Anglican Church

Under the Anglican Church protocol, when a complaint is received the Archbishop or other relevant Church Authority may:

- suspend or stand down the accused from the duties of office or position of responsibility held by them
- prohibit the accused from holding a specified position or office or from carrying out a specified function
- take such other action as the Church Authority deems fit.¹⁹⁶

¹⁹³ *Transcript of evidence*, NSW Ombudsman, p. 9.

¹⁹⁴ *Submission S185*, Catholic Church in Victoria, p. 56.

¹⁹⁵ *Submission S185*, Catholic Church in Victoria, p. 69.

¹⁹⁶ Anglican Diocese of Melbourne (2010) *Power and trust in the church. A protocol under the Professional Standards Act 2009 for responding to abuse harassment and other misconduct within the church*, p. 10.

The protocol provides for the ‘stand down’ of a Church worker in situations where the potential risk posed by the worker remaining in their role or continuing to have contact with vulnerable persons is such that concerns over ‘duty of care’ arise.¹⁹⁷

In addition to the protocol, the Anglican Church in October 2007 passed the *National Register Canon 2007*. Its objective is:

... to assist in providing for the physical, emotional and spiritual welfare and safety, and the protection from the risk of abuse of all people having dealings with the clergy and church workers by establishing a National Professional Standards Register to which authorised persons may have access and make disclosures of the information therein.¹⁹⁸

Finding 21.7

Some organisations demonstrated a reluctance to implement effective disciplinary processes for offenders in their organisation, such as standing them down from their duties, removing their title or their membership to the organisation.

21.10 The Catholic Church—outside the processes

In Chapter 4 of Part B of this Report the impact on victims of criminal child abuse was considered. The Committee accepts that much of the grief suffered by victims and the anger they have directed to the Catholic Church is partly as a consequence of the Church’s treatment of perpetrators.

21.10.1 The Christian Brothers

The Committee questioned representatives of the Christian Brothers about their financial support of their members who face criminal charges for abuse against children in their care. Material provided to the Committee showed that the Christian Brothers order has spent significant funds on the legal defence of Br Robert Best. The following facts were accepted:

- In 1996, the Christian Brothers spent \$158,000 on defending Br Robert Best, who was found guilty of indecently assaulting a boy.
- The Christian Brothers spent a further \$33,000 in 1998 on defending other criminal proceedings relating to Br Best.
- Most significantly, the Christian Brothers spent almost \$1 million defending Br Best through trials and pleas in 2010 and 2011. In those proceedings Br Best was found guilty of 20 counts of indecent assault and one count of buggery, against eight victims. Br Best also pleaded guilty to four counts of indecent assault against two victims and two counts of aggravated indecent assault against one victim. Br Best pleaded guilty to crimes against only three of the 11 victims involved.¹⁹⁹

The Committee questioned Br Brian Brandon Executive Officer for Professional Standards on why the Christian Brothers had continued to support Br Best, even though he had been convicted of similar offences in 1996. Br Brian Brandon responded:

197 *Submission S244*, Anglican Diocese of Melbourne, p. 15.

198 *Submission S244*, Anglican Diocese of Melbourne, p. 15.

199 *Transcript of evidence*, Christian Brothers, Melbourne, 3 March 2013, p. 31.

It was certainly considered, but they were different allegations ...

The 2010 matters are all post the decision to engage criminal support defence ...

I am saying that the funds have nothing to do with decision. It is the history of those trials that would impact on our decision.²⁰⁰

When asked why the Christian Brothers paid the actual costs of defending Br Best, Br Brandon responded:

We did not choose to do that ... You would have to ask what would happen were we not to have done that ... You would have to consider the alternative.²⁰¹

When asked what that alternative might be, Br Brandon replied:

That is a good question.²⁰²

Representatives of the Christian Brothers also spoke of other support provided to members of their order who were found guilty of criminal child abuse. Such support included funding a private investigator to seek information regarding complainants, additional counselling for offenders while in prison and continued visits and support in custody. They stated:

We regard visiting prisoners as one of the Catholic Church's corporal works of mercy, so visiting prisoners is part of the charisma of the Christian Brothers. Our founder, before he established the Christian Brothers, did a lot of work with prisoners. We do not just add further to the punishment. Any family member would visit a member who had committed a crime anywhere.²⁰³

Such treatment caused particular angst to victims. Mr Stephen Woods of Ballarat stated to the Inquiry:

One of the paedophiles who molested me was Brother Edward Dowlan. His lawyers—when I had charges against him along with 22 other victims at the time—harassed victims by hiring private detectives to call up the victims and to ask us whether we wanted to continue with the charges, and if we were sure we felt up to the court case et cetera. These private detectives were harassing victims, until they got to me. I told them where to go; I told them what to do with their lives; I told them if they came to see me, I would get my father's chainsaw and I would fucking teach them a lesson they would never forget.

I merely rang up Sergeant Blair Smith, who was the police informant in that case, and he stopped them. This is what happens when you go against an organisation such as the Church. They harass you. Harassment by the Church's lawyers is normal. In one of the courts I had to go to, the judge stopped the proceedings and he told the QC to speak to me in a respectful and professional manner. This was the guy who was receiving close to \$6,000 a day, and he had been Brother Best's lawyer for years and years. He and I had met previously, and yet he was treating me so badly in court that the judge had to stop proceedings and instruct him to speak to me correctly. That is one of the ways that they harass you.

Another way is being treated as if you are the perpetrator. The questions they ask, the way that they put questions, was to make you feel that you were the perpetrator; just like the way that women years ago complained about the way that they were made to

200 *Transcript of evidence*, Christian Brothers, p. 30.

201 *Transcript of evidence*, Christian Brothers, p. 31.

202 *Transcript of evidence*, Christian Brothers, p. 31.

203 *Transcript of evidence*, Christian Brothers, p. 31.

feel that they were the ones who had instigated the rape against them. That is the way that we victims feel in court, being harassed by these obscenely paid for lawyers

The Church, in defending Brother Edward Dowlan, over the years that he was in court, they spent close to, or, as it was said to me, they would not have got any change from \$500,000, because he was their first golden boy to go into court. But even worse than that is Brother Robert Best. I was told by an informed person of the court that the Christian Brothers have spent—are you sitting down?—\$1.5 million defending this heinous sex criminal. This is the one also who has a litany of bodies after him—\$1.5 million they have spent so far. Thankfully, he is in jail now.²⁰⁴

Another victim stated:

Payments from St Alipius to victims—the limited investigation has concluded—have not equated to \$1 million. When I was in court with Best the barrister was getting \$10,000 a day. He earned more in one week than one payment that has been made to one of the victims of Best. Forty thousand dollars to a victim of child abuse—a rape victim—is half a year's wages, and that is the system they have got at the moment. I am asking the Committee to tell the Catholic Church to shove their pamphlet and get on with the real game—the real business—of Healing this community. Thank you.²⁰⁵

When questioned about this support for Br Best, and the Christian Brothers' failure to dismiss him, Br Julian McDonald responded:

That is an option available to us—to formally dismiss him from the congregation. One of the questions we must ask is: are we being responsible by letting somebody with a record like that loose in the community unsupervised? ...

I can understand how people in the community would see that as offensive. I do not have the same view. I understand they are taking offence, but I think we also have a responsibility to address the issue ...

Yes, my opinion is that I believe we have an obligation to the community not to let people like Best loose in the community unsupervised. By retaining him we can supervise his behaviour and monitor his movements and make sure that he does not just run loose in the community ...

Firstly, I would like to say that the recidivism among Christian Brothers who have been retained after having been in prison is nil. I think that has partly to do—or not partly—I think it is largely to do with the fact that we do monitor their behaviour and we do put restrictions on them and we do expect them to be accountable.²⁰⁶

Representatives from the Christian Brothers were also questioned regarding their support for Br Edward Dowlan, who had been convicted of criminal child sex offences in 1996. Br Dowlan pleaded guilty in June 1996 to 16 counts of indecent assault of 11 victims. The Committee was provided with documentation located on Br Dowlan's file, including:

- A portion of correspondence on 11 February 2008:

I am writing to you for some quick information ... We had submitted the application for Ted Dowlan's dispensation. The Vatican have asked me for some details ...²⁰⁷

- The second paragraph of a memo dated 29 August 2008 from Br Brandon:

204 *Transcript of evidence*, Mr Stephen Woods, Ballarat, 28 February 2013, p. 8.

205 *Transcript of evidence*, Mr Rob Walsh, Ballarat, 28 February 2013, p. 13.

206 *Transcript of evidence*, Christian Brothers, pp. 31,33.

207 *Transcript of evidence*, Christian Brothers, p. 23.

TD looking for advice re protecting his assets in some sort of testamentary trust. We talked about this a bit. It is a good way for him to proceed but he needs independent legal advice and obviously needs help to set it up ...

In response to a question from TD re costs, I indicated that, given his present status as a brother, we would pick up the cost of the advice and implementation process.²⁰⁸

- Portion of a letter from solicitors Tolhurst Druce and Emmerson dated 15 October 2008 to Br Brandon, as Trustees of the Christian Brothers:

... the entitlement of Ted Dowlan while unaltered in quantum is left to him in the form of a discretionary trust to protect it, so far as that is possible, from any attack on his assets after Mrs Dowlan's death.²⁰⁹

When questioned by the Committee regarding these matters, Br McDonald accepted that it was a 'very real possibility, maybe a probability'²¹⁰ the most likely attack would come from victims regarding compensation. Br Brandon responded:

I would simply say by way of response to your question that I was not the author of the letter.²¹¹

The following portion of a letter dated 4 December 2008 from Br Brandon was also read:

I'm aware of Ted Dowlan's signing of his dispensation papers in recent times.

It will also be helpful to me to have some idea of the quantum of his separation payment.

I don't need to know that to the nearest cent, but at least a broad indication will assist me in helping ensure that it isn't all lost through the said legal action with some consequent further call on the CBs [Christian Brothers] for support funds. I am aware of the arrangements made in relation to the estate that will come to him in line with his mother's will when she dies.²¹²

On consideration of that correspondence, Br McDonald and Br Brandon did not accept that the Christian Brothers put its members needs over those of victims:

I do not believe so. Legal action and paying legal fees is one thing. It does not mean that we deny victims ...

No, it is not about repentance. It is about obligation and caring for people who would just be put on the scrapheap.²¹³

When a brother is severed from the congregation we believe it is an obligation for us to provide him with some kind of stability. He has to have accommodation and he has to have the wherewithal to survive. This man is a psychological cripple. That is manifest in his behaviour, in his whole history of abuse. So he is not going to get employment anywhere.²¹⁴

208 *Transcript of evidence*, Christian Brothers, p. 23.

209 *Transcript of evidence*, Christian Brothers, p. 24.

210 *Transcript of evidence*, Christian Brothers, p. 24.

211 *Transcript of evidence*, Christian Brothers, p. 25.

212 *Transcript of evidence*, Christian Brothers, p. 26.

213 *Transcript of evidence*, Christian Brothers, p. 26.

214 *Transcript of evidence*, Christian Brothers, p. 25.

21.10.2 Catholic Archdiocese of Melbourne—Fr Desmond Gannon

Fr Desmond Gannon resigned from his parish in Macleod on 7 May 1993 after a complaint was made to the Vicar General, Monsignor Gerald Cudmore regarding his abuse of a boy in 1959 at St Anthony's Glenhuntly. The Macleod parish was informed that Fr Gannon had retired for health reasons.

In Fr Gannon's file provided to the Inquiry from the Catholic Archdiocese of Melbourne, it is apparent that then Archbishop Frank Little directed Monsignor Cudmore to draft a letter appointing Fr Gannon as a Pastor Emeritus. The letter was to be backdated (from 24 May 1993) to the time of Fr Gannon's resignation. This letter of appointment was full of praise for the service of Fr Gannon and was in circumstances where Fr Gannon had admitted to Monsignor Cudmore 'involvements' with boys in five or six other parishes. No mention of these activities is made.²¹⁵

When questioned about this course which was adopted, Cardinal Pell indicated:

It is not a promotion to go to pastor emeritus; it is an acceleration ... It is an exit... You are no longer an active priest.²¹⁶

When Cardinal Pell was questioned about the backdating of the document and the failure to mention any complaints relating to Fr Gannon of his admitted paedophilic activity, he responded:

... that is totally unacceptable. The pattern for such letters would be the letters that are sent out to the various emeritus pastors ...

It is an unfortunate letter, totally.

Let me say as we go along that obviously I do not approve of these at all. I was unaware of this particular incident, but it was this sort of unacceptable behaviour that prompted me to bring in the measures I did. I agree with you that it is unacceptable.

He got the bloke out, but the way he did it was reprehensible.²¹⁷

The Committee also questioned Archbishop Denis Hart about a letter addressed to him on 10 February 1999. In 1998, an assessment report was written on Fr Gannon. This was sent to the then Archbishop, George Pell. That assessment report was explicit about Fr Gannon, stating that 'his sexual offences ranged over the years from about 1957 to 1979, though this last date may stretch to 1981'.²¹⁸ The letter goes on to say that:

This deficiency, together with the absence of effective resources in coping with his overall psychological disturbances, means his level of risk for reoffending is a very real concern and needs to be attended to forthwith.²¹⁹

The Committee challenged Archbishop Hart on why the Church did not take steps to laicise Fr Gannon for many years after his activities had been exposed and proven. Archbishop Hart responded:

First of all, I would say that he had his faculties as a priest withdrawn on 3 August 1993 by Monsignor Cudmore, so he did not work as a priest ever since then. He then had some convictions and some prison time. It is very difficult to process a case. What is also significant is that if the person is not ready to cooperate, up until the new version of

215 *Files relating to Father Desmond Gannon*, provided to the Family and Community Development Committee by the Catholic Archdiocese of Melbourne.

216 *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 48.

217 *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 50.

218 *Transcript of evidence*, Catholic Archdiocese of Melbourne, p. 47.

219 *Transcript of evidence*, Catholic Archdiocese of Melbourne, pp. 8–9.

Sacramentorum Sanctitatis Tutela in 2002 there was a very heavy reliance on that unless you could get the fellow to petition to be laicised, you could not do quite as much without a very, very onerous process. What was significant in 2002 was that the then Cardinal Ratzinger—Pope Benedict XVI—simplified the process and enabled the bishop to go as petitioner and for there to be a more summary process which would bring the result. Because he had been in jail, we were not able to go ahead until 2011 when we certainly went for it and we put the case there in great detail. So I would say that we were always desiring to do something. The difficulties of Church law at the time and the difficulties of him being imprisoned impeded us through that time. But I was quite resolute then when I sent his case to Rome, and I maintain that resolution.²²⁰

The Committee asked Archbishop Hart why 18 years passed between Fr Gannon losing his faculties (in 1993), and being laicised in 2011. Archbishop Hart responded:

There would be very few who would have been laicised forcibly until the late 2000s—until after 2002. We were quite determined to get something done about Gannon, and we are still determined ...

Well, better late than never.²²¹

When questioned about the effect on victims of such a delay, particularly nine years after Church law changed, Archbishop Hart responded:

I would say we did what we could. I wish it had been earlier. I agree with you. I really would have wanted to get onto it, but we just were restricted by the fact that the law had to be changed, and that did not come until 2002. We were also restricted by the fact that he was in prison at different times. It is not a nice story. I agree with you. His activities have been most offensive to those who were his victims, to their families.

I am not proud of that, but at least we are addressing it.²²²

Archbishop Hart also understood that this matter strongly symbolised for many victims the attitude of the Church.

Connected to this issue was the Church's motive in taking action against Gannon when it eventually did. The Committee read to Archbishop Hart the following contents of a letter he had written to the Vatican: 'In the near future, the Catholic Church throughout Australia will—along with other religious organisations—be the subject of a royal commission.' In the letter Archbishop Hart also referred to this Inquiry, then continued:

The media in Victoria have been active in reporting the information and allegations made before the Parliamentary Inquiry, often concentrating on those cases involving the Catholic Church ...

I am gravely concerned that the steps taken in the case of Reverend Desmond Gannon, in the light of this new situation and also the possibility of further allegations against him, be seen to be inadequate and the cause of scandal for the faithful.

I am concerned that the good name of the church, and the strong and dedicated efforts that are being made within the Archdiocese of Melbourne to protect children, could be damaged unless Reverend Desmond Gannon is laicised.

I therefore humbly request that this case be reconsidered in light of the new situation.²²³

220 *Transcript of evidence*, Catholic Archdiocese of Melbourne, p. 9.

221 *Transcript of evidence*, Catholic Archdiocese of Melbourne, p. 9.

222 *Transcript of evidence*, Catholic Archdiocese of Melbourne, p. 9.

223 *Transcript of evidence*, Catholic Archdiocese of Melbourne, p. 17.

The Committee questioned Archbishop Hart about the contents of the letter, particularly the Church's motivation for seeking Fr Desmond Gannon's laicisation at this time. Archbishop Hart responded:

We would have sent a case to Rome which had all the details of his convictions. So in other words we had already argued on the basis of justice. We were trying to get them to see that this was an exceptional case for the public good, for the welfare of society and the Church ...

I put the justice argument. I was trying to pile up other arguments that might sway matters to get them to make an exception, because when people turn 80 it is a lot more difficult. You have got old age and frailty. Now I do not agree with that. If a person has offended, if a person has really seriously hurt people, the consequences of the civil law should be followed and the person should be removed from the priesthood.²²⁴

When challenged that the Church took steps only when it knew it would be obliged to appear before this Inquiry, Archbishop Hart replied:

I am not sure when the reply came. We had been thinking about what we could do for some months, I must say ...

I would certainly say that we were slow to move. With regard to Gannon, I believe I put that case very, very forcefully, and I was not very happy that it was not granted and I was told to impose a penalty.²²⁵

Archbishop Hart rejected the Committee's suggestion that the laicisation of Fr Desmond Gannon was a public relations exercise or piece of propaganda. He responded, '... That was not the way I saw it.'²²⁶

21.10.3 Catholic Archdiocese of Melbourne—Fr Ronald Pickering

Another area considered by the Committee was the Church's continued payments to priests. One example was that of Fr Ronald Pickering. The Committee read to Cardinal George Pell a note dated 5 June 2002 from the Vicar General, Monsignor Christopher Prowse:

On Thursday, 30 May I was informed by the business manager ... that stipend money had been sent from the priests' retirement foundation of the archdiocese of Melbourne to a former parishioner of Father Ron Pickering in Gardenvale. The indication was that the money would then be forwarded by this intermediary to England and eventually be passed on to Father Ron Pickering.²²⁷

This was in circumstances where:

- In 1993, Fr Pickering had fled Australia to England without approval.
- Fr Pickering had been informed that there were allegations of criminal child abuse against him.
- Fr Pickering had refused to cooperate with Catholic Church insurers when they sought him out in England. The insurers were seeking information in order to respond to a number of civil claims that were based on the abuse allegations.

224 *Transcript of evidence*, Catholic Archdiocese of Melbourne, p. 17.

225 *Transcript of evidence*, Catholic Archdiocese of Melbourne, pp. 17–18.

226 *Transcript of evidence*, Catholic Archdiocese of Melbourne, pp. 17–18.

227 *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 40.

- Fr Pickering had refused to provide details of the whereabouts of another alleged sex offender, Fr Paul David Ryan from the Ballarat Diocese, when requested to do so.

Yet the Melbourne Archdiocese under the leadership of Cardinal Pell continued to pay Fr Pickering a monthly amount. Cardinal Pell responded:

We have an obligation to all priests who are not laicised, even if they are convicted, to continue to pay them a modest stipend. I was obliged in canon law to do that, and I did ...

If he remains a priest—and he was a guilty priest—we have an obligation to provide for him. Most priests are not well off. As long as a priest is a priest, canon law requires the bishop to support them.²²⁸

It was put to Cardinal Pell that this was a situation in which somebody had been mistakenly paid for nine years, and that it was inappropriate to continue payments. Cardinal Pell did not accept this, stating:

I have a different view. The sum was quite modest, and as with all the other priests who were in a similar situation, I authorised such a payment.²²⁹

The Committee read to Cardinal Pell a further part of the Vicar General's letter: 'We want to know his address so we can write to him and insist that he returns to Melbourne and 'face the music' regarding allegations of sexual abuse in his ministry here in Melbourne.'²³⁰

Cardinal Pell responded to the Inquiry:

I certainly was keen for him to face up to the music, but he refused to do that, and that was different from providing a rudimentary keep for him ...

There was no secret in Church circles about the money that was going, you know, in the immediate environment. That was not a secret, it was not done covertly. He was one of a number like that, and my successor had a different view, which obviously you commend.²³¹

21.10.4 Catholic Archdiocese of Melbourne—Fr Kevin O'Donnell

One victim described the effect of Fr O'Donnell remaining a priest until his death:

Why do I call him 'Father'? Okay. I want to call him every other thing. He was buried as a full priest after he came out of jail. He was still Father O'Donnell, and Mr Pell was Mr Bloody Archbishop of Melbourne when he died. This was two years after he had come out of jail, and he was still a priest, and he was buried in the Melbourne General Cemetery in the bloody priests' crypt ...

I was so pissed off! I mean, they had the chance to do something, even just a little bit there, but they still had to recognise him. Mr Pell is the biggest protector— I do not care— within the diocese of Melbourne, because he is part of the diocese of Melbourne. It might have been the diocese of Ballarat, but it is the diocese of Melbourne I am talking about there ...

Here was the archbishop of Melbourne, and they gave him a full salute funeral, or whatever.

228 *Transcript of evidence*, Catholic Archdiocese of Sydney, pp. 40–41.

229 *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 41.

230 *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 41.

231 *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 41.

Yes. It was like a kick in the bloody face. Seriously, it was a kick in the face.²³²

The Committee put to Cardinal Pell a portion of the evidence of Mr Anthony and Mrs Chrissie Foster regarding their family:

- O'Donnell pressed his erection against their little naked bodies, and these are children that were in primary school. O'Donnell left few physical scars. Instead, he left them emotionally tortured and spiritually ruined. He irreparably altered their development as humans so their relationships, their ideas of love and connections to others were also strained and sometimes impossible. O'Donnell and the Church stole a part of their souls.²³³
- The actions of O'Donnell are appalling, absolutely appalling. He was a minister of the Church so he brought disrepute on the Church, and there is no doubt whatsoever about the terrible spiritual and emotional turmoil he produced. It is totally reprehensible.²³⁴

However, Cardinal Pell did not accept that this description would fit many victims of clergy child abuse across Victoria. He said:

I understand people feel deeply about this, and in any case where it happened I would not want to dispute it. But it is not helpful to go from one example to a claim that it is done many, many times. What I do know from my painful acquaintance with this is that O'Donnell would be certainly amongst the worst of them—certainly amongst the worst of them. It does not condone what others might have done, or lesser. If comparable things—if any terrible things are done, we concede they are terrible and we concede also that they have ruined those people's lives. I would do anything to be able to provide some healing in that way, but I am not sure it is helpful to extend that radical condemnation without giving book, chapter and verse.²³⁵

When asked whether the Catholic Church hierarchy does not understand the impact of abuse on the victims, Cardinal Pell responded:

One of the things that one of the Fosters, Mrs Foster—I do not mean any disrespect, to Mr or Mrs Foster—said was that she did not believe in the apologies of bishops. I disagree with that. One thing she said was, and this resonates with me as an Australian of my age, 'If people keep apologising too frequently my instinct is to say, 'Well, what's going on? Apologise once and sincerely'. She or he also went on to say that actions are the important thing.

That is precisely why I set up the Melbourne Response; it was to stop this sort of stuff, these terrible things that are happening. You might say it is imperfect. I am sure the Melbourne authorities would be open to improving it, but I stood down plus or minus 20 priests in my five years in Melbourne. I believe that the Melbourne Response has had a significant impact in providing justice and stopping this thing going on. Unfortunately, with these people who are so wounded, it is very, very difficult to help them. God knows we would like to be able to in some way.²³⁶

Mr Anthony and Mrs Chrissie Foster said in their evidence to the Inquiry:

It is so hard to understand people talking about innocent, molested children without

232 *Submission S478*, Name withheld.

233 *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 42.

234 *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 43.

235 *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 43.

236 *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 43.

compassion. Perhaps priests, bishops and archbishops don't have that connection with children because they can't or rather, according to their vows, shouldn't father them. But that's no excuse. They were once children too. Surely we are not so many worlds apart that we can't share a sense of loyalty and protection of young people, humanity's future.²³⁷

When the Committee sought a response to this, Cardinal Pell said:

I would totally agree with that, and that is precisely what I tried to do. As somebody who for 17 years, off and on, has had to grapple with the details of these appalling cases I am only too well aware of the suffering it has produced.²³⁸

Cardinal Pell was informed by the Committee of the view expressed by Mr Foster regarding Cardinal Pell's behaviour, displaying a 'sociopathic lack of empathy'. When questioned whether he understood why that view had been formed, Cardinal Pell responded:

I think it is a pretty big call after a 20-minute meeting, and I do not think the actions of the Church since then in any sense justify that. For example—and I do not begrudge this—I think it was during my time that the Church paid out \$100,000 for counselling for the Fosters, and that was money well spent. Peter O'Callaghan visited the Fosters in their home on two occasions to help them as they were putting together their case. After I had that very unfortunate encounter with them, the Fosters continued following the Melbourne Response procedures in an attempt to get justice. Whatever is said about my style, I believe compassion is best expressed through actions and we have consistently, with next to no success, tried to demonstrate that we are not hostile to the Fosters and in particular in no sense to the daughters.²³⁹

Perhaps the views of victims are best summarised by the following remark made to the Inquiry:

As for the Catholic Church, they will never be a brother or a father to me. I will never use that title, because He is Our Father, and He has seen everything ... As I said, they are no father. They are no brother, and that title should be ripped from them too.²⁴⁰

21.10.5 Victim dissatisfaction

Many victims of criminal child abuse made the now familiar complaint that those in power in the Catholic Church just do not get it. The dissatisfaction of many victims of abuse with the internal Catholic Church processes stems from a very deep sense of betrayal. Although that abuse was directly perpetrated by individual members of the Catholic Church, many victims channel much of their anger and distress towards the organisation itself.

A combination of factors account for the hostility that many of these victims show. The principal factor is the Church's refusal to acknowledge involvement in the abuse. Other factors include the limited funds granted by the Church to 'compensate' victims, the victims' limited control over the proceedings, and the Church's lack of support for victims and their families, particularly in the spiritual sense. Adding to the victim's assessment of the Catholic Church response is a perception that the

237 *Transcript of evidence*, Mr Anthony and Mrs Chrissie Foster, p. 6.

238 *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 44.

239 *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 18.

240 *Transcript of evidence*, Mr Tim Lane, Ballarat, 28 February 2013, p. 13.

Catholic Church's approach is more supportive towards offenders than the victims of criminal child abuse.

Finding 21.8

The dissatisfaction with the internal process of an organisation was influenced by the manner in which the organisation supported the perpetrator of criminal child abuse.

PART G

LAW REFORM AND CRIMINAL JUSTICE



To properly address the needs of children in the care of organisations, there needs to be a ‘significant framework implemented by government’ that applies to employees and volunteers in those organisations.¹ The Committee concluded that opportunities for improvement and reform can be found in two main areas relating to the criminal justice system:

- grooming
- reporting, and responding to, allegations of criminal child abuse.

In the past, the abuse of children in organisational settings has been under-researched,² and largely misunderstood as a community problem.³ The incidence of child abuse in organisations is difficult to estimate though children in Victorian organisations remain vulnerable to multiple types, and repeated episodes, of abuse.⁴

As Professor Chris Goddard, Director of Child Abuse Prevention Research Australia at Monash University, told the Committee:

In my view the starting point ... has to be clarifying what our goal is. We are seeking to provide children with the best possible protection. To do that we need to fully acknowledge the vulnerability of children and the serious crimes that are committed against them.⁵

In describing the current situation in Victoria, the Australian Childhood Foundation (ACF) commented to the Inquiry that:

The legal and policy paradigm currently in place in Victoria can best be described as a loose collection of uncoordinated initiatives which have been implemented progressively in reaction to public concern to specific cases as they have been reported.⁶

Victims and their need for criminal justice

Victims of criminal child abuse spoke to the Committee of their desire for the criminal justice system to adequately respond to their needs. These needs included:

- appropriate criminal sanctions for offenders
- public acknowledgement of an offender’s guilt
- an opportunity to air publicly the devastating effect of offending on victims.

Associated with these matters was the desire of victims to ensure that organisations both:

- properly screen, monitor and supervise employees and volunteers who have the care of and responsibility for children⁷

1 *Transcript of evidence*, Australian Childhood Foundation, Melbourne, 9 November 2012, p. 2.

2 M. Irenyi, L. Bromfield, L. Beyer et al. (2006) *Child maltreatment in organisations: Risk factors and strategies for prevention*. *Child Abuse Prevention Issues series*. vol. 25, Spring 2006, Melbourne, Australian Institute of Family Studies, p. 2.

3 *Transcript of evidence*, Australian Childhood Foundation, p. 2.

4 M. Irenyi, L. Bromfield, L. Beyer et al. (2006) *Child maltreatment in organisations: Risk factors and strategies for prevention*, p. 2.

5 *Transcript of evidence*, Professor Chris Goddard, Child Abuse Prevention Research Australia, Monash University, Melbourne, 19 October 2012, p. 5.

6 *Submission S224*, Australian Childhood Foundation, p. 3.

7 Discussed in Part D.

- make appropriate and prompt reports to the police when an employee or volunteer is known or suspected of having criminally abused a child.⁸

One witness told the Committee that in his view, prosecution through the criminal justice system and the subsequent imposition of criminal sanctions was the only effective way to address an offender's behaviour. Mr Robert Mackay told the Inquiry:

I am thinking a bit about how offenders deny, minimise or rationalise their behavior ... My sense is that the community at large, represented by government, has to set very clear boundaries and, if you like, positions that actually challenge and also deconstruct the ways in which offenders make sense of their behaviour, so that if there has been denial, if there has been reluctance to address these issues, that has to be confronted. Sometimes that may have to be confronted through the process of prosecution.⁹

The criminal justice system gives many victims of criminal child abuse a voice and a public forum. For a victim who has maintained their silence, sometimes for many, many years, finally having an opportunity to make publicly known what an offender did and the effect of that behaviour on them can be of great importance. Recent changes in practice and amendments to the *Sentencing Act 1991* (Vic)¹⁰ are designed to ensure that the experience of one witness, who was not able to read out his Victim Impact Statement in court, is not repeated:

In our case we had no voice ... We were given 5 minutes worth of the public prosecutor's time while the perpetrator had hours of defence. For us, our perpetrator pleaded guilty, and we had people say to us, 'That is good', and 'You do not have to prove this in trial'. That is probably the worst thing that could have happened, because no one has heard our side ... A person got up and said, 'He has been charged with these offences and he is pleading guilty'. That was the whole lump sum total of our side of the case.¹¹

Broken Rites also impressed upon the Committee the importance of the criminal law having the ability to properly respond to victims of criminal child abuse. Ms Chris MacIsaac, President of Broken Rites told the Committee:

That is why we come before you people today—to make sure that there can be recommendations made to government that will change the plight of the victim who comes in with a little pile of evidence under their arm. They want to see their perpetrator pay the price for harming them, and they want to see the institution that allowed this to happen also having to act in a responsible way.¹²

Many victims' evidence to the Committee expressed a call for any changes necessary to make the criminal justice system more responsive to victims of criminal child abuse. As demonstrated by the examples above, having the opportunity to pursue justice through the successful prosecution of offenders is an important avenue of redress for victims of abuse.

8 Or other appropriate authority, as recommended in Chapter 18 of Part E.

9 *Transcript of evidence*, Mr Robert Mackay, Melbourne, 1 March 2013, p. 6.

10 *Sentencing Amendment (Community Reform) Act 2011* (Vic) s.8Q.

11 *Submission S454*, Name withheld.

12 *Transcript of evidence*, Broken Rites (Australia) Collective Inc., Melbourne, 9 November 2012, p. 4.

Chapter 22

The criminality of grooming

AT A GLANCE

Background

There are a number of ways 'grooming' can occur including through conduct directed at parents of a victim and also by the cultivation of friendship with the child victim. Traditionally this conduct has been treated by the Court as an aggravating feature of the sexual offence committed against the child. Currently the law does not regard such conduct, carried out with criminal intent or intent to engage in sexual activity with a child as a criminal offence.

Key findings

- Treating grooming as an aggravating feature of a sexual offence does not sufficiently recognise the damage such conduct causes to those who are the subject of such behaviour, categorised as secondary or passive victims. The criminality of the conduct of grooming should be recognised as an offence and in addition to the primary victim, parents and others should be recognised as victims of grooming.
- It is recognised that grooming can occur in many contexts other than via telecommunications which are currently covered by legislation. Perpetrators of sexual offences against children often engage in grooming behaviour directly with the child cultivating a friendship through personal contact and the criminality of that conduct should be recognised.

Recommendation

- That the Victorian Government give consideration to an amendment to the *Crimes Act 1958* (Vic) to create a criminal offence of grooming.

The grooming offence should:

- ♦ not require a substantive offence of sexual abuse to have been committed
- ♦ recognise that in addition to the primary or intended child victim of sexual abuse, parents and others can be victims of this criminal conduct.

The term ‘grooming’ refers to actions deliberately undertaken by an adult with the aim of befriending and influencing a child and, in some circumstances, members of the child’s family. Grooming is intended to establish an emotional connection, in order to lower the child’s inhibitions or to gain access to an intended victim. In this respect grooming involves psychological manipulation that is normally very subtle, drawn out, calculated, controlling and premeditated.

A person who grooms a child in this way makes numerous decisions and engages in a number of acts, all separately and collectively directed at achieving a serious criminal objective. Grooming also involves a breach of trust that makes this behaviour particularly abhorrent. Furthermore, through the grooming process the perpetrator often seeks to isolate and silence the victim, by fostering a sense of exclusivity in their relationship.

The Committee heard from a number of secondary victims as to the impact of ‘grooming’ behaviour, who felt responsible for the abuse suffered by their children and personally exploited by the perpetrator, as discussed in Section 4.3 of Part B. The Committee recommends the Victorian Government give consideration to a separate criminal grooming offence which recognises the harm to secondary victims as a consequence of the actions of the perpetrator, directed towards them and carried out with criminal intent.

As discussed in Section 23.3, techniques used by Victoria Police to investigate sexual offences have changed over the last decade. The current approach gives a victim the chance to tell their whole story, including details of the circumstances and history of events leading up to the actual sexual assault. By this technique investigators can find evidence of grooming behaviour from victims. The Committee heard that grooming is one of the three critical concepts that police investigating child sexual abuse explore with victims. Mr Patrick Tidmarsh, a forensic interview adviser with the Sexual Offences and Child Abuse Investigation Team (SOCIT), told the Inquiry:

To talk about whole-story specifically, it is the crafting of the relationship narrative, not the narrative of events ... But there is always a lead-up to sexual offending, and there are three critical concepts that we teach our members.

The first is grooming ... One of the things that I think is not adequately known about grooming in sexual offending is that it is not exclusively about the sexualisation of the relationship with the child. We teach our investigators that what we call grooming—which is the establishment of power, control and authority over that individual—is far more important in the investigation of the crime, ironically, than the sexual element, because it is in that phase, which is always present, that you will see the offender craft the silence, the surrender and the cooperation of that particular victim. As I said earlier, that can take years in some particular cases, but it often takes weeks and mostly months.¹³

Victims gave evidence to the Inquiry that was consistent with Mr Tidmarsh’s analysis of grooming behaviour, although (as illustrated below) grooming can take many different forms. A number of witnesses described a range of grooming behaviours to which they and their families had been subjected. The evidence revealed that offenders are highly skilled in identifying vulnerability in a potential victim and exploiting it to achieve their criminal purpose or desire.

13 *Transcript of evidence*, Sexual Offences and Child Abuse Investigation Team (SOCIT), Victoria Police, Melbourne, 9 November 2012, p. 5.

22.1. The process of grooming the individual, family or organisation

The Committee learnt that the criminal abuse of a child will regularly involve multiple secondary or passive victims of the grooming process. These victims are likely to suffer significant long-term trauma, caused in part by the perpetrator's deliberate betrayal and manipulation of their trust, but more particularly by their sense that they (unknowingly) helped make possible the ultimate sexual abuse.

Mr Tidmarsh described the deliberate way in which offenders construct and manipulate relationships in order to achieve their objectives:

What you will hear [offenders] say is how carefully they [perpetrators] craft their relationship with individuals, with communities and with organisations—the masks they wear in order to persuade people of the way they would like to be seen and the way they manipulate children to say what they would like them to say. One man in treatment once said to me—I have never heard it said more clearly—when asked about grooming and his approach to grooming, “The point for me is I want the child to think like me.”¹⁴

A further element in crafting the relationship is trying to ensure that the victim will not disclose the fact that the abuse is occurring. Mr Tidmarsh explained:

For example, two of the myths that are still around about the reporting of children is that they will immediately report to a trusted adult. Leave aside that most of the offending happens in families where the trusted adult is often the person doing the offending, in the context of what we are talking about today, it is extremely unlikely after the relationship has been manipulated and crafted for them to be isolated and for them to see that adult abusing them as connected to their parents and trusted by their parents. It is extremely unlikely that children will report in those circumstances.¹⁵

22.1.1. Grooming victims

Perpetrators recognise that certain children are more susceptible to their influence than others. Relevant factors include the victim's age, home circumstances, and emotional or psychological state. Offenders will often target children who have family problems or lack confidence, and are therefore indiscriminate in trusting others. In other words, offenders will often identify, and then seek to fill, a void in a child's life.¹⁶ Grooming behaviour has been observed in both historical and current environments where criminal child abuse occurred.¹⁷

Ms Nicky Davis told the Inquiry how an offender identified vulnerability in her. She had suffered emotional abuse at home and as a consequence she was:

... painfully shy and insecure and had been taught to believe I was hopeless at everything, and I was too worthless to exist, far less to have opinions or needs.¹⁸

14 *Transcript of evidence*, Sexual Offences and Child Abuse Investigation Team (SOCIT), p. 3.

15 *Transcript of evidence*, Sexual Offences and Child Abuse Investigation Team (SOCIT), p. 4.

16 AM. McAlinden (2006) “‘Setting ‘em up’: Personal, familial and institutional grooming in the sexual abuse of children”. *Social and Legal Studies*, Vol. 15, No. 3, pp. 339-62, p. 349.

17 In 2008–09, the New South Wales (NSW) Ombudsman examined trends and patterns of child sexual abuse by school employees, including the incidence of grooming as a precursor to sexual activity.

The research found that where teachers were the perpetrators, grooming occurred prior to the sexual offence in 92 per cent of cases. NSW Ombudsman (2009) *Annual Report 2008–2009*. p. 57.

18 *Submission S334*, Ms Nicky Davis, p. 10.

Ms Davis believed that, having identified her as a potential victim, the offender set about grooming her:

Initially he groomed me, paying attention to a shy child starved for love and affection. The fact that any adult would pay attention to worthless me was a foreign concept, far less a godlike creature such as Brother Brendan.¹⁹

Mr Lincoln McMahon similarly told the Inquiry that he was targeted because of his family circumstances:

My father was by this stage drinking heavily ... I now realise, having read accounts by other victims of Ridsdale, that my father's drinking probably helped ensure that I was someone he would target.²⁰

Many offenders will seek to develop a special relationship with an intended victim in order to facilitate the abuse. As described above by Ms Davis, grooming can typically involve befriending a potential victim. The offender may develop their relationship with a child by getting to know the child's interests, being helpful, and confiding in them, all in order to gain the child's confidence and trust. The offender may then cultivate a 'special' friendship by giving the child presents, treats, outings, trips or money.²¹

This special friendship can reinforce the exclusivity of the relationship between the offender and the victim. It also distances the child from other significant adults such as parents.²² The offender also controls the victim in the course of their relationship through inducements, bribes or threats, all intended to ensure the child's ongoing co-operation or silence.

The Committee heard evidence that supported these descriptions of grooming. For example, Mr Tim Lane described how he was targeted and groomed, stating that:

I think we were nearly the Brady Bunch without Alice. Three boys and three girls; it was almost that perfect scenario, I suppose. We were all pretty shy kids. He made things fun. He would chase us, or something like that. He made it so that, I do not know, we would not say anything, even though our parents said nobody is allowed to touch you in certain areas. They told all the kids that, but he made things fun and he made it like he was a friend. I was only five and still did not quite understand what he was doing, really.²³

A number of victims explained that the offender introduced alcohol as part of the grooming process. Mr Raymond D'Brass told the Committee:

I was born and raised in Melbourne and between 1979 and 1983—I was aged between 9 and 13—I was a member of both the choir and altar boys at St James, Gardenvale, during which time I was regularly abused by Father Ronald Pickering, now deceased. He groomed me by giving me cigarettes, money and alcohol ... I am aware that two other boys were also sexually abused by Father Ronald Pickering. I was regularly fondled and petted by Pickering, as were other boys. This occurred within the change rooms of the church and within the presbytery. I began smoking cigarettes and drinking alcohol with Pickering from the age of nine and on many occasions passed out from consuming the alcohol, which left me vulnerable to such abuse.²⁴

19 *Submission S334*, Ms Nicky Davis, p. 10.

20 *Submission S432*, Mr Lincoln McMahon, p. 1.

21 AM. McAlinden (2006) "'Setting 'em up': Personal, familial and institutional grooming in the sexual abuse of children', p. 347.

22 AM. McAlinden (2006) "'Setting 'em up': Personal, familial and institutional grooming in the sexual abuse of children', p. 347.

23 *Transcript of evidence*, Mr Tim Lane, Ballarat, 28 February 2013, pp. 2–3.

24 *Transcript of evidence*, Mr Raymond D'Brass, Melbourne, 4 March 2013, p. 2.

22.1.2. Grooming parents and families

As they do with children, offenders often identify vulnerabilities in a family unit. Offenders may infiltrate the lives of families by helping a parent overcome problems and ensuring that the parent perceives their interest in the child as helpful. This serves to isolate the child victim and give the abuser unquestioned access to the child.

Ms Debi Crocker explained to the Inquiry that her mother was groomed by a pastor of an independent church. She described the process:

Parents have a very specific role in dispossessing their children and allowing a person to control their parental instincts. My mother was no exception and with a very complex set of circumstances in her own life that allowed for psychological abuse, exploitation and manipulation, she was truly putty in the hands of a man who was targeting her child and distancing her from her maternal role toward the child.²⁵

The Committee also heard that the authority of religious organisations and their personnel can play a unique part in the process of grooming family members. Offenders may take full advantage of the respect accorded to their position and the unquestioned trust that parents, grateful for and in some cases honoured by the attention being given to their child, place in them. There is a power imbalance in situations where an offender has a revered position in the family. Ms Mairead Ashcroft described such an experience to the Inquiry:

My parents of course thought, ‘isn’t this wonderful that somebody from the church has taken my children under their wing, and they’re going to help us ...’ that was, of course, the idea that my parents had: that they could not have put their children in any better hands; how lucky were they? Brother Bernard then offered to become our family babysitter because, as I said, we had no relatives here; there was just us. So, yes, he became our family babysitter.²⁶

Some offenders will try to position themselves in an organisation in a way that gives them access to children. Emeritus Professor Freda Briggs described the process that some offenders pursue when trying to get close to selected victims, their parents, other employees, and the wider community:

What you usually find is that child sex offenders in schools will get the trust of everybody. They will get to know the targeted children. They will offer their services for a wide range of things, so they get a reputation for being the best teacher in the school. They will do the extra playground duty. They will be volunteering for sports. They will be volunteering for camps—anything that will give them contact with the children with no other supervisor there.²⁷

A witness who was the parent of abused children explained:

I first met XXX in the early 1960s. We became pretty friendly and I took him to Melbourne a couple of times ...

Then I met my wife. We were married in 1964 and then the children came. Then he reappeared in 1975, just prior to Christmas. From that point on—I was a psychiatric nurse who worked night shift, and he seemed to make it his business to come when I was on duty, so all this molestation of my children by him came about while he was

25 *Submission S366*, Ms Debi Crocker, p. 15.

26 *Transcript of evidence*, Ms Mairead Ashcroft, Melbourne, 23 November 2012, p. 6.

27 *Transcript of evidence*, Emeritus Professor Freda Briggs, Education Arts and Social Sciences Divisional Office, University of South Australia, Melbourne, 4 April 2013, p. 3.

visiting our home. That was going on unbeknown to myself and my wife.²⁸

Perhaps the devastation of the family was best described by the mother of a victim who ultimately took his own life as a result of the abuse he suffered. She told the Inquiry that:

Even our eldest daughter put on the internet for everybody to read that I am to blame ... for allowing him (the offender) to be in the house ... When our children needed us most, we were not there ... I still feel the guilt that I did not know about it, and I should have, being a good mother. I should have been a better mother.²⁹

The Committee recognises that parents or other family members who have been targeted by perpetrators in order to get access to a child are also victims. Their trust in the offender has been betrayed and they feel some responsibility for the abuse perpetrated on the child. In addition to dealing with the effects of criminal abuse on the child as the primary victim, many family members have to deal with an internal guilt that arises from their role in encouraging a relationship between the perpetrator and the child, or from allowing the perpetrator free access to the child. We should remember that these passive or secondary victims were deliberately exploited by an individual whose actions were intended to make possible a crime against a child.

Finding 22.1

Treating grooming as an aggravating feature of a sexual offence does not sufficiently recognise the damage such conduct causes to those who are the subject of such behaviour, categorised as secondary or passive victims. The criminality of the conduct of grooming should be recognised as an offence and in addition to the primary victim, parents and others should be recognised as victims of grooming.

22.2. Difficulty in drafting effective grooming legislation

It is difficult to draft legislation to penalise the crime of grooming. Actions or conduct that may constitute grooming can sometimes appear innocent, even if inappropriate. It is the perpetrator's intent that makes the conduct criminal in nature. Legislators must be careful in making laws that depend upon circumstantial evidence. For this reason, it is necessary to consider the behaviour in the context and circumstances in which it occurs, in order to determine whether it is part of a pattern that reveals a criminal intent.

There may be cases where an offender's history enables police to use propensity evidence. That is, police may observe that a particular offender has habitually used a certain method of grooming. Police might then be able to identify the same patterns of behaviour towards other victims.

Because of grooming, an incident of criminal child abuse will often involve multiple secondary victims, who are likely to suffer long-term trauma. Most typical are parents and other family members who allowed and encouraged the perpetrator to develop a relationship with the child. Continued offending and continued exploitation of the victim's and family's trust in the perpetrator are likely to have a devastating effect on all of them. Treating grooming simply as an aggravating feature of the sexual offending perpetrated against the child does not adequately reflect the seriousness

²⁸ *Submission S482*, Name withheld.

²⁹ *Submission S482*, Name withheld.

and significance of this element of criminal child abuse. Conduct that is deliberately intended to facilitate the perpetrator's sexual activity with a child should, in and of itself, be made a criminal offence.

22.2.1. Other grooming offences

The Commonwealth and each of the Australian states have considered grooming as a specific offence in the context of electronic communications. They have passed laws that criminalise use of the internet or other forms of communication to create or develop relationships with children, with the ultimate intention of engaging in sexual activity with them.³⁰

In April 2001, the Victorian Law Reform Commission (VLRC) was given a reference to consider ways the criminal justice system could become more responsive to sexual offence complainants, encourage more people to report sexual offences to police and participate in the criminal trial process. In respect of sexual offences committed against children a number of procedural reforms were enacted with the aim of making the criminal justice process less traumatic for children and other sexual abuse victims, including adults who had been abused as children.

The *Sexual offences: Interim report*, tabled in Parliament on 4 June 2003, considered whether the criminal law could deal adequately with conduct amounting to the grooming of children. Law reform in this area was directed to amending statutory offences under the *Crimes Act 1958* (Vic) of procuring and soliciting a child for sexual activity.³¹ This amendment was designed to address what was seen as a growing and serious problem in the early 2000s: child exploitation facilitated through the internet.³²

The current provision, made in 2006 on the basis of the VLRC's recommendation:

- prohibits recruiting or propositioning children to participate in a sexual act
- makes such conduct a crime, whether or not sexual activity takes place (criminal liability arises from the perpetrator's intention to engage in sexual activity with the child and acting upon that intention by contacting or engaging the child)
- applies both to making an offer to a child to participate in sexual activity (procuring), and to urging or persuading a child to participate in sexual activity (soliciting).

The VLRC did not recommend that the mode of communication should be limited to the internet. It said that the criminality of the conduct should not be based on the medium used to prepare the child to participate in sexual activity. In this way the VLRC anticipated that the section would cover a range of telecommunications media, including telephones and the internet.³³ It is noted that the Cummins Inquiry³⁴ recently recommended the creation of a Victorian offence (as opposed to a Commonwealth offence) to cover internet or online grooming.³⁵ Clearly the VLRC

30 *Crimes Act 1900* (ACT) s.66; *Criminal Code Act 1995* (Cth) ss.474.26,74.27(1)(2)(3),74.27A; *Criminal Code Act 1899* (Qld) s.218A(1); *Criminal Law Consolidation Act 1935* (SA) s.63B(3); *Criminal Code Act 1924* (Tas) s.125D; *Criminal Code Act Compilation Act 1913* (WA) s.204B; *Criminal Code Act* (NT) ss.131,32(2); *Crimes Act 1900* (NSW) s.66EB.

31 *Crimes Act 1958* (Vic) s.58(1).

32 Victorian Law Reform Commission (2003) *Sexual offences: Interim report*. Melbourne, VLRC, p. 383.

33 Victorian Law Reform Commission (2003) *Sexual offences: Interim report*, p. 386.

34 Cummins, P., Scott, D., OAM, & Scales, B., AO (2012) *Report of the Protecting Victoria's vulnerable children inquiry*.

35 See Recommendation 51, Cummins, P., Scott, D., OAM, & Scales, B., AO (2012) *Report of the Protecting Victoria's vulnerable children inquiry*, Melbourne, Department of Premier and Cabinet.

intended that this provision would cover ‘grooming’ conducted through some form of communication, but not where a person grooms a child by befriending them and establishing an emotional connection with them *in person*. For this reason, the current Victorian provision does not cover many of the behaviours that can be part of the grooming process. The Department of Justice recently released a review of sexual offences consultation paper that proposes changes to the criminal law to include a broader definition of grooming.³⁶

22.2.2. NSW grooming provision

In 2007, NSW introduced s.66EB of the *Crimes Act 1900* (NSW): ‘procuring or grooming child under 16 for unlawful sexual activity’.

Grooming provisions introduced in NSW were designed to go further than those in Victoria and other states, by covering a broader range of grooming activities. The parliamentary debates revealed:

Grooming is essentially a process that paedophiles and child sexual abusers engage in to get access to a child and prepare him or her for sexual abuse. It often entails emotional seduction and unfortunately can be quite subtle. Perpetrators can target a child’s family to get closer access to the child, or befriend the child directly without the child or the family being aware of the intentions ... Increased use of the Internet and new technologies expose children to sexual predators partly through the anonymity of online interaction. However, such behaviour can and does occur without the use of communications technology. That type of behaviour should be dealt with by the criminal justice system whether it is perpetrated on the internet or elsewhere.³⁷

Amendments in 2008 added another offence: ‘meeting a child following grooming’. These offences are designed to cover the following situations:

- An adult intentionally procures a child for unlawful sexual activity (s.66EB(2) ‘Procuring children’).
- An adult intentionally meets a child, or travels with the intention of meeting a child, whom the adult has groomed for sexual purposes, and who does so with the intention of procuring the child for unlawful sexual activity with that adult or any other person (s.66EB (2A) ‘Meeting child following grooming’).
- An adult engages, on one or more previous occasions, in conduct that exposes a child to indecent material (s.66EB(2B) ‘groomed for sexual purposes’).
- An adult engages in any conduct that exposes a child to indecent material or provides a child with an intoxicating substance; and does so with the intention of making it easier to procure the child for unlawful sexual activity (s.66EB(3) ‘Grooming children’).

‘conduct’ includes:

- a) communicating in person or by telephone, the internet or other means, or
- b) providing any computer image, video or publication. (s.66EB(1)).

‘Unlawful sexual activity’ is broadly defined and it is not necessary to prove or specify the unlawful sexual activity for which the child was procured (s.66EB(1) and s.66EB(4)).

36 See Part 8, Department of Justice (2013) *Review of Sexual Offences Consultation Paper*, Criminal Law Review, Melbourne.

37 *Parliamentary Debates*, The Hon. Ian Cohen, New South Wales Legislative Council, 7 November 2007, p. 4011.

The provision covering ‘meeting a child after grooming’ requires proof that on one or more previous occasion, the adult exposed the child to indecent material. This requirement is also included in the grooming provision, although alternatively an adult can be liable under this provision if the adult provides the child with intoxicating liquor. The legislation defines conduct broadly and covers all forms of communication, including a face-to-face meeting with the child.

Although these provisions go further than those in other states, including Victoria, there is no grooming offence where an adult engages in conduct (whether directed at the child or at some other person) to facilitate access to that child and does so with the intention of making it easier to procure that child for unlawful sexual activity.

22.2.3. Applying existing grooming laws

If an equivalent grooming provision were enacted in Victoria it would cover many of the grooming behaviours described to the Committee by witnesses. For example, victims told the Committee about perpetrators giving them illicit drugs or alcohol and/or pornographic material before committing sexual offences, or giving them alcohol or pornography with the intention of engaging them in sexual activity.³⁸ However, significantly, such provisions would not cover actions aimed at deliberately exploiting a relationship with a child’s parent to gain their trust and get access to their child for a sexual purpose. As discussed above, as with direct victims (the subject of criminal activity), passive or secondary victims are also exploited by the perpetrator. They unknowingly assist the perpetrator in carrying out a criminal intent towards a child.

The other limitation of the NSW provision is that the conduct must expose a child to indecent material. This limitation does not exist under the Commonwealth legislation, although it is limited to grooming via various forms of communication. Section 474.27 of the *Criminal Code 1995* (Cth) was amended in 2010 to delete the requirement that the communication in question must include material that was indecent. This change recognised that grooming can encompass a wide range of activities designed to build a relationship of trust with a child for the purposes of sexually exploiting that child. The content of communications may not always be indecent. The grooming process is just as likely to involve seemingly platonic exchanges and innocent materials.³⁹

22.2.4. Difficulties in defining grooming

As discussed in Section 18.3 of Part E, the NSW Ombudsman requires organisations to notify him of allegations against employees, including allegations that would constitute criminal child abuse. The ‘reportable conduct scheme’ includes sexual offences that are ‘committed against, with or in the presence of a child.’ Grooming or procuring a child under s.66EB is included as a sexual offence constituting reportable conduct. Other ‘grooming behaviour’ may be sexual misconduct which is also ‘reportable conduct’.

The NSW Ombudsman’s *Child protection practice update 2013* outlines difficulties in identifying grooming as a sexual offence. Behaviour constituting sexual misconduct is not necessarily a criminal offence. The document outlines three categories of sexual misconduct:

38 *Transcript of evidence*, Mr Raymond D’Brass, p. 2; *Files relating to Father Paul David Ryan*, provided to the Family and Committee Development Committee by the Catholic Ballarat Diocese.

39 Commonwealth of Australia (2010) *Explanatory Memorandum Crimes Legislation Amendment (Sexual Offences Against Children) Bill 2010*. p. 92.

- crossing professional boundaries
- sexually explicit comments or other overtly sexual behaviour
- grooming behaviour.⁴⁰

The 2013 document urges caution when considering whether there has been ‘grooming behaviour’, particularly since it can, in some circumstances, amount to a criminal offence. The document advises that in many cases it would be more appropriate to consider whether there has been a crossing of professional boundaries and/or other more overt sexual behaviour.

Additionally, the 2013 document advises that proving ‘grooming’ requires evidence of a pattern of conduct or behaviour consistent with grooming the child for sexual activity where there is no other reasonable explanation for the conduct. The document then outlines the types of behaviours that may support a conclusion that grooming behaviour is occurring. An extract from the document is shown in Box 22.1.

Box 22.1: Grooming behaviour

- Persuading a child or group of children that they have a ‘special relationship’, for example by:
 - ♦ spending inappropriate special time with a child
 - ♦ inappropriately giving gifts
 - ♦ inappropriately showing special favours to one child but not other children.
- Inappropriately allowing the child to overstep the rules.
- Asking the child to keep the relationship to themselves.
- Testing boundaries, for example by:
 - ♦ undressing in front of a child
 - ♦ encouraging inappropriate physical contact (even where it is not overtly sexual)
 - ♦ talking about sex
 - ♦ ‘accidental’ intimate touching.
- Inappropriately extending a relationship outside of work (except where it may be appropriate—for example, where there is an existing friendship with the child’s family or as part of normal social interactions in the community).
- Inappropriate personal communication (including emails, telephone calls, text messaging, social media and web forums) that explores sexual feelings or intimate personal feelings with a child.
- An adult requesting that a child keep any aspect of their relationship secret, or using tactics to keep any aspect of the relationship secret, would generally increase the likelihood that grooming is occurring.

Source: *NSW Ombudsman child protection practice update 2013*.⁴¹

40 NSW Ombudsman (2013) *Child protection practice update: Defining reportable conduct*. Accessed on 9 September 2013 from http://www.ombo.nsw.gov.au/__data/assets/pdf_file/0013/5620/PU_CP_02_11_Reportable_Conduct_v3.pdf.

41 NSW Ombudsman (2013) *Child protection practice update: Defining reportable conduct*.

The Committee recognises the difficulties in defining grooming behaviour. The critical feature of grooming is not the conduct itself, rather the intention that accompanies it. The difficulty in identifying this kind of offence is that apparently innocuous conduct needs to be viewed in the context of a pattern of behaviour and the accompanying intention will usually need to be inferred from all the circumstances.

Finding 22.2

It is recognised that grooming can occur in many other contexts other than via telecommunications which are currently covered by legislation. Perpetrators of sexual offences against children often engage in grooming behaviour directly with the child cultivating a friendship through personal contact and the criminality of that conduct should be recognised.

→ Recommendation 22.1

The Committee recommends that the Victorian Government give consideration to an amendment to the Crimes Act 1958 (Vic) to create a criminal offence of grooming.

The grooming offence should:

- not require a substantive offence of sexual abuse to have been committed
- recognise that in addition to the primary or intended child victim of sexual abuse, parents and others can be victims of this criminal conduct.

Chapter 23

Reporting abuse and the response of the criminal justice system

AT A GLANCE

Background

Child abuse in organisations is a crime. The failure to report to police or to conceal the commission of such a serious crime should be regarded as a criminal offence.

Key findings

- Improvements in techniques adopted by Victoria Police in investigating criminal child abuse have resulted in increased satisfaction with complainants and their involvement in the criminal justice system.
- Given that criminal child abuse is a very serious offence against the criminal law, failure to report or concealment of an offence is more appropriately dealt with under the criminal law than under the welfare/child protection regime.
- Section 326 *Crimes Act 1958* (Vic) currently requires proof that the person who concealed a serious indictable offence received a benefit. The failure to report to police knowledge of the commission of a serious indictable offence (including those relating to child abuse) and thereby concealing the offence should be punishable as a crime, regardless of whether any benefit is received.
- The creation of the offence of child endangerment will impose criminal responsibility on those who act understanding that their action may pose a substantial and unjustifiable risk of harm to children, but who disregarded that risk and acted accordingly.

Recommendations

- That the Victorian Government consider amending Section 326 of *Crimes Act 1958* (Vic) to remove the element of 'gain', to ensure that a person who fails to report a serious indictable offence involving the abuse of a child will be guilty of an offence.
- That the Victorian Government consider the introduction of a criminal offence relating to child endangerment in organisations that covers relevant wanton or reckless behaviour in situations:
 - ♦ when a person in authority is aware of and consciously disregards a substantial and unjustifiable risk that their acts or omissions placed a child in a situation that might endanger the child's life, health, welfare, morals, or emotional well-being.

23.1. Criminal justice system response to reports of criminal child abuse

The decision to report a crime to the police can have profound consequences for victims and the criminal justice system.⁴² As noted previously in this Report, there are many reasons why a child does not complain to police or anyone else about criminal sexual abuse. Evaluating the operation of the criminal justice system and ensuring that it can respond appropriately and adequately to instances of abuse is particularly important when vulnerable members of society, such as children or adult victims of child abuse, are involved. Evidence before the Inquiry has demonstrated the need to recognise the vulnerability of both these groups and to ensure that they are not further traumatised through their interaction with the criminal justice process.⁴³

In particular, the way the criminal justice system carries out investigations into allegations of sexual abuse is an important part of the community response to criminal child abuse.

Encouraging people to report actual or suspected criminal child abuse is vital. Vulnerable children are often unable to reveal what is happening to them, and are often too young to understand that what is happening is a crime and that they are a victim. The responsibility then falls upon adults who become aware of what may be happening, to protect the child.

When people report suspected criminal child abuse, it becomes possible for authorities to intervene early to protect the child being abused as well as to prevent further offending against the child and other children. The Committee sees a need to strengthen laws that provide for the reporting of criminal child abuse perpetrated in religious and non-government organisations. Given that such activity is criminal, it is most appropriate to make such reports to the police.

The Committee determined that there are two main areas of Victorian legislation directly relevant to the reporting of child abuse in an organisational setting:

- mandatory reporting laws
- failing to report or concealing abuse.

It is important to recognise that all adults have a moral responsibility to report any reasonably held suspicions about someone who may be committing acts amounting to criminal child abuse. The Committee has found that there is a need to strengthen the criminal sanctions for concealing abuse, and recommends the Victorian Government consider the introduction of a 'failure to report' offence as described in Section 23.6.1.

The Committee also recommends the Government consider the introduction of a child endangerment offence.

42 C. Carcach (1997) 'Reporting crime to the police'. *Trends & issues in crime and criminal justice*, Vol. 68, p. 2.

43 C. Eastwood (2003) 'The experiences of child complainants of sexual abuse in the criminal justice system'. *Trends & issues in crime and criminal justice*, Vol. 250, p. 113.

23.2. The criminal justice system

The criminal justice process commences when a person (usually the victim) makes a report to police, thus starting an investigation. A prosecution, trial and punishment of an offender found guilty then follows. However, many factors can influence a victim's willingness to report a crime.⁴⁴ Some of these are outlined in Figure 23.1.

Figure 23.1: Dynamics of reporting a crime



Source: Compiled by the Family and Community Development Committee.

The progress of sexual assault complaints through the criminal justice system can be complex. Victims of sexual abuse—and child victims in particular—face a variety of difficulties pursuing a complaint through the courts. These difficulties include a lack of corroborating evidence, given the secretive nature of sexual offending, and the fact that crimes often took place a long time ago.

Historically, further obstacles include the poor perception generally of child witnesses (or adult witnesses suffering the effects of criminal child abuse) and negative inferences commonly drawn as a consequence of delayed reporting.

Finally, various decision makers can exercise discretion at many points in the prosecution process. This may result in a complaint not proceeding to court. The result is that only a small proportion of child sex crime cases reach trial and result in a conviction.

The filtering of cases begins when police must decide whether to record and investigate a complaint and then whether to charge a suspect with the offence. Their discretionary powers probably make police the most significant gatekeepers to the criminal justice system.

Once the police charge a suspect, prosecution lawyers review the file to determine whether the case should be prosecuted. Cases that proceed are subject to continuous reassessment because the circumstances of the case can change over time.⁴⁵

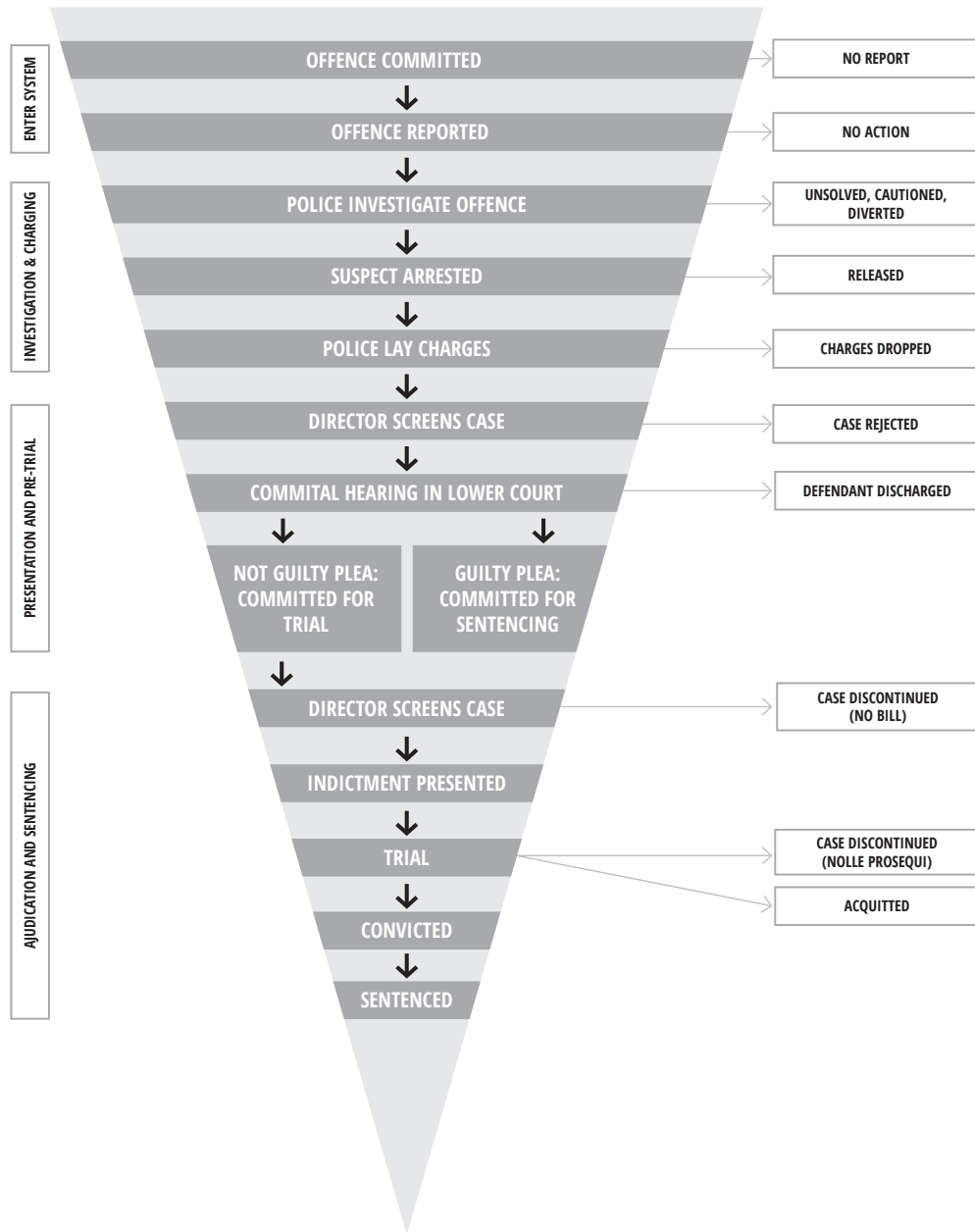
⁴⁴ C. Carcach (1997) 'Reporting crime to the police', p. 3.

⁴⁵ Australian Law Reform Commission & NSW Law Reform Commission (2010) *Family violence: A national legal response. Final report (ALRC 114)*. Commonwealth of Australia, p. 1207.

In addition, different evidentiary standards apply at each decision-making stage—the police decision to charge is based on the ‘prima facie’ test (that is, based on the facts as presented), which is a more inclusive standard than the ‘reasonable prospects’ test applied by the prosecutor, while the jury’s decision to convict is based on the stringent standard of ‘beyond reasonable doubt’.

A summary of the way a complaint progresses through the criminal justice system is outlined in Figure 23.2 below.

Figure 23.2. The movement of a complaint through the criminal justice system



Source: Australian Law Reform Commission & NSW Law Reform Commission (2010) *Family violence: A national legal response. Final report (ALRC 114)*.⁴⁶

46 Australian Law Reform Commission & NSW Law Reform Commission (2010) *Family violence: A national legal response. Final report (ALRC 114)*, p. 1186.

23.3. Police investigation of criminal child abuse

While reporting rates for child abuse have increased significantly over the past 20 years, the same cannot be said for the prosecution and conviction rates for the physical and sexual assault of children and young people.⁴⁷

The first stage of the prosecution process is the police investigation. Because police are the ‘gatekeepers’ to the criminal justice system, the way they respond to people who report sexual assault is vitally important.⁴⁸

In the past, police treated sexual assault investigations very much like any other crime. This resulted in a ‘segmented investigative response, with little real understanding of the complexities of sexual offending, sexual offenders and, most importantly, the victims.’⁴⁹ This mindset has often handicapped police investigations.

Furthermore, research has shown that victims wishing to report offences that took place a long time ago often feared that the police would not treat the matter as being as important or serious as a more recently committed crime.⁵⁰

While the evidence to the Committee from Victoria Police focused on the reporting and investigation of sexual offences, it is reasonable to conclude that victims of other forms of abuse, such as physical abuse, would encounter many of the same challenges in making a report to police. As identified in the 2010 *Victims of crime compensation review: Framework report*:

The ongoing harm caused (by a crime) can be greater than the injury incurred directly due to the crime. Even when no or little physical injury is suffered, often the victim continues to have ongoing difficulties caused by the crime, such as increased fear and perceived vulnerability.⁵¹

Many victims have been concerned that they will be viewed as a ‘second-class’ victim because they waited a long time to come forward. They were concerned people would think they had probably moved on from the abuse when in fact they remained haunted and deeply affected by the crime.⁵² This is particularly relevant to victims of child sexual abuse. When adult victims report to police in these circumstances they are often motivated less by their own needs and more by their concern that the perpetrator may have offended against others in their family group or community.⁵³

23.3.1. Past approach by the police

Before Victoria Police set up the Sexual Offences and Child Abuse Investigation Teams (SOCIT) in 2009, police investigation of sexual offences was significantly

47 P. Cummins, D. Scott, OAM, & B. Scales, AO (2012) *Report of the Protecting Victoria’s vulnerable children inquiry*. Melbourne, Department of Premier and Cabinet, p. 331.

48 Victorian Law Reform Commission (2004) *Sexual offences: Final report*. Melbourne, VLRC, p. xxii.

49 *Transcript of evidence*, Sexual Offences and Child Abuse Investigation Team (SOCIT), p. 2.

50 C. Taylor, S. Muldoon, C. Norma et al. (2012) *Policing just outcomes. Improving the police response to adults reporting sexual assault*. Social Justice Research Centre, Edith Cowan University, Western Australia, p. 107.

51 Department of Justice (2010) *2010 Victims of crime compensation review: Framework report*. Department of Justice, p. 2.

52 C. Taylor, S. Muldoon, C. Norma et al. (2012) *Policing just outcomes*, p. 108.

53 C. Taylor, S. Muldoon, C. Norma et al. (2012) *Policing just outcomes*, p. 107.

different. Detective Superintendent Rod Jouning, from the Sexual and Family Violence Directorate, told the Inquiry that:

As was the training then, the detective would firstly try to establish if in fact a criminal offence had been committed, and this often centred on the victim—their behaviours during, pre and post offending, their presentation at the time and their recall of events. This had the potential to create significant tension between the investigator and the victim and often resulted in the victim withdrawing from the process.⁵⁴

Witnesses told the Committee about their poor experiences once they became involved in the criminal court process:

The other part of it is that because the court process necessarily has to be very legalistic, and the abuse was very traumatic, you have to be able to remember specific instances of abuse, whether it be rape or whatever. It is very hard if it has gone on for 18 months or 2 to 3 years to remember specific instances. So you can say, ‘This happened to me once a week or once every couple of weeks’, but when you get to court, you need to say, ‘I remember this time specifically, because it was this sort of day’, and there does not seem to be any weight given to what you are doing.⁵⁵

In 2004 the Victorian Law Reform Commission’s *Sexual offences: Final report* highlighted the fact that people who had been sexually assaulted were the least likely of all crime victims to report the offence to police. The report provided 201 recommendations in all, 36 relating to police. These recommendations focused on improving training, procedures and processes for the investigation of sexual assault.⁵⁶

Prior to the introduction of these reforms, the approach of Victoria Police towards adult victims of criminal child abuse was not particularly sympathetic and investigation of such complaints was frequently perceived as too difficult with little chance of a successful prosecution. As a consequence such complaints were often treated by Victoria Police with little enthusiasm. With the reforms in investigative techniques adopted by Victoria Police, such complaints are now more appropriately handled by specialist police units.

23.3.2. Recent criminal justice reforms

Significant reforms were introduced following the Victorian Law Reform Commission’s *Sexual offences: Final report* recommendations.⁵⁷ These reforms were introduced to make the criminal justice system more responsive to the needs of sexual offence complainants, to encourage more people to report sexual offences to police and to become involved in the criminal trial process. Further procedural reforms aimed to make the whole criminal justice process less traumatic for children and other sexual abuse victims, including adults who had been abused as children, were also introduced.

Other reforms were designed to permit acceptance of expert evidence to explain to the court why victims might delay disclosing abuse. Delay in disclosing abuse and the reasons for it have been addressed in various sections of this Report. However, the reasons for delays in reporting abuse are not commonly known and such delay ‘affects

54 *Transcript of evidence*, Sexual Offences and Child Abuse Investigation Team (SOCIT), p. 2.

55 *Submission S454*, Name withheld.

56 *Transcript of evidence*, Sexual Offences and Child Abuse Investigation Team (SOCIT), p. 3.

57 *Crimes (Sexual Offences) Act 2006* (Vic); *Criminal Procedure Act 2009* (Vic); *Evidence Act 2008* (Vic).

the way that the credibility of a victim is understood.⁵⁸ This lack of understanding often makes it difficult for people to appreciate or acknowledge the influence of grooming in securing a victim's silence, as discussed in Chapter 22. The following provision in *Criminal Procedure Act 2009* (Vic) was enacted to deal with this issue:

In a criminal proceedings that relates to a charge for a sexual offence, the court may receive evidence of a person's opinion that is based on that person's specialised knowledge of—

The nature of sexual offences;

The social, psychological and cultural factors that may affect the behaviour of a person who has been a victim, or who alleges that he or she has been the victim of a sexual offence, including the reasons that may contribute to a delay on the part of the victim to report the offence.⁵⁹

But Professor Caroline Taylor, Foundation Chair of Social Justice at Edith Cowan University, told the Committee that although the amendment was an enlightened one, in practice it was not used by the prosecution or was rejected at the trial judge's discretion:

And this is one of the problems that we have when we create legislative reform. It can be stultified and it can be resisted and not filter down into practice. So since its introduction it has been mostly prohibited from entering court cases. This legislation was designed to assist victims, to have a jury understand delayed disclosure, the grooming tactics used by offenders, and it is still not filtering into practice and is still hanging around on the courtroom steps.⁶⁰

Other reforms to improve a victim's experience in the criminal justice system have been introduced to ensure that victims may have their Victim Impact Statement read out in court. As outlined in the introduction to this part of this Report, victims see this as important—it means they have a public acknowledgement of the damage they have suffered.

The provision reads:

s.8Q Reading aloud of victim impact statement.

A person who has made a victim impact statement may request that any part of that victim impact statement—

(1) (a) is read aloud or displayed in the course of the sentencing hearing by—

- (i) the person making the request; or
- (ii) a person chosen by the person making the request who consents and who is approved by the court for that purpose; or
- (iii) is read aloud in the course of the sentencing hearing by the prosecutor.⁶¹

Given that these legislative changes are so recent and their operation is at an early stage, it is difficult to assess the success or otherwise of these reforms in practice. However, the Committee did receive detailed evidence from Victoria Police about

58 *Transcript of evidence*, Professor Caroline Taylor, Edith Cowan University, Melbourne, 4 April 2013, p. 8.

59 *Criminal Procedure Act 2009* s.388.

60 *Transcript of evidence*, Professor Caroline Taylor, p. 8.

61 *Sentencing Act 1991* (Vic) s.8Q.

the changes it had made to its investigative techniques as a consequence of the same law reform package.

23.3.3. Changes in police approach to investigating sexual offences

Victoria Police gave evidence to the Committee about the philosophical shift in its approach to allegations of sexual abuse. The current approach provides specialised training about sexual offending and child abuse, to ensure that the investigation of sexual offending:

- is open-minded
- is knowledgeable
- places importance on listening to victims throughout the process
- understands the nature of victim behaviour
- understands the nature of offender behaviour
- provides positive outcomes for victims at whatever stage of the investigative process their case might reach.⁶²

Table 23.1 below highlights some of the main differences in the Victoria Police approach to investigating sexual offences following the 2009 reforms.

Table 23.1: Changes in Victoria Police investigations of criminal child abuse

	Before 2009	2009 to present
Investigation of sexual offences	Sexual offences treated like any other crime. Segmented investigatory approach. Limited understanding of the complexities of sexual offending, offenders or victims. A generalist detective undertakes a local criminal investigation.	A dedicated unit carries out investigation. Investigators with specialised training about sexual offending and child abuse. Whole-story approach.
Approach to investigation	Establish whether a crime has been committed by assessing victim’s behaviours during, pre and post-offending, their presentation at the time of reporting and their recall of events. Victim often required to repeat their account numerous times, with the risk of re-traumatisation.	Listen, inquire and ask questions until a comprehensive narrative is obtained. The way people remember trauma is understood and recognised by investigators. Focus on eliciting a full, free and uninterrupted account.
Priorities in investigation	Take a statement where appropriate and obtain a forensic medical examination. Gather corroborating evidence such as CCTV, DNA or a witness. Establish whether a crime has been committed by focusing on a victim’s ability to provide a convincing account.	Focus on the entire relationship between a perpetrator and the victim to look at how this was crafted over time. Elicit the moments in those relationships that might be evidence of predatory behaviour or the beginnings of perpetrating.

Source: Compiled by the Family and Community Development Committee.

62 *Transcript of evidence, Sexual Offences and Child Abuse Investigation Team (SOCIT)*, p. 7.

23.3.4. The value of reporting where there is no likelihood of prosecution

Detective Superintendent Jouning told the Inquiry that two of the central aims of Victoria Police's new approach are:

- to increase the rate of reporting of child sexual abuse and giving the victim a judicial response
- to reduce the number of cases that fall by the wayside in the course of investigation.⁶³

In Good Faith and Associates endorsed the changing police approach to investigating historical offences, telling the Inquiry:

We believe now the police are very keen to gather information. Even if it will never go to court, they are wanting to get the intelligence of these things and where they were operating. Many children abused in those sorts of circumstances developed dissociative disorders which make testimony in court very difficult. But the police tell us that does not in any way prevent you going to the police and giving that intelligence. That might help someone who is able to testify, because it can corroborate. That is really important.⁶⁴

There is clearly great value in making a report to police, even if the victim is unwilling or unable to pursue the matter through the justice system. This is because the report might corroborate the account of another victim. In addition, that same victim may be able to give police more information about the offender as well as other potential and as yet unknown victims. In some instances child sexual abuse victims only ever report the abuse when contacted by Victoria Police after another victim had nominated them as a possible victim.⁶⁵

Finding 23.1

Improvements in techniques adopted by Victoria Police in investigating criminal child abuse have resulted in increased satisfaction with complainants and their involvement in the criminal justice system.

23.4. Reporting criminal child abuse to authorities

This section of the Report deals with the question of whether criminal child abuse or suspected criminal child abuse should be reported to police or to some other welfare authority.

23.4.1. Mandatory reporting

In Victoria, media attention surrounding the tragic death of two-year-old Daniel Valerio in 1990 resulted in public pressure for legislative change to child protection laws and the introduction of mandatory reporting. In 1993, the Victorian Government amended the *Children and Young Persons Act 1989* (Vic), making it mandatory for prescribed professionals to notify state child protection services if they suspected a child was being abused. The legislative framework for mandatory reporting is now

⁶³ *Transcript of evidence*, Sexual Offences and Child Abuse Investigation Team (SOCIT), p. 11.

⁶⁴ *Transcript of evidence*, In Good Faith and Associates, Melbourne, 12 November 2012, p. 13.

⁶⁵ *Transcript of evidence*, Victoria Police, p. 3.

covered by the *Children, Youth and Families Act 2005* (Vic), though it remains in a form similar to that introduced in 1993.

The Committee received evidence that shows there is a great deal of confusion about mandatory reporting laws in Victoria and how these laws might operate to protect children from criminal child abuse in an organisational setting. Much of the confusion seems to stem from the fact that mandatory reporting to child protection authorities is often confused with compulsory reporting of a crime to police.

The Committee heard that there is a need to properly identify any criminal child abuse as a crime and to deal with it on that basis. It is not enough simply to call welfare services to deal with what must be recognised as a criminal offence. Professor Chris Goddard, Director of Child Abuse Prevention Research Australia at Monash University, told the Committee:

It is a strange perception that somehow we have allowed child abuse to become a welfare problem, even in organisations. It is not. Sometimes it is a welfare problem, but our responses to child abuse should not be as if all child abuse is benign neglect in a careless, disorganised family. Some of the people who abused their children are evil and they are criminal. To actually say that a welfare response will cover that, when they are torturing children or killing children or something, is a nonsense. We have to have a minimum standard, and we have to accept our responsibility to try to care for children.⁶⁶

23.4.2. 'Welfare' reporting versus 'criminal' reporting

The Committee heard from a number of witnesses about the need to differentiate between what can be described as mandatory 'welfare' reporting to Department of Human Services (DHS) of an unsatisfactory home environment stemming from abuse or neglect on the one hand, and compulsory 'criminal' reporting of criminal abuse (or suspected abuse) to police on the other.

The mandatory welfare reporting system gives first priority to protecting the 'at-risk' child, while criminal reporting focuses on catching, prosecuting and convicting offenders. Both are critically important.⁶⁷ As Ms Maria McGarvie, a member of Catholics for Renewal told the Committee:

We distinguish between mandatory welfare reporting and mandatory criminal reporting. The first prioritises the protection of at-risk children; the latter, the apprehension and conviction of offenders. Both are critically important, but the mandatory criminal reporting will, in our view, prevent concealment of sexual abusers. The obligation to mandatorily report to the police should be imposed on all religious personnel at all levels in the church.⁶⁸

Dr Tom Keating also referred to the dichotomy between mandatory 'welfare' reporting and mandatory 'criminal' reporting in relation to abuse carried out by religious personnel:

Mandated persons are required under sections 182 and 184 of the *Children, Youth and Families Act 2005* to report where on reasonable grounds they believe that a child is in need of care and protection. This is concerned with circumstances in which the

⁶⁶ *Transcript of evidence*, Professor Chris Goddard, p. 10.

⁶⁷ *Transcript of evidence*, Catholics for Renewal Inc., Melbourne, 23 January 2013, p. 5.

⁶⁸ *Transcript of evidence*, Catholics for Renewal Inc., p. 5.

principal caregiver is unwilling or unable to protect a child. Instances of abuse by clergy are simply not relevant ... and in most circumstances parents and guardians would be doing all in their power to protect the child. They simply do not know that the abuse has taken place. These are not child protection situations; they are occasions of criminal assault.⁶⁹

The Committee heard calls for change to the way we address child abuse in Victoria. Dr Joe Tucci, CEO of the Australian Childhood Foundation, stated:

There needs to be a significant framework implemented by government that looks at the abuse and exploitation of children by employees and volunteers within organisations. But that has to be articulated. It has to draw across jurisdictions in relation to criminal law, in relation to child protection law and in relation to community education.⁷⁰

Finding 23.2

Given that criminal child abuse is a very serious offence against the criminal law, failure to report or concealment of an offence is more appropriately dealt with under the criminal law than under the welfare/ child protection regime.

23.4.3. Extending mandatory reporting to religious personnel

The Committee considered whether religious personnel should be mandated reporters under the child protection legislation.⁷¹

The Catholic Church in Victoria made submissions to the *Protecting Victoria's vulnerable children inquiry* (the Cummins Inquiry) opposing an extension of the mandatory reporting laws to include religious personnel.⁷² The Committee acknowledges that the Catholic Church has reconsidered its position on this matter. In its submission to this Inquiry, which it titled *Facing the Truth*, the Church told the Committee:

In its submission to the PVVC inquiry [the Cummins Inquiry], the Church had opposed including clergy among those mandated to report child abuse. However, the Church accepts that the PVVC Inquiry carefully considered all of the submissions made to it, and that it was charged by the community with making a recommendation on this issue. Therefore, the Church now accepts that the requirement of mandatory reporting of cases of suspected child abuse under the CYF Act should be extended to ministers of religion and other religious personnel, provided that the sanctity of the confessional is maintained.⁷³

Other churches and religious organisations have also indicated a willingness to include religious personnel as a category of mandated notifiers. The Rabbinical Council of Victoria submitted to the Committee that 'rabbis are not currently mandatory reporters under the legislation. The Rabbinical Council of Victoria explained that it would have no objection to rabbis coming into that category.'⁷⁴

69 *Transcript of evidence*, Dr Tom Keating, Melbourne, 10 December 2012, p. 4.

70 *Transcript of evidence*, Australian Childhood Foundation, p. 2.

71 *Children, Youth and Families Act 2005* (Vic) s.182(1).

72 P. Cummins, D. Scott, OAM, & B. Scales, AO (2012) *Report of the Protecting Victoria's vulnerable children inquiry*, p. 351.

73 *Submission S185*, Catholic Church in Victoria, p. 106.

74 *Submission S138*, Rabbinical Council of Victoria, p. 3.

Similarly, the Baptist Union of Victoria (BUV) submitted that:

The BUV supports the Mandating of Ministers of Religion (reporting suspected child sexual abuse) and believe it would have a positive effect for Ministers/Leaderships. It would make it clear cut for Ministers/Leaderships as to what they have to do in dealing with difficult and complex situations. Mandating Ministers of Religion would also provide more legal protection (as a notifier through the Legislation) for Ministers of Religion as they report ... It is the nature of Church that Ministers/Leaderships develop close relationships with the members and families of their Churches, and by making Ministers of Religion mandated, this very difficult process will be made clearer for all involved.⁷⁵

The Uniting Church also indicated its support for the proposition when it submitted to the Committee that:

Ministers have a position in which a significant amount of trust is reposed. To suggest they should be outside the provisions of mandatory reporting is arguably inconsistent with this trust ... Legally it is difficult to see a reason not to extend mandatory reporting to Ministers of Religion.⁷⁶

However, the Cummins Report did not support the extension of mandatory welfare reporting to all religious personnel.⁷⁷ The Cummins Report determined that extending the categories of mandated notifiers to include ministers of religion and religious personnel may inappropriately extend the reach of the legislation. *The Children, Youth and Families Act 2005* (Vic) currently applies to 'identified professional groups that have training in and would be expected to have frequent contact with children and young people.'⁷⁸ To include ministers could extend the operation of the legislation beyond what was originally contemplated.⁷⁹ This, as the Cummins Report suggests, could lead to a 'significant spike in reports with few resulting substantiations.'⁸⁰

The Committee also shares the concern expressed in the Cummins Report that extending mandatory welfare reporting would not necessarily ensure an appropriate investigation of suspected child abuse, particularly where the abuse is committed by religious personnel. The Committee considers the *Crimes Act 1958* (Vic) to be the more appropriate legislative mechanism to deal with this issue.

The Committee also notes that the Cummins Report identified that 'the "reverencing of church leaders" can lead to a reluctance of victims to speak up.'⁸¹ In essence, the Cummins Report recognised the unique dangers to child victims that predators who are religious personnel represent. This situation demonstrates 'the need for

75 *Submission S210*, Baptist Union of Victoria, p. 2.

76 *Submission S164*, Uniting Church in Australia, p. 24.

77 The Cummins Report did however recommend in Recommendation 44 that The Victorian Government should progressively gazette those professions listed in sections 182(1)(f)–(k) *Children Youth and Families Act 2005* (Vic) to cover those not yet mandated, beginning with child care workers.

78 P. Cummins, D. Scott, OAM, & B. Scales, AO (2012) *Report of the Protecting Victoria's vulnerable children inquiry*, p. 351.

79 The Cummins Report observed the likely absence of expertise and capacity of religious and of religious organisations' staff under the provisions of welfare reporting (other than those professionals such as school teachers who are already mandated) to report suspected cases of child physical and sexual abuse, unlike the mandated professionals with relevant skills.

80 P. Cummins, D. Scott, OAM, & B. Scales, AO (2012) *Report of the Protecting Victoria's vulnerable children inquiry*, p. 351.

81 P. Cummins, D. Scott, OAM, & B. Scales, AO (2012) *Report of the Protecting Victoria's vulnerable children inquiry*, p. 353.

reporting of a suspected criminal offence to police authorities—a very different form of mandatory reporting from the established welfare reporting.⁸² This view is also consistent with the belief that the most appropriate authority to deal with acts of criminal child abuse is the police.

23.5. Compulsory criminal reporting

As outlined in Part D, the Committee highlighted that organisations providing services to children need to improve their systems and processes for creating child-safe environments. It has also recommended making it compulsory to report to police all incidents involving alleged or suspected serious criminal abuse of children. This would be one mechanism for reports to be made to police.

The Law Institute of Victoria (LIV) argues that:

If a person within an organisation has no discretion but to report suspected abuse, and can also be criminally liable for failure to report it, the existence of this legal duty will assist persons within those organisations to take the proper steps to ensure that criminal acts are made known to police rather than covered up or regarded as matters that the religious organisation should handle internally.⁸³

In the Cummins Report, it is recommended that the *Crimes Act 1958* (Vic) be amended to create a separate reporting duty where there is a reasonable suspicion a child or young person who is under 18 is being or has been physically or sexually abused by an individual within a religious or spiritual organisation. It recommended that the duty should extend to a minister of religion and a person who holds office within, is employed by, is a member of, or a volunteer of a religious or spiritual organisation that provides services to, or has regular contact with children and young people. It was recommended that information received during the rite of confession would be exempt. The Cummins Report also recommended that a failure to report should attract a suitable penalty having regard to s.326 of the *Crimes Act 1958* (Vic) and s.493 *Children Youth and Families Act 2005* (Vic).⁸⁴

The Committee noted that the Catholic Church stated in its submission to this Inquiry that it supports some elements of this recommendation, namely:

- (i) An exemption for information received during the rite of confession.
- (ii) That the duty to report would operate prospectively, that is, in respect of information/concerns about current danger to children.⁸⁵

However, as outlined above, the Catholic Church maintains that the most effective way to better protect children is to extend the mandatory requirement to report cases of suspected child abuse under the *Children, Youth and Families Act 2005* (Vic) to all religious personnel, provided that the sanctity of the confessional is maintained.⁸⁶

In its submission to this Inquiry, the Catholic Church described the Cummins Inquiry recommendation as misconceived. It stated that:

82 *Submission S205*, Catholics for Renewal Inc., p. 22.

83 *Submission S226*, Law Institute of Victoria, p. 17.

84 P. Cummins, D. Scott, OAM, & B. Scales, AO (2012) *Report of the Protecting Victoria's vulnerable children inquiry*, p. 355.

85 *Submission S185*, Catholic Church in Victoria, p. 108.

86 *Submission S185*, Catholic Church in Victoria, p. 145.

... a priest who was aware a child was being abused by another priest would be obliged to report that, but a priest who was aware that a child was being abused by a family member such as a father or uncle would be under no obligation to report.

Accepting as the Church does, the important role of mandatory reporting in protection of children, it is misconceived to suggest that a child who is abused by a priest is in need of protection but that a child who is abused by a family member is not.⁸⁷

However, this response from the Catholic Church fails to recognise that the provision recommended was primarily directed towards holding those who commit serious criminal offences against children criminally responsible for their actions. Also, the Committee recommends the obligation to report such criminal conduct be cast in much broader terms than was recommended by the Cummins Inquiry.

Ms Maria McGarvie, representing Catholics for Renewal, told the Committee:

We endorse the Cummins report, which proposed that religious personnel should be mandated under the Crimes Act, and we agree that welfare reporting is inadequate. Both church protocols, the Melbourne Response and Towards Healing, allow the church to investigate allegations of abuse and possibly find the allegations substantiated, yet not report the matters to the police, thus leaving a potential sexual predator at large.⁸⁸

It is difficult to reconcile the position of the Catholic Church in Victoria with that in New South Wales, where there are provisions to compel the reporting of serious criminal offences.⁸⁹

23.5.1. Compulsory criminal reporting and privacy concerns

Some organisations told the Inquiry they were concerned that making police reporting compulsory would stop victims who were worried about their privacy from revealing their abuse.

In relation to protecting the confidentiality and privacy of the complainant, Dr Tom Keating told the Committee:

There is a difficult situation where someone who themselves has been the victim of abuse seeks support and says, 'Now, I don't want you to act on this'. That is the only complicating situation that I can see. It seems to me that you would deal with that as a counsellor would, working through the issue with the person, helping them get to a point where they can take a decision that it ought to go forward as a complaint to the police, particularly where there is a risk that there may be other persons at risk.⁹⁰

Representatives of both the Anglican and Catholic Churches expressed similar concerns. Representatives of the Anglican Church explained:

We would not want to be part of any conspiracy or secrecy, but we also understand that there are some situations where people who have suffered abuse do not welcome the intrusion of other, legal authorities in their situation ... but in some aspects we are sensitive that people who have been victims have to tell their own stories, and we do not want to revictimise people by taking that responsibility off them ...

87 *Submission S185*, Catholic Church in Victoria, p. 108.

88 *Transcript of evidence*, Catholics for Renewal Inc., p. 5.

89 See Section 23.2.3.

90 *Transcript of evidence*, Dr Tom Keating, p. 9.

We would always encourage people to tell their story, and we would always encourage them to report to police, but let us make a distinction here between current child abuse and historical child abuse. When I am talking historical, I am talking 20, 30, 40 or 50 years ago in situations where most likely, in all probability, the alleged abuser is deceased. If there is current child abuse, there is no question: the matter must be reported ...

If we are talking about a historical event, absolutely it is our preference that the matter be reported. However, if we are looking at a situation where follow-on abuse is impossible—the alleged abuser is deceased, for example—then this is where the tension comes in, and CASA [Centre Against Sexual Assault] would understand this as well. If somebody has been abused, they get strong enough and come and tell you about it. Often it might be a first report. If you ask them, ‘Can you report it to police?’, and they say, ‘No, I don’t want to’, they might have a number of different reasons—for example, they have a criminal history themselves, they do not want their family to find out about it, they do not want to do this, they do not want other people to know, they recognise it was a one-on-one situation that occurred on a single occasion, they understand that the police are unlikely to take it up, or they do not know the name of the abuser. They are all possibilities; they are all things that have come up.

Given that we are trying to empower them and encourage them to come forward with their story so that we can assist them, can you then say to them, ‘In the face of your absolute denial that you do not want this reported, I don’t care what you reckon. I want to report it. It suits us to report it, so therefore we will report it’? We are trying to judge that empowerment versus disempowerment for the individual.⁹¹

Similarly, in its submission to the Inquiry, the Catholic Church made the following comments about the Melbourne Response:

At its heart, this difficult matter requires a balance to be struck between:

- The right of a victim to privacy
- The responsibility of society to protect its citizens and punish offenders
- The right to the presumption of innocence.⁹²

Catholics for Renewal took a firmer view. Ms McGarvie told the Committee:

We reject this as a constraint. We say that the church is a private and conflicted organisation which should not have the power to determine whether the police can handle such situations. We say the police can deal with them discreetly and with sensitivity to the interests of the complainant. Again we refer to the comments of Gill Callister, Secretary of the Department of Human Services, where she notes:

... often what happens is the police will then speak to that child or young person, and sometimes they will go ahead with a statement of complaint even though they originally said that they did not want to and other times they will not.

The police in our view are trained to interview complainants with care and sensitivity. They have expressed concern that the police should not be hindered by church authorities undertaking their own investigations.⁹³

On the same issue of the duty to report a criminal offence, Victoria Police submitted:

91 *Transcript of evidence*, Anglican Diocese of Melbourne, Melbourne, 22 April 2013, pp. 5–6.

92 *Submission S185*, Catholic Church in Victoria, p. 112.

93 *Transcript of evidence*, Catholics for Renewal Inc., p. 6.

The Catholic Church has maintained its reluctance to refer allegations to police on the basis that it is not the wish of the victim. Mandatory reporting creates a public duty to report such suspicions and sends a message to everyone within the organisation who may know of such issues but are reluctant to become involved. This is acknowledgment of the seriousness of the conduct involved and the moral responsibility of the community to care not only for one complainant, but other potential victims.⁹⁴

The reference to mandatory reporting in the above quote is not related to reporting to welfare authorities, but to compulsory reporting to police.

The Committee appreciates the particular difficulty in weighing up the competing interests of all parties including:

- a victim's right to privacy and to seek support and counselling without the fear of their abuse being made public or otherwise reported
- the protection of potential future victims who may be exposed to an abuser if an opportunity to apprehend them is not taken in a timely manner
- the identification of other victims who may require assistance
- the general function of the criminal law in seeking justice for all victims, together with protecting the community.

23.5.2. Reporting child criminal abuse to police and Victoria Police criticism of the Melbourne Response

The Melbourne Response was established in October 1996 after consultation between the Catholic Archdiocese of Melbourne and Victoria Police, as discussed in Chapter 1 of Part A. After some negotiation, the parties reached an agreement that included a requirement that the Independent Commissioner would encourage victims to report abuse to police. The protocol was publicly supported by the Catholic Church, Victoria Police and the Victorian Government.

The Committee heard from victims and from Victoria Police, who criticised the Melbourne Response, particularly the manner in which the Independent Commissioner 'encouraged' victims to report abuse to the police. It is important to note that the Committee's examination of Melbourne Response files and transcripts of interviews revealed that the Independent Commissioner's practice throughout was to tell victims that they had an 'unfettered right' to report abuse to the police.

Documentation about the Melbourne Response states:

The Melbourne Response also recognises however that some complaints will not be dealt with by the police based on the wishes of the complainant or for reasons such as the alleged offender being deceased or the complaint having previously been reported to the police and police action having been finalised.⁹⁵

As outlined in the previous section of this Report, the Anglican Church also adopted this approach for similar reasons.⁹⁶

⁹⁴ *Submission S201*, Victoria Police, p. 11.

⁹⁵ *Submission S185*, Catholic Church in Victoria. Annexure 1.

⁹⁶ Anglican Diocese of Melbourne (2010) *Power and Trust in the Church. A protocol under the Professional Standards Act 2009 for responding to abuse harassment and other misconduct within the church*. Canterbury, Anglican Diocese of Melbourne, p. 4, Paragraph 1.5(f).

Arguably, the position taken by both these organisations was justifiable, given the manner in which Victoria Police has historically investigated allegations of sexual assault, particularly at the time when the Melbourne Response was introduced in 1996. More particularly, prior to the reforms, the police would not become involved if an offender was deceased. Victoria Police's criticism to the Inquiry of this approach (considered in more detail below) needs to be viewed in the context of changes Victoria Police has recently made to police investigative techniques in matters of sexual assault and its approach to victims who report such crimes, as discussed in Section 23.3.3 Experience has shown that victims of sexual assault are reluctant to reveal their experience to anybody—including the police. Victims of criminal child abuse perpetrated by a member of the Catholic Church, as recognised earlier in this Report,⁹⁷ have an additional reluctance to report their assault to the Church, or through a process that is perceived to be part of the Church. Given this hesitancy on the part of victims, many of whom have been very seriously damaged, more active encouragement than words or a signature acknowledging that they have been advised that they can go to the police, is necessary. It was not until February 2011 that a complainant participating in the Melbourne Response was required to sign an acknowledgement that the Independent Commissioner had encouraged them to go to the police but that they had decided not to adopt that course.⁹⁸

The other issue is that reporting abuse to police may delay a victim's claim for compensation under the Melbourne Response process and the receipt of any funds. Arguably, this delay may act as a powerful disincentive for a victim to make a report to police.

The seriousness of the criminal child abuse offending cannot be denied. Deputy Commissioner Graham Ashton of Victoria Police illustrated the unjustifiable position of the Catholic Church with his assertion that if a child was raped on Catholic Church grounds it would be reported by officials to police unless the offender was a member of the clergy.⁹⁹

Victoria Police was very critical of the Melbourne Response, stating:

In relation to offenders being deceased, simply saying 'The offender is dead. The police don't need to know' is an absolute nonsense. Despite the fact that an offender is dead, we need to know the fact that the person was an offender through their life so that when other victims come forward to us and they say, 'I'd like to tell you about my abuse at the hands of Mr X, Y or Z,' our records will show that that person actually had a history of offending. That changes that interview with that victim because we are not then exploring with the victim the validity of what the victim is talking about and has experienced—we know that that person is an established offender. It assists us in our analysis of these issues and our dealings with other victims.¹⁰⁰

Victoria Police expressed the view that a victim not wanting to go to police is not necessarily making an informed decision. Additionally, information regarding alleged offenders even if deceased at the time of complaint, can be useful as part of the whole story approach and validation for a victim. Victoria Police told the Committee its members were better trained, and in the best position to provide all

97 See Chapter 7 in Part C.

98 From 2003, *Towards Healing* has had this as a requirement.

99 *Transcript of evidence*, Victoria Police, p. 6.

100 *Transcript of evidence*, Victoria Police, p. 11.

relevant information to complainants, about the choices they had and their potential involvement in the criminal justice system. It is inappropriate, in the opinion of Victoria Police, for other bodies to undertake that role:

But the mere fact that there is a process of a criminal investigation conducted by the Church into that victim in our view does not give us reliable facts or allow them to say, ‘The person doesn’t consent.’

What normally happens is that if a person comes forward with a complaint an interview is conducted using the whole-of-story concept interview techniques ... It goes into a lot of detail about how interviews are conducted. Then at the end of that the victim is able to make an informed decision about whether they wish to complain or not. For the Church to be simply saying ‘The person didn’t want to complain’ is in our view an invalid response because it is based around a flawed investigative premise ...

What I am saying to the Committee is that, sure, a lot of the offending we have got is historic offending; there is a reason why it is historic offending, and based on all the other data we have around general offending, population cohorts and the protection of the people who commit these crimes that is placed around them by the Church, we think that the offending is likely to be continuing ... But without these sorts of inquiries we are not optimistic that people will come forward in any increasing number, and we will not see this offending for years to come. I guess I am saying to you we are not seeing big numbers right now, but there is a reason for that.¹⁰¹

Although Victoria Police directed these criticisms at the Catholic Church’s Melbourne Response, the Committee concluded they are equally applicable to other organisations that have adopted a similar approach. These approaches are discussed in Chapter 21 of Part F.

We should note that many of the matters that Victoria Police raised before the Committee in justifying its criticism of the Melbourne Response come from a shift over the last few years in the police approach to investigating and collating information about historical sexual abuse complaints. Previously, if an offender had died or a victim could not give enough detail of an historical offence, police were unlikely to take the matter any further or have any use for the information provided by a victim.¹⁰²

It is important to recognise that it was only relatively recently that Mr Peter O’Callaghan QC, the Catholic Church’s Independent Commissioner, became aware of Victoria Police concerns about the reporting of historical criminal abuse.¹⁰³ As far as the Committee is aware, Victoria Police made no complaint to the Catholic Church about the absence of reports to them flowing from the Melbourne Response process, and made no request for a review of the Melbourne Response protocol in the period 1996–2009. Significantly, in materials that the Melbourne Archdiocese provided to the Committee, it is evident that Mr O’Callaghan QC and representatives of the Melbourne Archdiocese and Victoria Police had cordial relations and were working together on a protocol in 2009. There is no suggestion in these materials that Victoria Police did not enter into a protocol at that time (2009) on the basis that

101 *Transcript of evidence*, Victoria Police, p. 11.

102 See Section 23.3.

103 *Neil Mitchell radio interview with Deputy Commissioner Graham Ashton, Victoria Police*, 3AW 693, 13 April, 2012.

the Melbourne Response's 'processes were fundamentally flawed'.¹⁰⁴ Rather, Victoria Police was no longer entering into formal protocols with any organisations.

Both Mr O'Callaghan QC and Archbishop Denis Hart gave a detailed written response to Victoria Police's criticisms of the Melbourne Response.¹⁰⁵ Annexed to these responses was a significant amount of correspondence between Melbourne Response representatives and Victoria Police. From that material we can see:

- The Catholic Church established the Melbourne Response (in 1996) in consultation with Victoria Police and the Victorian Government. Assistant Commissioner Gavan Brown, and the Solicitor-General each approved and signed off on the process.
- In the period December 2009 to October 2010, representatives of the Melbourne Response and Victoria Police were working together to establish a protocol. On 6 October 2010, Deputy Commissioner Sir Ken Jones wrote to Archbishop Hart and informed him:

You may have read in various media reports that Victoria Police has recently changed its policy with regards to entering into agreements with non-government or non-law enforcement agencies who are involved in our investigations or operations. The Chief Commissioner, or any of his staff, can no longer enter into such agreements with organisations external to government and law enforcement. Essentially our position now is that there is no need for such agreements and that our relationships with such bodies ought to be solely regulated by the extant laws and procedures that apply to everyone.

Unfortunately the agreement that the Church and Victoria Police were developing for some time has been caught by our change of policy and cannot now be completed. Consequently any previous similar agreement between Victoria Police and the Catholic Church is now effectively rescinded.

I have discussed this decision with Detective Inspector Glenn Davies and feel that a meeting be arranged to agree a way forward which ensures that Victoria Police and the Catholic Church continue to work closely together. Inspector Chris Gawne, from my office, will be in contact shortly to arrange that.¹⁰⁶

- On 12 November 2010, Sir Ken Jones confirmed with representatives of the Melbourne Archdiocese and Mr O'Callaghan QC that Victoria Police was content with the process and the Church's care of victims. Thereafter, members of Victoria Police and the Melbourne Archdiocese worked to prepare a joint media release. Ultimately, the media release of February 2011 was issued solely by the Catholic Archdiocese of Melbourne.
- There was no indication that at anytime before April 2012 Victoria Police told the Catholic Archdiocese of Melbourne that it had any concerns about the Melbourne Response.¹⁰⁷

104 *Transcript of evidence*, Victoria Police, p. 12.

105 *Right of Reply* Mr Peter O'Callaghan QC, Independent Commissioner, Melbourne Response, 26 April 2013; *Right of Reply*, Archbishop Denis Hart, Catholic Archdiocese of Melbourne, 17 October 2012; *Right of Reply*, Archbishop Denis Hart, Catholic Archdiocese of Melbourne, 5 June 2013.

106 Catholic Archdiocese of Melbourne, Letter from Deputy Commissioner Sir Ken Jones, Victoria Police, 6 October 2010 to Archbishop Denis Hart, accessed by the Family and Community Development Committee.

107 *Right of Reply*, Archbishop Denis Hart, Catholic Archdiocese of Melbourne.

Given this history, the approach of the Melbourne Response in ‘encouraging’ victims to report abuse to police, including in circumstances where there was no likelihood that the police would use that information for any purpose, is understandable.

However, given the evidence of Victoria Police about its current specialised treatment of victims who complain of historical sexual abuse, the Committee recognises the important benefits of reporting to police all information, including cases where the perpetrator has died or has already been convicted of other similar offences.

The Catholic Church’s rationale of empowering the victim in Victoria is significantly different from that adopted in NSW. In that state, the failure to report such conduct amounts to a criminal offence.¹⁰⁸ A document published by the Sydney Archdiocese states that:

Sexual abuse is a crime which must be reported to the police.

The police are best placed to investigate allegations of sexual abuse and sexual assault, not the church. Sexual abuse has no place in the church and the best way to investigate it is to report criminal conduct to the police. The law requires serious crimes to be reported to the police and the policy of the Archdiocese is to report allegations of sexual abuse to the police ...¹⁰⁹

As noted in the submission of the Catholic Church to the Inquiry:

Victorian law does not require crimes to be reported to police. This sets the legal context in which the Church believes that victims should be empowered to make this important choice for themselves.¹¹⁰

There is no good reason why such a distinction with respect to the rationale should exist. It could not be justified on the basis of the existence of an obligation under the criminal law.

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

23.6. Universal responsibility to report a serious crime

The Committee takes the view that every member of society has a moral and ethical responsibility to report to police any knowledge they have about serious crimes committed against children. This obligation is certainly stronger in circumstances where the most vulnerable members of our community are child victims or adults suffering the consequences of criminal child abuse.

The Committee therefore considers that it is necessary to develop a criminal offence that deals with the reporting of serious criminal offences committed against

¹⁰⁸ *Crimes Act 1900* (NSW) s.316.

¹⁰⁹ Catholic Archdiocese of Sydney (2012) *Sexual abuse: The response of the Archdiocese of Sydney*. Sydney, Catholic Archdiocese of Sydney, p. 5.

¹¹⁰ *Submission S185*, Catholic Church in Victoria, p. 110.

children. The Committee has reached this determination in preference of extending the mandatory welfare reporting scheme.

One benefit of introducing a criminal offence relating to the reporting of criminal child abuse is that it would remove the need for the reporter to possess any particular expertise or training. The Committee believes that members of the community are much better able to recognise what behaviour constitutes a criminal offence, than to identify and assess the elements that must be satisfied under the mandatory reporting legislation.

As discussed below, the Committee considers that it is necessary to amend the *Crimes Act 1958* (Vic) to make it a crime for any person who knows or believes that a serious offence has been committed by another person against a child, and has information that they believe might be of material assistance, to fail to report that information to police. The Committee considers that this provision would address the need to make clear the requirement to report to police all child-related offences, as well as making it a crime to fail to do so. The Committee considers that this is the most effective way of addressing the criminal abuse of children in organisational settings. This approach accepts that institutional abuse cannot be adequately addressed by employing a welfare response alone.

23.6.1. Offence of failing to report a serious crime—concealment

Criminal child abuse often goes undetected. This is due to:

- the private nature of the crime
- offenders' efforts to silence their victims
- children's difficulties in revealing what has happened to them and in being believed.

These challenges are often made harder by other practical difficulties. For example, many victims of abuse are unable to report offences against them because of their age or other vulnerability. Such victims should be able to rely on another person to intervene on their behalf.

Archbishop Hart acknowledged that prior to the 1990s some senior religious personnel in the Catholic Church responded to allegations of criminal child sexual abuse by removing offending priests from the parishes in which the allegations had been made and relocating them to new parishes where their history was not known and where they would not be suspected of any wrongdoing.¹¹¹ It is convenient to refer to this practice as offender relocation.¹¹²

Victoria Police gave evidence to the Committee:

As part of their process of 'handling' allegations of child sexual assault, the Catholic Church has on a number of occasions moved alleged offenders. This has included moving alleged offenders ... to other locations to impede police investigation. In the 1970s, 1980s and 1990s a number of alleged offenders were moved to different parishes after complaints were made to the church.¹¹³

111 *Transcript of evidence*, Catholic Archdiocese of Melbourne, Melbourne, 20 May 2013, p. 13.

112 Offender relocation is discussed in greater detail in Section 7.3.7 of Part C.

113 *Submission S201*, Victoria Police, p. 7.

The Committee heard that while offenders were often moved to a different parish, they could also be transferred overseas. The Committee also heard of a more recent example of this practice in the Jewish community.¹¹⁴

Offender relocation is discussed in detail in Section 7.3.7 of Part C. But it is useful to examine here the legal response to the risks inherent in the practice.

Prior to 1981, a person who engaged in offender relocation may have been found guilty of the offence of misprision of felony. The courts have described this offence as follows:

[A] person is guilty of the crime of misprision if knowing that a felony has been committed he fails to disclose within a reasonable time and having a reasonable opportunity for so doing his knowledge to those responsible for the preservation of the peace.¹¹⁵

The courts made it clear that ‘the offence lies in the failure to perform the duty to disclose. And so it matters not what induced the citizen concerned not to do his duty.’¹¹⁶ That is, it was not necessary for a person to benefit from not having reported a crime for that person to have committed an offence.

23.6.2. Modification of Victorian law is required

Following the abolition of the misprision of felony offence in Victoria in 1981, it is currently illegal to conceal a crime if you benefit from that concealment.¹¹⁷ In other words, and in the context of this Inquiry, a person will only be charged with an offence for failing to report the criminal abuse of a child if they have received some reward in exchange for maintaining their silence.

The Committee considers that there is a need to reform the law covering situations where an adult has knowledge of a serious indictable offence committed against a child and fails to report that information to police. The change would place an enforceable obligation on people who have knowledge of any serious offence, including sexual offences against children, to make a report to police. The aim is to send a clear message to the community that withholding information about crimes against children, or concealing that criminal activity without reasonable excuse, may carry severe legal consequences.

With respect to child abuse, serious indictable crimes would include offences such as indecent assault, physical assault or gross indecency.

23.6.3. Irish example of similar legislation

In recent times in Ireland there have been a number of reports cataloguing many appalling revelations of the sexual abuse of children in the Catholic Church and the failure to respond to that abuse.¹¹⁸ In Ireland, the Murphy Report¹¹⁹ found that at least until the mid-1990s, the Dublin Archdiocese dealt with cases of child sexual abuse in

114 *Transcript of evidence*, Mr Manny Waks, Melbourne, 10 December 2012.

115 *R v Stone* [1981] VR 737. per Crockett J at 741

116 *R v Crimmins* [1959] VR 270. 270 at 272

117 *Crimes Act 1958* (Vic) s.326.

118 Commission of Investigation (2009) *Report into the Catholic Archdiocese of Dublin*, Ireland, Department of Justice and Equality; Commission of Investigation (2005) *Report into the Catholic Archdiocese of Cloyne*, Ireland, Department of Justice and Equality; Commission of Investigation (2011) *Report into the Catholic Archdiocese of Ferns*, Ireland, Department of Justice and Equality.

119 Commission of Investigation (2009) *Report into the Catholic Archdiocese of Dublin*, p. 4.

secrecy. This was intended to avoid scandal, to protect the reputation of the Church and to preserve its assets. All other considerations, including the welfare and justice for victims, were subordinated to these priorities.

It is clear from these revelations, and the various published reports, that if those who had knowledge in the past of sexual offences against children had told the police, many children who later became the victims of abuse may have been protected from sexual predators.

The Committee has seen a similar situation reflected in the evidence of Victorian victims. The Irish reports prompted the drafting of the *Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Act 2012*. This Act provides some useful guidance for reform of Victorian law. The relevant section of the Irish legislation is set out in Box 23.1.

Box 23.1: Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Act, Number 24 of 2012

2. (1) Subject to this section, a person shall be guilty of an offence if—
- (a) he or she knows or believes that an offence, that is a Schedule 1 offence, has been committed by another person against a child, and
 - (b) he or she has information which he or she knows or believes might be of material assistance in securing the apprehension, prosecution or conviction of that other person for that offence,
- And fails without reasonable excuse to disclose that information as soon as it is practicable to do so to a member of the Garda Síochána ...
- (4) This section is without prejudice to any right or privilege that may arise in any criminal proceedings by virtue of any rule of law or other enactment entitling a person to refuse to disclose information.

Source: Irish Statute Book, available at: <http://www.irishstatutebook.ie/2012/en/act/pub/0024/index.html>

The Committee has considered circumstances where the victim is a child, for whom making a report to police and the subsequent criminal justice process may be too traumatic. Similar issues were considered prior to the enactment of the Irish legislation with provision made for various defences to the crime in circumstances where it was not in the interests of the child to report the crime.¹²⁰

23.6.4. Seal of confessional

One issue that arose during the Inquiry with a number of witnesses and in written submissions was the question of whether a Catholic priest would be liable for this kind of criminal offence, on the basis of failing to reveal information provided in the confessional from a perpetrator regarding criminal child abuse. Under canon law the sanctity of the confession is paramount. Further, under the provision of the *Evidence*

¹²⁰ *Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012* s.4.

Act 2008 (Vic) outlined in Box 23.2, the information provided to a Catholic priest in the confessional would be privileged.¹²¹

It is apparent that for many in the Catholic Church and other religious groups that have a rite of religious confession the removal of the present exemption under s.127 *Evidence Act 2008 (Vic)* would raise serious issues of conscience and tension between their perceived religious duty and their obligations to the secular community.

There is no superior canon law which binds the community or justifies non-compliance with the civil or criminal law by anyone. Equally obviously, the community accepts the importance of freedom of religion and will intervene only when required to do so in order to protect fundamental interests and values, and then only to the minimum extent necessary.

It is not always seen to be in the interests of our society to allow exemptions or privileges that conceal evidence and impede or defeat our legal processes. However, they are accepted because the enforcement of the broader principles underlying them are regarded as more important than the achievement of a desirable short term objective in a particular case. The right against self - incrimination and legal professional privilege provide examples of this choice. The limitations placed on our ability to compel the production of evidence represent the balance effected in a democratic community between the maximum recognition of personal autonomy reasonably available on the one hand and the rights and needs of the community on the other.

Fewer and fewer Catholics are utilising the sacrament of confession. The Committee was informed by representatives from Catholics for Renewal that 'that not many Catholics go to confession these days ... rarely on a one-to-one basis.'¹²²

As far as the sanctity of the confessional is concerned, recognition of the concept of religious belief on which it is based must be considered against the importance of protecting children against criminal abuse. The protection of children and the vindication of their rights is an overwhelming consideration. However, the central question is whether the removal of the exemption/privilege is likely to be of assistance in exposing offenders and bringing them to justice.

A similar issue arose in Ireland with the introduction of its legislation. As indicated in the submission by Catholics for Renewal:

... The debate about whether there should be any exemptions from the mandatory duty to report knowledge of the criminal abuse of children in the case of confession has been enlivened by the Irish Government's decision to proceed with legislation (The Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Bill 2012), which contains no such exemption provision and removes the right of priests to use the confessional seal as a reason for not coming forward with information concerning the abuse of children. This has placed the State, the Irish Government, in conflict with the Catholic Church which has indicated that it will not cooperate with this legislative requirement.¹²³

121 Section 127 of the *Evidence Act 2008 (Vic)*, outlined in Box 23.2.

122 *Transcript of evidence*, Catholics for Renewal Inc., p. 12.

123 *Submission S205*, Catholics for Renewal Inc., p. 29.

Box 23.2: Evidence Act 2008 (Vic) s.127*Religious confessions**127. Religious confessions*

- (1) 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 confession was made, or the contents of a religious confession made, to the person when a member of the clergy.
- (2) Subsection (1) does not apply if the communication involved in the religious confession was made for a criminal purpose.

Source: *Evidence Act 2008 (Vic)*.

Section 127 of the *Evidence Act 2008 (Vic)* outlined in Box 23.2 affords protection to religious personnel who are the recipients of confidential information in the context of a religious confession. A person who receives such information cannot be compelled to reveal this information. The privilege is limited to evidence of communication secured by a member of the clergy in those precise circumstances. It does not affect their obligation to provide evidence of their observations or communications in any other context. Nor does the provision appear to impact in any way upon the entitlement of a confessionalist to disclose what occurred. It would not for example preclude a child providing evidence of a complaint about grooming in the context of a confessional. The protection does not extend to any communication made for a criminal purpose.

As Catholics for Renewal indicated in its submission to the Inquiry:

There is an argument that the seal of confession should not be recognised by civil law given past Church failures. However, such an approach would be a grave step requiring confessors to breach a sacred trust with nothing to be gained by way of protecting children. However horrendous the crime and sin, State legislation to breach this trust would be ineffectual and would simply isolate the perpetrators from a potentially helpful source of guidance and contrition.¹²⁴

In 1987 the Australian Law Reform Commission considered whether the privilege should attach to such communications. It concluded on the basis of the concept of free exercise of religion, the perceived tension between Church and State and significantly, that there was no evidence from law enforcement authorities where the privilege existed, that its existence hampered law enforcement in any significant way, that such a privilege should remain.¹²⁵

The Committee considers that the current exemption in s.127(2) of the Evidence Act 2008 provides an appropriate check on the potential abuse of any communication in a religious confessional setting made for a criminal purpose. The operational effect would be that where a religious confession of criminal child abuse is made for the purposes of seeking assistance in concealing that crime, the exemption will not apply.¹²⁶

¹²⁴ *Submission S205*, Catholics for Renewal Inc., p. 30.

¹²⁵ Australian Law Reform Commission (1987) *Evidence (ALRC Report 38)*. ALRC. Paragraph 211– 213

¹²⁶ See Box 23.2

Finding 23.3

Section 326 *Crimes Act 1958* (Vic) currently requires proof that the person who concealed a serious indictable offence received a benefit. The failure to report to police knowledge of the commission of a serious indictable offence (including those relating to child abuse) and thereby concealing the offence should be punishable as a crime, regardless of whether any benefit is received.

The Committee requests that the Victorian Government is mindful that while Recommendation 23.1 has been considered in its application to the criminal abuse of children within organisations, if implemented it may become of general application. In consequence, in drafting any legislation there needs to be consideration of any unintended implications for other groups and individuals.

→ Recommendation 23.1

The Committee recommends that the Victorian Government consider amending Section 326 *Crimes Act 1958* (Vic) to remove the element of ‘gain’, to ensure that a person who fails to report a serious indictable offence involving the abuse of a child will be guilty of an offence.

23.7. Child endangerment

In order to further encourage people to report suspected abuse to police, the Committee considered that the Victorian Government should consider introducing a new criminal offence that would make it an offence to cause or permit any child to be placed or left in a situation that creates a substantial risk to the child of becoming a victim of serious harm or sexual abuse, or to fail to take reasonable steps to protect a child from such a risk while knowing that the child is in such a situation. Such an offence would cover the situation where a person wilfully disregards the risk of criminal abuse to a child.

Such a provision would help greatly to establish a strong legal framework to protect children at risk. It would mean that where a person in authority intentionally or recklessly fails to take steps to protect a child from harm or abuse, that person is guilty of an offence. People who know that a child is being abused and are in a position to do something about it would have a direct legal duty to intervene to save the child. ‘One cannot turn one’s eyes away and say that it is somebody else’s business or that it is too embarrassing to deal with.’¹²⁷

For the purposes of a child endangerment offence, such wanton or reckless behaviour would occur when a person is aware of, yet consciously disregards, a substantial and unjustifiable risk that the person’s acts or omissions placed a child in a situation that might endanger the child’s:

- life
- health
- welfare

¹²⁷ *Parliamentary Debates*, Minister for Justice and Equality—Criminal Justice Bill 2004: Second Stage Seanad Éireann Debate, Seanad Éireann (Ireland), vol. 184, no. 9, 21 May 2013, p. 731.

- morals
- emotional wellbeing.

The risk must be of such a nature and degree that disregarding the risk would constitute a gross deviation from the standard of conduct that a reasonable person would follow in the situation.

For a person to be found guilty of child endangerment, the State must prove that the defendant understood that their action posed a great risk of harm, yet they disregarded that risk and continued to perform the action. In proving the charge, it would not be necessary to prove that the defendant intended to cause the resulting harm. However, they must have intended to perform the act in question, and again they must have understood the risks associated with their conduct.

In June 2012 in the United States, Monsignor Lynn, a former cardinal's aide of the Archdiocese of Philadelphia, was found guilty of endangering children. The Monsignor was the first senior official of the Roman Catholic Church in the United States to be convicted of covering up sexual abuse by priests under his supervision. The New York Times reported that:

Monsignor Lynn served as secretary for clergy for the 1.5 million-member archdiocese from 1992 to 2004, recommending priest assignments and investigating abuse complaints. Prosecutors presented a flood of evidence that Monsignor Lynn had not acted strongly to keep suspected molesters away from children, let alone to report them to law enforcement.¹²⁸

The New York Times also reported that prosecutors argued that the Church 'sought to avoid scandal and costly lawsuits at almost any price, putting the reputation of the archdiocese ahead of protecting vulnerable children.'¹²⁹

Finding 23.4

The creation of the offence of child endangerment will impose criminal responsibility on those who act understanding that their action may pose a substantial and unjustifiable risk of harm to children, but who disregarded that risk and acted accordingly.

→ Recommendation 23.2

The Committee recommends that the Victorian Government consider the introduction of a criminal offence relating to child endangerment to cover relevant wanton or reckless behaviour in situations:

- when a person is aware of and consciously disregards a substantial and unjustifiable risk that their acts or omissions placed a child in a situation that might endanger the child's life, health, welfare, morals, or emotional well-being
- where the risk is of such a nature and degree that disregarding the risk would constitute a gross deviation from the standard of conduct that a reasonable person would observe in the situation.

128 J. Hurdle & E. Eckholm (June 22, 2012) *Cardinal's aide is found guilty in abuse case*, New York Times. Accessed on 28 May 2013 from www.nytimes.com.

129 J. Hurdle & E. Eckholm (June 22, 2012) *Cardinal's aide is found guilty in abuse case*.

23.8. Need for laws to protect those who report criminal child abuse in an organisation

The Committee considered the further reform of extending protections under ‘whistleblower’ legislation to cover individuals who reported incidents of criminal abuse of a child in the care of a religious or other non-government organisation. Such individuals can play a critical role in protecting children in organisational settings.

The Committee heard from a number of witnesses about their experiences in the organisation when they tried to report criminal child abuse. These witnesses saw the law as having a key role to play in giving appropriate and effective protections against retaliations for reporting.¹³⁰ Some whistleblowers told the Committee that they felt they had been forced, one way or another, from their jobs and then from their careers, as a consequence of their complaint about the conduct of a person in their organisation towards children in their care. Their resignations were met with support in some instances but in others they encountered criticism from members of the community who continued to find it incomprehensible that religious personnel in the Catholic Church could ever commit such atrocities and therefore maintained their support for the priest. Mr Graeme Sleeman explained:

The sad part about all this is that my mother died before I could be vindicated. She disowned me because I should have kept my mouth shut, and that is the saddest thing. Even though my mum thought I was the most educated no-hoper, she still did not believe that I should have done what I have done.¹³¹

The Committee heard evidence that the Catholic Education Office Melbourne established a whistleblower protection policy. The current version is dated 2007. The policy is described as being ‘underpinned by a strong commitment to building a culture in Catholic education workplaces that reflects sound governance and that promotes ethical behaviour in the detection and management of fraudulent, corrupt or improper conduct.’ Mr Stephen Elder, Executive Director of the Catholic Education Commission of Victoria, told the Committee that this policy enables any person to ‘make an anonymous complaint to the designated whistleblower person within the office, and that can be dealt with.’¹³²

Mr Dennis Torpy, Manager of Wellbeing and Community Partnerships in the Catholic Education Office Melbourne, told the Committee that:

Under our policy of allegations of misconduct against lay employees there is clear detail about what processes should be followed hand in hand with mandatory reporting. They include clear steps around maintaining confidentiality, as well as appropriate documentation, reporting, and careful listening and understanding of the allegation at the same time. So that is set out as well to ensure confidentiality.¹³³

The Committee considered whether it was necessary to recommend amendments to the *Protected Disclosure Act 2012* (Vic). This Act aims to encourage and enable

¹³⁰ *Transcript of evidence*, Mr Graeme Sleeman, Melbourne, 23 January 2013; *Transcript of evidence*, Ms Carmel Rafferty, Melbourne, 23 January 2013; *Transcript of evidence*, Ms Sandra Clark, Melbourne, 25 March 2013.

¹³¹ *Transcript of evidence*, Mr Graeme Sleeman, p. 14.

¹³² *Transcript of evidence*, Catholic Education Office Melbourne & Catholic Education Commission of Victoria, Melbourne, 3 May 2013, p. 5.

¹³³ *Transcript of evidence*, Catholic Education Office Melbourne & Catholic Education Commission of Victoria, p. 6.

disclosure of improper conduct, reporting of experiences of reprisal against a person who has made a disclosure, and protection and confidentiality for those affected by such disclosures.¹³⁴ The definition of improper conduct includes conduct that would constitute a criminal offence.¹³⁵

The Act presently only covers the public sector and does not apply to the corporate, unincorporated or charitable sectors. As Dr Tucci from the Australian Childhood Foundation told the Committee:

The Australian Senate Community Affairs Committee recommended that governments introduce whistleblower legislation to cover not-for-profit and religious sectors. Whistleblower legislation is already in place for government and corporate organisations. We would see that if you had whistleblower protections under various Acts, you would make the system far more transparent and far more accountable. You would encourage people to come forward and expose, in a contemporary way, the abuse and exploitation of children within religious and not-for-profit organisations.¹³⁶

However, the Committee is of the view that the proposed reform to create a criminal offence for failing to report information about abuse or suspected abuse to police is enough to meet these concerns. That is, the Committee recommends that failure to report to police information about criminal child abuse in an organisation be made a criminal offence, and those that fail to report be subject to criminal sanctions. In those circumstances, the actions of a 'whistleblower' would be protected and justified because they would be acting in accordance with the law.

134 *Protected Disclosure Act 2012* (Vic) s.1.

135 *Protected Disclosure Act 2012* (Vic) s.4.

136 *Transcript of evidence*, Australian Childhood Foundation, p. 3.

PART H

CIVIL JUSTICE REFORM



The Committee identified that for many victims of criminal child abuse, the option of pursuing a claim through civil litigation is critical. However, significant barriers prevent victims from achieving justice through this avenue. This part of the Report proposes ways to improve the path to civil litigation for victims of criminal child abuse in organisational settings. It also considers the civil liability of organisations for such abuse and identifies potential areas for legislative reform.

The Committee is aware that the civil justice system has many limitations that the recommendations of this Report will not overcome. These include practical barriers such as the financial and psychological position of victims of criminal child abuse, evidentiary issues relating to historical events, the difficulty in creating rights or obligations under the civil law retrospectively and the sometimes limited outcomes that the civil litigation system offers. For this reason, despite the civil law reforms recommended in this part of the Report, a number of victims of criminal child abuse in organisational settings will not be in a position to pursue a civil claim. Therefore, the Committee considers that it is important to develop an alternative justice approach alongside the existing traditional civil justice avenues.

Victims, justice and the importance of civil litigation

Many victims told the Committee that the option of commencing civil proceedings is an important part of their search for justice. Victims recognised the significant barriers to civil litigation, but many perceived that civil judgements were critical for achieving justice, including public acknowledgement of wrongdoing by organisations.

In the words of one of the victims who gave evidence to the Inquiry:

The wrongs of the present also include the multiple legal barriers for survivors and victims in finding justice.¹

Victims felt strongly that non-government organisations should not stand in their way in pursuing justice through the courts. A victim who went through the Catholic Church's Towards Healing process told the Committee that:

Towards Healing should allow the victims to seek justice through the legal system at the same time as their process is running. This gives the appearance of the church running its own legal system behind closed doors.²

Inquiry participants made a strong call for governments to make laws that would ensure that organisations could be held vicariously liable for criminal child abuse perpetrated by their members. As one victim explained:

I think the laws of vicarious liability should be amended in Victoria so that priests and religious are treated as employees and church authorities are held responsible for breaches committed by the church personnel. If that were the case, my section 85B would have been paid. But they have denied any liability.³

1 *Transcript of evidence*, Ms Judith Courtin, Ballarat, 28 February 2013, p. 2.

2 *Submission S477*, Name withheld.

3 *Submission S462*, Name withheld. Section 85B of the *Sentencing Act 1991* (Vic) is about sentencing orders. It provides that application can be made at the time of the sentencing for a Court order that an offender pay compensation to the victim.

Many victims told the Committee that ensuring organisations have a legal entity that can be sued by victims of child abuse is fundamental to the exercise of their rights. The following quotes represent the views of many victims on this issue:

One of the things I would like to say is that I think the Church should be forced to become a legal entity. It should be able to be sued over abuses by people in its employ. As it is, the institution of the church is under no real threat—it is just a real inconvenience that they have had to suffer this—and therefore I do not think they will change.⁴

Basically at the end of the day, there was nothing. You could not sue anyone. There was no such thing as the Catholic Church. We could not sue anyone.⁵

The wealth of the church and other organisations must be readily accessible to victims through our legal system. Victorian legislation currently allows the church to segregate its wealth in ways that deny victims access to just compensation. Officeholders should be able to be held liable in relation to the sexual abuse of children occurring during the period of their predecessors in office. Unlike the managers of other entities, the Archbishop of Melbourne, for example, is able to deny responsibility for any wrongdoings done by his predecessor.⁶

The importance of alternative justice avenues

Despite the importance of reforms to civil litigation, Inquiry participants told the Committee that many victims will never be in a position to pursue civil claims in the courts (see Chapter 25 and Chapter 26 for a discussion of the practical, evidentiary and legal barriers to civil litigation). Accordingly, many victims considered that alternative forms of achieving justice were important.

Victims of child abuse emphasised a broad range of concerns in relation to achieving justice, particularly the need to be heard and believed and for the organisation to take responsibility for what happened to them. While acknowledging that financial compensation is important to victims, Ms Angela Sdrinis of Ryan Carlisle Lawyers explained:

More than the money, there also has to be a real acknowledgement of the wrongdoing and apology—restorative justice, if you like—where the organisation is able to say, ‘We recognise what happened to you, we apologise for it. Here is an offer of compensation which is a gesture which expresses a belief that you suffered at our hands.’ That all has to be part of the process.⁷

Many victims told the Committee that they sought justice through processes established by some non-government organisations. While many received financial compensation, pastoral support and counselling through these processes, most did not feel they achieved justice. Many victims told the Committee that they felt that they had not been heard, had not been adequately supported, or had not received genuine acknowledgement of the role of the organisation in allowing the abuse to occur. Some perceived the responses as adversarial and others perceived them as designed

4 *Transcript of evidence*, Ms Anne Murray, Ballarat, 28 February 2013, p. 10.

5 *Submission S478*, Name withheld.

6 *Transcript of evidence*, Mr Anthony & Mrs Chrissie Foster, Melbourne, 23 November 2012, pp. 7–8.

7 *Transcript of evidence*, Ryan Carlisle Thomas Lawyers, Melbourne, 17 December 2012, p. 8.

to limit the accountability of the organisation. For a more detailed discussion of these processes, refer to Part F.

The Committee considered that the difficulties victims have faced in accessing justice under the civil law is one of the primary reasons that victims seek out remedies directly through non-government organisations. For example, the Committee heard many examples of non-government organisations accepting that abuse took place or paying compensation where no such entitlement would have existed under civil law.

Inquiry participants delivered a strong message to the Committee that Victoria needs a government-run justice process that supports victims and that is paid for by non-government organisations. Such an avenue could give recourse to victims where civil litigation is not available or appropriate. For example, Mr Peter Blenkiron told the Committee:

People have had enough. Healing does not have to take place just for us survivors; it has to take place in the community as well. Unless we can put something in place, run by the government and paid for by the Church or the responsible religious body, then the healing will not happen.⁸

The role of non-government organisations

Not only do non-government organisations hold out members, employees, volunteers and others who represent their organisation in the community as credible and trustworthy individuals, but with the knowledge of the organisation, the individuals possess their status and respect by reason of their association with it. The Committee considers that, because of its contribution to this special relationship of trust, an organisation has a duty of care to take reasonable steps to protect children from abuse by employees, volunteers and others whom it has engaged. This is discussed further in Chapter 26.

A matter of great concern to the Committee and participants in the Inquiry was the extent to which some non-government organisations rely on technical legal defences accorded by the traditional civil justice system. For example, although Cardinal George Pell insisted that ‘we have never relied on a legal technicality—I have not’, from the Committee’s perspective this has not been the approach. Cardinal Pell went on to explain in relation to the case of *Trustees of the Roman Catholic Church v Ellis & Anor* (discussed in more detail in Section 26.2) that:

If he had sued the right person, if he had sued the archbishop at the time, there might have been some possibility of that, but even there in law the archbishop was not aware of that offence and therefore he is not legally liable.⁹

In that case, the Catholic Church relied on the inability of the plaintiff/claimant to identify an appropriate defendant who was responsible for appointing and monitoring the perpetrator. Cardinal Pell did not indicate whether the Catholic Church was willing to identify a nominal defendant against whom a claim could be made—one that would allow claimants to argue the substantive issues of liability in the court and that would have sufficient funds to meet any judgement.

⁸ *Transcript of evidence*, Ballarat & District Group, Ballarat, 28 February 2013, p. 5.

⁹ *Transcript of evidence*, Catholic Archdiocese of Sydney, Melbourne, 27 May 2013, p. 55.

The Committee acknowledges that, in common with all other individuals and bodies in the community, non-government organisations have a right to argue their case in a court of law. However, it considers that there is an obvious tension between such reliance on technical legal defences (particularly by religious organisations) and a real commitment to ensuring justice for victims of criminal child abuse. Indeed, the Committee saw this lack of commitment as part of the reason that government intervention has become necessary.

At a minimum, the Committee considers that a non-government organisation party to a court case should nominate an entity to act as a nominal defendant to enable the courts to determine the substantial merits of the case.

The Committee is encouraged by the cooperation of non-government organisations throughout the Inquiry and notes that most undertook to comply with the Committee's recommendations. Cardinal George Pell, for example, stated, 'whatever we are compelled to do, we will do'.¹⁰ He further indicated:

I am certainly totally committed to improving the situation; I know the Holy Father is too. I know there are significant persons in the community and in the Church who believe, rightly, that we have failed ... We have done quite a deal. I commit myself to doing whatever further is required and appropriate so that we can bring a bit more peace.¹¹

Br Julian McDonald from the Christian Brothers stated:

I know that we will never fully comprehend the extent and depth of the pain carried by all of you out there who have been victims of abuse by Christian Brothers. I can only extend to you our profound apologies, beg your forgiveness and assure you that the Christian Brothers will do their best to right the wrongs that have been done to you.¹²

Similarly, Sr Angela Ryan from Towards Healing indicated:

We are open to suggestions as to how to improve the process, and we look forward to this Inquiry and the Royal Commission making recommendations in relation to such improvements.¹³

Furthermore, in their evidence before the Inquiry, non-government organisations have acknowledged that the financial compensation awarded through existing traditional and alternative avenues does not, of itself, adequately meet the needs of victims. For example, Mr David Curtain QC, Chairman of the Melbourne Response Compensation Panel, made this point clearly in his evidence to the Inquiry:

Can I tell you this: that is nowhere near enough and [victims who have pursued litigation] would also say the money that was achieved at settlement in litigation was not enough. That is my point: it is never full compensation. So when you talk to me about full compensation, please understand I accept fully it is never enough, but I never suggested that this was full compensation in the *Melbourne Response*.¹⁴

Similarly, Archbishop Philip Freier of the Anglican Archdiocese of Melbourne told the Committee:

10 *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 26.

11 *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 57.

12 *Transcript of evidence*, Christian Brothers, Melbourne, 3 March 2013, p. 36.

13 *Transcript of evidence*, Towards Healing, Melbourne, 3 May 2013, p. 25.

14 *Transcript of evidence*, Compensation Panel, Melbourne Response, Melbourne, 3 May 2013, p. 9.

Where there are omissions or where we have had something we have not seen, we are eager to learn from that and certainly look forward to the deliberations of your Committee.¹⁵

All the non-government organisations which appeared before the Committee confirmed their commitment to righting the wrongs of the past, and many acknowledged the need for a victim-centred approach.¹⁶

Finding

Non-government organisations that appeared before the Committee undertook to comply with any Committee recommendations that would improve their processes for responding to child abuse claims.

15 *Transcript of evidence*, Anglican Diocese of Melbourne, Melbourne, 22 April 2013, p. 17.

16 See, for example, *Transcript of evidence*, Salesians of Don Bosco, Melbourne, 29 April 2013.

Chapter 24

What are the different forms of civil justice?

AT A GLANCE

Background

There is a range of traditional and alternative justice avenues in Victoria for victims of criminal child abuse in organisations:

Each of the existing avenues of civil justice has its strengths and weaknesses.

There is a role for non-adversarial justice avenues that provide an alternative to traditional forms of justice.

- civil litigation, including court-ordered mediation
- victims of crime tribunal
- non-government organisation protocols.

Key finding

- There is no existing independent avenue in Victoria for the resolution of claims by victims of criminal child abuse in organisational settings that is paid for by non-government organisations.

24.1. Relevant justice approaches in Victoria

The Committee identified the following justice approaches in Victoria that are relevant to criminal child abuse in organisations:

- civil litigation, including court-ordered mediation
- Victims of Crime Assistance Tribunal (VOCAT)
- non-government organisation protocols.

The Committee's aim is to improve all three forms of dispute resolution through its recommendations.

The importance of civil court judgements in providing public acknowledgement and vindication is discussed in detail in Chapter 25. Victims who commence civil proceedings can also request or be directed to court-ordered mediation, which is an alternative dispute resolution avenue for resolving civil claims. While court-ordered mediation may provide some cost savings and efficiency, the Committee considered that it may not go far enough in achieving justice for victims.

VOCAT provides state-funded compensation for victims of crime, including child abuse victims in organisational settings, even if the perpetrator cannot be found or has no money. VOCAT focuses on supporting and hearing victims of crime and addressing their needs. The ability to have a case heard before a magistrate contributes to the acknowledgement of the harm, a key feature of justice sought by victims. However, this avenue does not require non-government organisations to contribute financially or otherwise assist victims of criminal child abuse in non-government organisations. VOCAT is discussed in more detail in Chapter 27.

Protocols established by non-government organisations vary greatly. These protocols generally respond to claims with some form of alternative dispute resolution. For example, in its submission to the Inquiry, the Catholic Church described the Melbourne Response Compensation Panel as a dispute resolution process.¹⁷ Most non-government organisations provided apologies to victims of criminal child abuse, and some sought to address their pastoral and counselling needs. For example, Archbishop Freier of the Anglican Archdiocese of Melbourne told the Committee:

We remain very conscious that there are real people behind each of these numbers, and I hope our engagement with them has been of some assistance in their recovery of hope and confidence. We have wanted most of all to have restorative outcomes for people who have reported abuse.¹⁸

However, the Committee found that many victims did not perceive that these processes established by non-government organisations achieved justice for them. For a detailed discussion of processes adopted by non-government organisations, see Part F.

Based on the range of views presented to the Inquiry about what justice means to victims, the Committee heard that victims expect justice avenues to provide:

- independent acknowledgement of both the abuse and the role, if any, of the non-government organisation in the occurrence of that abuse

¹⁷ *Submission S185*, Catholic Church in Victoria, p. 57.

¹⁸ *Transcript of evidence*, Anglican Diocese of Melbourne, p. 26.

- acknowledgement by the organisation itself of its role in contributing to the abuse
- financial compensation and other supports paid for by the organisation.

The Committee determined that there is currently no existing justice avenue in Victoria that provides all these outcomes. For example, one victim told the Committee about her frustration at the lack of appropriate avenues:

If it were not for VOCAT or this Parliamentary Inquiry, I would have no alternative other than to carry this knowledge on my own. I would like to add that the VOCAT award was made at the taxpayers' expense, not at the Church's.¹⁹

Table 24.1 summarises the strengths and weaknesses of justice avenues available in Victoria for victims of criminal child abuse in organisational settings.

Table 24.1: Strengths and weaknesses of current Victorian justice approaches relevant to child abuse in organisational settings

Justice approach	Strength	Weakness
Courts—litigation	Court judgements provide public acknowledgement and vindication.	<ul style="list-style-type: none"> • Few cases are determined, due to legal and practical barriers (most are settled privately). • Legalistic and adversarial. • Time consuming. • Costly.
Courts—mediated settlements	<ul style="list-style-type: none"> • Can save costs. • Can reduce the time required to achieve resolution. • Provides an avenue for non-government organisations to fund compensation. 	<ul style="list-style-type: none"> • Can still be legalistic and adversarial, because mediation generally focuses on parties reaching agreement within the legal parameters of the case, rather than focusing on the needs of victims. • Usually no public acknowledgement of wrongdoing.
VOCAT—state-funded compensation	<ul style="list-style-type: none"> • Less legalistic. • Victims support services provided. • Legal representation funded. • Cases heard before a magistrate. 	<ul style="list-style-type: none"> • Limited compensation. • Time limits apply. • Does not provide an avenue for non-government organisations to fund compensation and other supports.
Non-government approaches: <ul style="list-style-type: none"> • private settlement negotiation • private settlement determination 	<ul style="list-style-type: none"> • Many provide compensation where none would have been available through legal avenues. • Many provide or fund counseling. • Many provide apologies. • Some are less legalistic. • Some provide pastoral support. 	<ul style="list-style-type: none"> • Actual and perceived independence is lacking. • Limited compensation (less than that achievable through successful litigation). • Some are legalistic. • Apologies not always seen as genuine. • Legal representation is not funded.

Source: Compiled by the Family & Community Development Committee.

19 Submission S465, Name withheld.

Based on these strengths and weaknesses, the Committee identified a number of reforms to civil litigation (Chapter 26), improvements to VOCAT (Chapter 27) and the need to expand the role of VOCAT to encompass an avenue for the resolution of claims by victims of criminal child abuse in organisational settings (Chapter 28).

Finding 24.1

There is no existing independent avenue in Victoria for the resolution of claims by victims of criminal child abuse in organisational settings that is paid for by non-government organisations.

Chapter 25

Why is access to civil litigation important?

AT A GLANCE

Background

The importance of civil litigation for victims of criminal child abuse was strongly emphasised in the evidence provided to the Committee. Many victims saw civil litigation not only as an avenue to seek compensation, but also as a form of acknowledgement and accountability for the harm they have suffered.

However, there are significant practical and evidentiary barriers that can prevent victims of child abuse from pursuing civil litigation against organisations.

Key findings

- Victims of criminal child abuse have a fundamental right to sue non-government organisations for damage they have suffered at the hands of representatives of that organisation. This course is an important avenue for some victims of criminal child abuse to achieve justice.
- Court judgements provide a valuable and practically available form of public condemnation for criminal child abuse, and create a powerful incentive for organisations to change their practices to prevent child abuse.
- No civil claims of criminal child abuse made against organisations have been decided by the Victorian courts. Instead, civil litigation in such cases is usually resolved by private settlements.
- Victims can be at a disadvantage in private settlement negotiations, due to their lack of resources and the evidentiary, legal and practical barriers of challenging an organisation in court. The emotional impact of an adversarial battle also acts as a deterrent to litigation for already suffering victims of criminal child abuse.
- Barriers to litigation for victims of criminal child abuse in organisational settings include:
 - ♦ lack of financial means
 - ♦ lack of emotional resources
 - ♦ practical limitations associated with the typically lengthy delay in bringing cases to court
 - ♦ family considerations.

The Committee identified civil litigation as an important part of some victims' search for justice. As discussed in Part B of this Report, victims saw civil litigation not only as an avenue to seek compensation, but also as a form of acknowledgement and accountability for the harm they have suffered.

The Committee found that a number of practical and legal barriers prevent victims from pursuing civil litigation against perpetrators of criminal child abuse, and against organisations for failing to take reasonable care to prevent the abuse from occurring.

Evidence provided to the Committee strongly emphasised the importance of law reform to remove barriers so that victims could issue and succeed in civil proceedings against organisations. Linked to the reforms is the Committee's view that improving a victim's access to litigation may act as a powerful incentive for organisations to be proactive in preventing criminal child abuse. In the words of Dr Tom Keating, who spoke about his experience with the Catholic Church:

Were church resources seriously under threat through civil suit, I believe that church authorities would quickly take action to limit their exposure. They would become vigilant and act to ensure that children were not placed at risk. At present they have very little to lose.²⁰

The Committee heard that because of the perceived barriers to civil litigation, many victims of criminal child abuse in Catholic Church organisations feel their only alternative is to seek compensation through the internal processes of the organisation concerned. For example, Dr Joseph Poznanski told the Committee:

In fact, my clients are advised by their lawyers that civil litigation or going through the County Court is not going to result in any compensation. At the end the Melbourne Response and Towards Healing are the only processes where the clients can achieve some compensation, so they are somewhat cornered into this situation.²¹

The Committee concluded that organisations have an important role to play in allowing civil cases relating to organisational child abuse to be tested on their merits in a court of law. This is discussed further in Chapter 26.

The Committee acknowledges that law reform is important in this area.

Finding 25.1

Victims of criminal child abuse have a fundamental right to sue non-government organisations for damage they have suffered at the hands of representatives of that organisation. This course is an important avenue for some victims of criminal child abuse to achieve justice.

25.1. What does civil litigation achieve for victims of child abuse?

Civil litigation is an avenue through which victims of criminal child abuse can seek financial compensation ('damages') in a court of law for the harm they have suffered. The process for pursuing civil litigation for victims of criminal child abuse in organisational settings is outlined in Figure 25.1.

However, the Committee found that because of the significant barriers to civil litigation, many victims do not pursue this avenue. Victims who do pursue civil claims invariably discontinue proceedings or settle out of court.

²⁰ *Transcript of evidence*, Dr Tom Keating, Melbourne, 10 December 2012, p. 4.

²¹ *Transcript of evidence*, Dr Joseph Poznanski, Melbourne, 1 March 2013, p. 7.

Figure 25.1: Civil litigation process for victims of child abuse



Source: Compiled by the Family and Community Development Committee.

Only a small number of civil cases alleging criminal child abuse in an organisational setting have been decided in Australia, and the Committee is not aware of any cases that have proceeded to trial in Victoria.²² Accordingly, only a few reliable precedents exist regarding the civil liability of organisations in Victoria.

Some victims told the Committee that organisations have favoured resolving civil litigation claims by settlement (although under the present law, there was only a small prospect the organisation would not succeed in defending itself against the claim). Some Inquiry participants considered that the organisation followed this course not out of concern for victims, but in order to avoid the public exposure of a civil litigation trial. Had there been any such concern for the victims, it is reasonable to assume that organisations would have been prepared to act as a nominal defendant (as discussed in Chapter 26). Ms Pam Krstic of In Good Faith and Associates, for example, told the Committee:

The church needs to nominate a legal church entity for civil litigation—these victims deserve the right to be able to sue. And they should agree to be a model litigant, as the Victorian state government has agreed in cases of sexual abuse in government institutions.²³

Mr Michael Holcroft, President of the Law Institute of Victoria, supported this view. He indicated that the Law Institute would not encourage churches to make aggressive use of legal defences in cases where the church's own inquiries have found that criminal child abuse has taken place. Mr Holcroft stated:

If they [the churches] have formed the view through their own inquiries that it is likely that the abuse took place, I would say it is inappropriate to then plead to the court in any court proceedings elsewhere. In fact they may in fact be misleading the court if that is the case, and there is an obligation by the lawyers and by the participants of litigation not to mislead the court.²⁴

Although victims recognised clearly the barriers to achieving a civil judgement, many perceived that civil judgements could deliver some aspects of justice that private settlements could not. The Committee therefore drew a distinction between the outcomes that victims can hope to achieve through a civil court judgement and outcomes through a private settlement.

Civil litigation—a court process for victims of criminal child abuse to sue the perpetrator of the abuse (or possibly another party for failing to prevent the abuse, for example the organisation of which the perpetrator is a representative) for 'damages' or financial compensation for the harm suffered.

Civil litigation can either proceed to trial and be resolved by a court judgement, or can proceed to private settlement.

A civil case that proceeds to trial is heard before a judge or in some cases a jury. Once liability is established, the quantum of damages to be paid is assessed.

The standard of proof under civil litigation is the 'balance of probabilities'. This is a lower standard of proof than the one applied in criminal proceedings.

22 Archbishop Denis Hart of the Melbourne Catholic Archdiocese, for example, confirmed that there have been no judgements against the Catholic Church in Victoria: *Transcript of evidence*, Catholic Archdiocese of Melbourne, Melbourne, 20 May 2013, p. 47. In Australia, notable decisions relating to civil claims against organisations relating to child abuse include *State of New South Wales v Lepore* [2003] 212 CLR 511. *Trustees of the Roman Catholic Church v Ellis & Anor* [2007] NSWCA 117.

23 *Transcript of evidence*, In Good Faith and Associates, Melbourne, 12 November 2012, p. 19. See also, for example, *Submission S203*, Waller Legal, p. 7.

24 *Transcript of evidence*, Law Institute of Victoria, Melbourne, 17 December 2012, p. 12.

25.2. Civil litigation court judgements

Court judgements in civil litigation trials focus on ‘damages’ (financial compensation) as the legal remedy for harm. Although there have not been court judgements favourable to victims of criminal child abuse in organisations in Victoria, there are signs that the courts are willing to award substantial damages in cases of child abuse generally. For example, in the recent Victorian Supreme Court decision of *GGG v YYY*, a victim of criminal child abuse perpetrated by a relative was awarded \$267,000 in total damages.²⁵

Many Inquiry participants saw a court judgement as an avenue for the public acknowledgement of wrongdoing that many victims sought. For example, Dr Jane Wangmann, although noting the many barriers to civil litigation, told the Committee:

One of the things the [civil litigation] system does do well if you get a judgement is the judge actually writes a decision saying why you got the compensation that you did. Often those judges go through that process of saying, ‘I acknowledge that this can never compensate’.²⁶

The Committee heard extensively from victims about the importance of acknowledgement. For example, Mr Chris Pianto expressed his views on the importance of this type of acknowledgement:

I desperately needed a judgement to prove that I was telling the truth as there were some sceptics as to whether or not I was telling the truth amongst the Catholic community.²⁷

Furthermore, the Committee heard that court judgements provide a valuable and practically available form of public condemnation for criminal child abuse, which can serve as acknowledgement of the harm caused not only to the victim but to the community. Furthermore, potential exposure of financial assets is a powerful incentive for organisations to change their practices to prevent criminal child abuse. The Committee recognises, however, that the vast majority of civil litigation claims against organisations do not result in publicly available court reports or judgements, but are instead resolved through private settlements.²⁸

Finding 25.2

Court judgements provide a valuable and practically available form of public condemnation for criminal child abuse, and create a powerful incentive for organisations to change their practices to prevent child abuse.

25 *GGG v YYY* [2011] VSC 429.

26 *Transcript of evidence*, Dr Jane Wangmann, University of Technology, Sydney, Melbourne, 12 November 2012, p. 7.

27 *Transcript of evidence*, Mr Chris Pianto, Geelong, 15 February 2013, p. 3.

28 The lack of court judgements is not limited to Australia. The Committee is aware of several cases in the United States where large amounts of damages were awarded to victims of child abuse in religious organisations. However, the vast majority of claims in the United States have been settled out of court. As at 2010, as few as 43 of the thousands of civil cases filed were resolved in a court of law. BishopAccountability.org, *Documenting the abuse crisis in the Roman Catholic Church*. Accessed on 29 May 2013 from www.bishopaccountability.org/.

25.3. Civil litigation settlements

Victims who commence civil proceedings can request or be directed to court-ordered mediation, with a view to resolving the civil claim.

Where civil litigation proceeds to mediation, an independent mediator is appointed by the court or agreed to by the parties. Mediators are approved by the Victorian Bar and the Law Institute of Victoria and are generally accredited specialists in mediation. If the dispute is resolved, parties enter into a written agreement and apply to the court to finalise the case. Court-ordered mediation is generally faster and cheaper than full litigation, and the cost of mediation is shared by the parties.²⁹

In contrast to civil court judgements, mediated private settlements focus on facilitating a negotiation between the parties. Mediators can consider options that are broader than those that can be considered by the court. Therefore, mediated settlements can address a broad range of victims' needs. These needs include, but are not limited to, financial compensation. However, because these settlements are private, it is difficult to know to what extent victims are able to successfully negotiate the outcomes they seek. Furthermore, the Committee notes that court-ordered mediation is generally focused on parties reaching agreement within the legal parameters of the case, rather than focusing on the needs of victims outside the litigation. Therefore, court-ordered mediation can still be legalistic and adversarial in nature, and may not go far enough in achieving justice for victims.

The Committee found that victims can be at a disadvantage in settlement negotiations. As well as being hindered by the legal impediments outlined in Chapter 26, victims rarely have the money needed for lengthy legal proceedings against a wealthy organisation. Some victims may also have dysfunction in their life that can weaken their apparent credibility and their ability to present evidence in a court of law. Others have missed out on learning the basic literacy skills needed to participate in legal action (the effects of abuse on the confidence, education and other aspects of victims' lives are discussed in Part B). Additionally, many of the complaints of criminal child abuse are historical and there are obvious evidentiary problems in proving matters relevant to events that occurred many years ago.

Out-of-court settlements generally do not enable the wider community to recognise or acknowledge the harm that victims have suffered. Victims told the Committee that this was an important aspect of justice and redress.

On the other hand, the Committee heard that civil claimants who settle out-of-court can achieve higher compensation amounts than those who seek redress through statutory or private avenues.³⁰

One victim also commented on the Catholic Church's approach:

If one were to look back at the different stages of this crisis and compare it to other scandals throughout the decades, the Church's response would appear to be straight from a corporate handbook on how to deal with scandals, with the primary goal of limiting legal and financial liability and damage to reputation.³¹

²⁹ Supreme Court of Victoria Mediation. Accessed on 27 July 2013 from <http://www.supremecourt.vic.gov.au/home/support+services/mediation/>; County Court of Victoria Mediation. Accessed on 27 July 2013 from <http://www.countycourt.vic.gov.au/mediation>.

³⁰ *Transcript of evidence*, Compensation Panel, p. 10.

³¹ *Submission S468*, Name withheld.

The following statement by Cardinal George Pell suggests that, historically, concern for the reputation of the Catholic Church outweighed concerns about the Church's exposure to financial claims:

Money is a factor. In my mind it was never the primary factor, and I suspect that was the case in many other instances of church leadership. There was a greater fear of scandal, a greater concern for the reputation of the church.³²

In spite of evidence that civil litigation achieves several types of justice as identified in Section 25.1, the Committee heard that the practical and legal barriers to civil litigation prevent it from being an effective avenue of achieving justice for many victims.

Finding 25.3

No civil claims of criminal child abuse made against organisations have been decided by the Victorian courts. Instead, civil litigation in such cases is usually resolved by private settlements.

Finding 25.4

Victims can be at a disadvantage in private settlement negotiations, due to their lack of resources and the evidentiary, legal and practical barriers of challenging an organisation in court. The emotional impact of an adversarial battle also acts as a deterrent to litigation for already suffering victims of criminal child abuse.

25.4. Practical and evidentiary barriers to civil litigation

Many victims told the Committee that they are not in a financial or emotional position to undertake civil litigation. For example, Ms Sandra Higgs, a victim in a criminal trial that stalled after the death of the accused priest, told the Committee that she did not pursue civil litigation because she was not in a financial position to do so.³³ Many victims rely on lawyers willing to take on their case under a 'no win, no fee' basis. It is reasonable to assume that, however well motivated such practitioners may be to help victims, there will be practical limitations on how far they will be prepared or able to pursue cases.

Furthermore, the very nature of claims relating to criminal child abuse means that cases are more likely to be strenuously defended in the courts in order to protect the reputation of individuals and organisations against which allegations are made. Non-government organisations, on the other hand, may have considerably more funds available for defence lawyers. This can give rise to substantial inequality between the parties in civil litigation and in the negotiation of settlements.

Ms Phyllis Cremona of the Care Leavers Australia Network (CLAN) explained that prosecuting a claim can also be very emotionally difficult for victims:

We should not underestimate the degree of trauma involved in prosecuting a claim, even if it results in a successful outcome. After having to prove their case of childhood abuse many times, documenting their abuse and finally being believed, survivors

³² *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 19.

³³ *Transcript of evidence*, Ms Sandra Higgs, Geelong, 15 February 2013, p. 6.

often find that opening up their old wounds and scars and recounting their abuse contributes to their life spiralling out of control, for some a considerably long time after the legal process has finished. One man well known to us did receive a payout through the process ... However, despite the outcome, it took three years to get his life back into some order where he could function on a day-to-day basis. This litigant commented, 'There has to be a better way than this. It is just too traumatic.'³⁴

As described throughout this Report, the Committee heard extensive evidence that the vast majority of criminal child abuse victims do not tell anyone about their experiences for years or even decades. This delay can result in loss of evidence.

In some cases, the delay in bringing cases to court may mean that the perpetrator cannot be sued because they are no longer alive. In other cases, the perpetrator may lack the financial means to pay damages. Some religious personnel, for example, have taken a vow of poverty. Often the only viable litigant in these cases is the organisation itself.

Finding 25.5

Barriers to litigation for victims of criminal child abuse in organisational settings include:

- lack of financial means
 - lack of emotional resources
 - practical limitations associated with the typically lengthy delay in bringing cases to court
 - family considerations.
-

³⁴ *Transcript of evidence*, Care Leavers of Australia Network (CLAN), Melbourne, 17 December 2012, p. 11.

Chapter 26

Legal barriers to claims against non-government organisations

AT A GLANCE

Background

There are a number of legal barriers to claims of criminal child abuse in non-government organisations:

Key findings

Victims of criminal child abuse find it difficult to:

- find an entity to sue because of the legal structures of some non-government organisations
- initiate action within the limitation period for child abuse cases specified in the statute of limitations
- establish that an organisation has a legal duty to take reasonable care to prevent child abuse by its members
- identify a legal relationship between the perpetrator and the entity
- convince courts that organisations should be subject to vicarious liability for criminal acts.

Recommendations

That the Victorian Government consider:

- Requiring non-government organisations to be incorporated and adequately insured where it funds them or provides them with tax exemptions and/or other entitlement.
- Working with the Australian Government to require religious and other non-government organisations that engage with children to adopt incorporated legal structures.
- Amending the *Limitation of Actions Act 1958 (Vic)* to exclude criminal child abuse from the operation of the limitations period under that Act.
- Undertaking a review of the *Wrongs Act 1958 (Vic)* and identify whether legislative amendment could be made to ensure organisations are held accountable and have a legal duty to take reasonable care to prevent criminal child abuse.

Victims and other Inquiry participants were strongly in favour of the Victorian Government removing legal barriers to civil litigation. For example, Mrs Chrissie Foster told the Committee:

I want to see victims given access to that legal system ... I think that is probably the best way. Our laws, our civil laws, need to be the overriding laws in regard to compensation and dealing with victims, but the cost of that needs to go back to whatever organisation caused the problem in the first place.³⁵

Similarly, Ryan Carlisle Thomas, a legal firm representing many victims of criminal child abuse in organisational settings, commented:

The legal barriers to claimants pursuing claims for compensation and/or criminal prosecution are significant and contribute to the sense of rage and powerlessness that many victims experience when trying to deal with the crimes against them.³⁶

This Inquiry identified five layers of defence that have been relied upon by various non-government organisations in responding to legal claims by victims of criminal child abuse:

- difficulty finding an entity to sue, because of the legal structures of some non-government organisations
- application of the statute of limitations to child abuse cases. This can disadvantage victims, who often delay reporting and acting on abuse for many years
- inability to establish that organisations have a legal duty to take reasonable care to prevent child abuse by their members difficulty identifying a legal relationship between the perpetrator and the entity
- the courts' exclusion of criminal acts from the notion of vicarious liability.

Inquiry participants suggested that non-government organisations that profess to act in the public good and receive charitable and tax exemptions should act as 'nominal defendants'. This would mean not relying on the difficulties that the organisation's own complex structures and lines of accountability create for a victim, or on the delay in commencing proceedings that is often a consequence of the abuse itself. In this way the court could authoritatively determine the substantive questions—has there been criminal child abuse for which the organisation can be reasonably held accountable as a consequence of its breach of duty to the victim and, if so, what is the appropriate measure of damages?³⁷

Evidence presented to the Inquiry revealed that some non-government organisations had threatened to use all available defences to defeat the civil claims of victims. For example, Mrs Chrissie and Mr Anthony Foster explained that an apology from Archbishop Denis Hart of the Catholic Archdiocese of Melbourne arrived with a letter from the Catholic Church's lawyers stating that compensation is offered in the hope that it will provide 'a realistic alternative to litigation that will otherwise be strenuously defended.'³⁸ Although the apology recognised the abuse and, as far as the Committee is aware, the credibility of members of the Foster family was never questioned, later court documents filed in

35 *Transcript of evidence*, Mr Anthony & Mrs Chrissie Foster, Melbourne, 23 November 2012, p. 14.

36 *Submission S195*, Ryan Carlisle Thomas Lawyers, p. 2.

37 *Transcript of evidence*, Law Institute of Victoria, p. 13; *Transcript of evidence*, In Good Faith and Associates, p. 19. See also, for example, *Submission S203*, Waller Legal, p. 7.

38 *Submission S037*, Mr Anthony & Mrs Chrissie Foster. (Appendix 9). In its review of the Melbourne Response files, the Committee observed that the wording indicating that litigation would be 'strenuously defended' appeared to be taken out in later correspondence. It did not appear in offers of compensation after July 2000.

proceedings on behalf of the Catholic Church indicated that the defendant did not admit the abuse.³⁹

Similarly, Ms Vivian Waller of Waller Legal indicated that she had acted for a number of victims who had been ‘forced’ to abandon civil litigation because Catholic Church entities had taken ‘strict technical legal defences based on the expiration of the limitation period.’⁴⁰

Organisational responses to compensation claims, including the Compensation Panel that is part of the Melbourne Response, are discussed in more detail in Chapter 21 of Part F.

In contrast, evidence from some organisations indicated that not all of them rely on the statute of limitations. Captain Malcolm Roberts of the Salvation Army, for example, told the Committee:

We have never relied on limitations of action to avoid anything. In fact in Victoria I think there have been only two or three times that proceedings have been issued. Limitations of action has a relevant place in our law because its position is to make sure that things come to an end, and it is a relevant factor to be taken into account. What we would say, if there were proceedings issued, is that it is for the presiding judge to decide about the relative detriment to the victim and the detriment to the organisation because people are dead or the evidence is not there. It is just a factor that may or may not be taken into account, but we do not rely heavily on that. We have never said, ‘You can’t claim because you’re out of time’. We try to deal with the victims who make claims upon us in a caring and compassionate manner.⁴¹

There are also some examples of organisations which have not sought to rely on the inability of victims to identify a legal entity to sue. For example, the Committee is aware of a New South Wales criminal child abuse case perpetrated on a student at a Jesuit school by a member of the Society of Jesus. Publicity surrounding the case prompted the head of the Jesuit order to change the Jesuits’ previous approach of contesting claims in court. In an appearance on the 7.30 Report in 2003, Fr Mark Raper SJ commented:

It’s a clear legal defence, to attempt to fight this matter at every point, if I understand it, to attempt to block it and until the point either that the complainant gives up from exhaustion or that we win the case or that we lose it ... I’m not content with that approach at all ...

Our assets are not as important as the people we serve. What is the point of doing what we are doing if that is not the case?⁴²

During the course of the Committee’s hearings, some non-government organisations made concessions regarding their position on civil law issues and their approach to technical legal defences. For example, Archbishop Hart acknowledged that an extended statute of limitations period is needed for victims of criminal child abuse in organisations, as noted in Chapter 26.3.

39 *Files relating to the Foster family*, provided to the Family and Committee Development Committee by the Catholic Archdiocese of Melbourne.

40 *Submission S203*, Waller Legal, p. 7.

41 *Transcript of evidence*, Salvation Army, Melbourne, 11 April 2013, p. 16.

42 David Hardaker (2003) *Mark Raper breaks his silence*, 7.30 Report (Australian Broadcasting Corporation). Accessed on 8 August 2013 from <http://www.abc.net.au/7.30/content/2003/s892572.htm>.

Finding 26.1

The Victorian Government has an important role to play in reforming the law to reduce the barriers to litigation faced by victims of criminal child abuse.

26.1. Legal structures of non-government organisations in Victoria

In order to successfully establish a civil claim against a non-government organisation, a victim of criminal child abuse needs to identify a legal entity that can be sued for failing to take reasonable care to prevent the abuse.

The Committee heard that some religious or non-government organisations whose representatives had perpetrated criminal child abuse are not incorporated entities, and cannot be sued in their own name. As a consequence (particularly when the abuse occurred many years ago and office bearers in the organisation have changed), a victim is left with no defendant to sue. The office bearer who might have been held responsible for supervising the perpetrator (and is therefore arguably liable) invariably no longer holds the same position in the organisation by the time proceedings are issued. Neither the subsequent office bearer nor the organisation itself can be held liable for the perpetrator's actions.⁴³ For this reason the assets of the organisation are not available to settle civil claims.

Box 26.1: Hypothetical case—inability to sue

In 1962, M, then aged 10 years, was sexually abused by Fr X at the presbytery in South Yarra. In 2013, M wants to issue proceedings against the Catholic Church in respect of the abuse. Fr X is deceased. In 1962, Archbishop A was responsible for supervising and monitoring all priests in the archdiocese, including Fr X. Archbishop A had long been aware of the criminal propensities of Fr X and had moved him from parish to parish, effectively concealing his activities and exposing the victim to abuse by him. Archbishop A is now also deceased, replaced by Archbishop B.

As the law currently stands, M could not sue either Archbishop B (the relevant office bearer's successor) or the Catholic Church (an unincorporated entity).

Source: Compiled by the Family and Community Development Committee.

In Victoria, most not-for-profit non-government organisations are incorporated. This means they have a legal identity independent of their members and can be sued in their own name. Incorporation also gives members some protection from personal liability.

The most common form of not-for-profit organisation in Victoria is the incorporated association. Incorporated associations are regulated by the *Associations Incorporation Reform Act 2012* (Vic).⁴⁴ They are registered with, and report to, Consumer Affairs Victoria. Some other Victorian not-for-profit organisations are incorporated as companies (including companies limited by guarantee). These are registered with, and regulated by, the Australian Securities and Investments Commission. Organisations can also be created by individual Acts of parliament, such as the *Brotherhood of St Laurence (Incorporation) Act 1971* (Vic) and the *Baptist Union Incorporation Act 1930* (Vic).

In Victoria, not-for-profit organisations are not required to incorporate. Such organisations are known as 'unincorporated associations'. The unincorporated association is a structure

⁴³ See Box 26.1 and see also the Ellis decision in Box 26.2.

⁴⁴ *The Associations Incorporation Reform Act 2012* (Vic). Commenced on 26 November 2012 and replaced the *Associations Incorporation Act 1981* (Vic).

that is generally not favoured by larger organisations as it makes individual members more vulnerable to personal liability. However, the Committee is aware that many religious non-government organisations are unincorporated associations.⁴⁵ This means they cannot be sued in their own name.⁴⁶ The complexity of religious structures can be seen in the Catholic and Anglican Church organisational diagrams in Appendix 7 and 8.

Finding 26.2

In Victoria, most not-for-profit non-government organisations are incorporated. This means they have a legal identity independent of their members and can be sued in their own name. However, not-for-profit organisations are not required to incorporate.

26.2. Addressing the legal identity of non-government organisations

Identifying an entity to sue can be a significant barrier to civil litigation by victims of criminal child abuse in organisations.

As indicated above, although many not-for-profit organisations in Victoria are incorporated, unincorporated associations can register as charities with the Australian Charities and Not-for-profits Commission (ACNC) (which commenced operations on 3 December 2012). They may also be regulated within the industry in which they operate (such as child care).⁴⁷ An unincorporated association can establish a legal structure to hold its funds and property. For example, there are a number of Victorian statutes whose purpose is to establish trustee corporations to hold property on behalf of religious organisations:

- *Anglican Trusts Corporations Act 1884* (Vic)
- *Coptic Orthodox Church (Victoria) Property Trust Act 2006* (Vic)
- *Presbyterian Trusts Act 1890* (Vic)
- *Roman Catholic Trusts Act 1907* (Vic)
- *The Salvation Army (Victoria) Property Trust Act 1930* (Vic).⁴⁸

45 Some evidence was received by the Committee regarding the ‘corporation sole’ structure. This is a structure utilised by religious organisations that consists of a single person who holds the property of the religious organisation, and ensures that property and powers are passed down to successors of the office. The corporation sole has in the past been considered to be a ‘perpetual office’ rather than an entity. Although this structure has been superseded by modern civil structures such as trusts and corporations, some religious organisations, for example in the United States, appear to use it to structure legal and financial affairs. Some American states that recognise the corporation sole by statute have enacted legislation which specifies that every corporation sole may sue and be sued. The Committee is not aware of the use of the structure in Victoria.

46 For example, the Catholic Church in its submission to the Inquiry cited the case of *Attorney-General (NSW) v Grant* [1976] 135 CLR 587. In which Gibbs J (at p 600) explained that ‘a church in Australia is a voluntary organisation of members bound together not only by common beliefs, but in some cases at least, by a consensual compact, which may confer rights and impose liabilities on the parties to it’. Submission S185, Catholic Church in Victoria, p. 80.

47 Australian Charities and Not-for-profits Commission *Factsheet: Regulation of charities in Victoria* (Vic). Accessed on 1 June 2013 from www.acnc.gov.au; Consumer Affairs Victoria *Should your club incorporate?* Accessed on 1 June 2013 from www.consumer.vic.gov.au.

48 *Submission S226A*, Law Institute of Victoria, p. 20. The Law Institute of Victoria explained that ‘the trustee corporation statutes provide for the incorporation of trustees who can acquire, take and hold church property. Any trusts created might then be registered on the ‘Successory Trust Register’ administered by the Victorian Registrar of Titles under the *Religious and Successory Trusts Act 1958* (Vic). Although the Successory Trust Register can be viewed by members of the public, only Trust representatives or the Supreme Court can inspect trust deeds.’

In contrast, some religious entities in Victoria have elected to become incorporated associations under various statutes. These include:

- *Brotherhood of St Laurence (Incorporation) Act 1971* (Vic)
- *Baptist Union Incorporation Act 1930* (Vic)
- *Lutheran Church of Australia Victorian District Incorporation Act 1971* (Vic)
- *Hungarian Reformed Church of Australia (Victorian District) Incorporation Act 1973* (Vic).

Some victims of criminal child abuse have tried to sue the trustee corporations that hold property on behalf of the religious organisation. But because such bodies are generally established to manage and administer property only, and are not engaged in supervising church members, the courts have found in other states that the trustee corporations cannot be held liable in cases of criminal child abuse.

An example is the case of *Trustees of the Roman Catholic Church v Ellis & Anor* (the Ellis decision), in which the claimant sought to sue the Trustees of the Roman Catholic Church for abuse perpetrated by a Catholic assistant priest (see Box 26.2). The NSW Court of Appeal held that the Trustees could not be sued because, at the time of the alleged abuse, there was ‘simply no evidence that the Trustees were involved in ... pastoral activities’.⁴⁹ The fact that the Trustees held and managed property for and on behalf of the Catholic Church did not make them subject to all legal claims associated with church activities,⁵⁰ including claims arising from the actions of one of its parish priests.

Box 26.2: Trustees of the Roman Catholic Church v Ellis & Anor [2007] NSWCA 117 (NSW Court of Appeal)

Ellis alleged that a Catholic assistant priest sexually abused him in the 1970s, while he was an altar server. Ellis sued Cardinal George Pell (then Archbishop of the Catholic Archdiocese of Sydney), the Trustees of the Roman Catholic Church for the Archdiocese of Sydney, and the alleged abuser. The abuser died before the court heard the case.

At trial, the judge dismissed the case against Cardinal Pell, on the basis that the archbishop could not be held liable for the acts of his predecessor, but found that there was an arguable case that the Trustees were the entity that the Roman Catholic Church in the Archdiocese of Sydney ‘adopted and put forward’ as its permanent corporate entity. The judge ordered that the statute of limitations be extended to allow Ellis to pursue the claim.

On appeal, the Trustees argued successfully that they were not the proper defendants in the case. The Court of Appeal held that the Trustees could not be sued because, at the time of the alleged abuse, there was ‘simply no evidence that the Trustees were involved in ... pastoral activities’.⁵¹

Source: Adapted from the *Trustees of the Roman Catholic Church vs Ellis & Anor* [2007] NSWCA 117

It appears that the legal status of unincorporated religious organisations is in conflict with public perception. For example, many people in the general community see the Catholic Church as having an identity, a recognised purpose and functions. The

49 *Trustees of the Roman Catholic Church v Ellis & Anor* [2007] NSWCA 117, paragraph 141.

50 As noted by Mason P in *Trustees of the Roman Catholic Church v Ellis & Anor* [2007] NSWCA 117, paragraph 149. See also *PAO v trustees of Roman Catholic Church of the Archdiocese of Sydney & Ors* [2011] NSWC 1216, paragraph 49.

51 *Trustees of the Roman Catholic Church v Ellis & Anor* [2007] NSWCA 117, paragraph 141.

community does not regard individuals or entities within the Catholic Church as being independent or separate from the authority of the Church. Indeed, the Catholic Church acted as a coherent body throughout its dealings with the Committee during this Inquiry. Nevertheless, the Committee acknowledges that the law in relation to the legal liability of unincorporated associations is clear. The Committee accepts for present purposes that the Catholic Church cannot be sued as a separate body in claims not associated with the trust activities, for example claims arising from criminal child abuse perpetrated by a parish priest or other religious personnel.

In a letter to the Committee, responding to Mr John Ellis's submission to the Inquiry, Cardinal George Pell commented directly on the Ellis case. Cardinal Pell confirmed that the Sydney Archdiocese told Mr Ellis that the Trustees were 'simply not involved in the appointment and supervision of priests.'⁵² He further noted that:

... this advice was disregarded leaving the Trustees, the Archdiocese and their lawyers no alternative but to respond to the claim that was brought by Mr Ellis and his representatives.⁵³

However, the Committee considered that this demonstrates the adoption of a strictly legalistic approach, which failed to address the issue of the genuine accountability of the Catholic Church and avoided dealing with Mr Ellis's claim on its merits. It is not to the point, contrary to what Cardinal Pell suggested, that Mr Ellis's claim was ultimately settled. The approach adopted by the Church is powerful evidence of the importance of protection of assets as a factor in the Catholic Church's response. Furthermore, it suggests a desire to ensure that accountability for wrongdoing is strictly confined to the individual perpetrator.

Inquiry participants heavily criticised organisations' use of the Ellis decision as a defence against civil claims. Mr James Boyle, for example, expressed the following view on the Catholic Church's use of the defence:

... they use what is known as the Ellis defence to say, 'You can sue us. We have never fought to avoid our legal responsibilities, except we have no legal responsibilities. We don't own the resources', or, 'We don't manage the priests'. Absolute nonsense. I see that the negation of the Ellis defence is a very important thing that should happen.⁵⁴

Similarly, the Australian Lawyers Alliance commented in its submission:

The effective consequence of the Ellis decision is that unlike the rest of the common law world (United States, Canada, Ireland, England) only in Australia is the Roman Catholic Church effectively immune from suit. Moreover, that immunity does not appear to apply to the other churches or at any rate, even if it did, none of them appear to take the Ellis defence.⁵⁵

The Committee found that the situation in the United States has resulted in a small number of very high settlements and a larger number of cases determined by court judgement. This larger number of court cases appears to be due to the fact that religious organisations in the United States are mostly incorporated and therefore victims are able to identify an entity that can be sued:

It may be said that as a rule, all Catholic educational and charitable institutions throughout the United States which have attained any importance or permanence are incorporated, usually under the provisions of general statutes for the incorporation

52 *Right of Reply*, Cardinal George Pell, Archbishop of Sydney, 31 July 2013, p. 2.

53 *Right of Reply*, Cardinal George Pell, Archbishop of Sydney, p. 2.

54 *Transcript of evidence*, Mr James Boyle, Melbourne, 15 March 2013, p. 4.

55 *Submission S011*, Australian Lawyers Alliance, p. 2.

of civil corporations.⁵⁶

The Committee acknowledges that there is a perception that unincorporated religious organisations (in particular the Catholic Church) have been structured deliberately to make themselves effectively immune from suit.⁵⁷ However, the Committee accepts that the statutory trusts were not established to avoid financial liability for criminal child abuse claims. Most of the statutory trusts were established in the early twentieth century, before any legal issues relating to criminal child abuse in organisations had come to light. As Ms Alice Palmer from the Law Institute of Victoria explained to the Committee:

... statutory trusts were created by Parliament in order to create a body to hold church property so that property could be held forever by that entity and get around the issues associated with having a number of different members of an unincorporated association over a period of time.⁵⁸

Similarly, Ms Angela Sdrinis of Ryan Carlisle Thomas acknowledged that:

Historically these property trusts were not invented by the churches to avoid legal liability; I am absolutely sure about that. They were created so that organisations, which are essentially a group of people coming together, had some legal status sufficient to allow them to deal with the property and financial requirements of the organisation. So the property trusts of themselves were not created as a sinister attempt to avoid liability.⁵⁹

Nevertheless, there is no doubt that the unincorporated structure of the Catholic Church has not only prevented victims of criminal child abuse from bringing legal claims against the Catholic Church as an entity. It has also been exploited by the Catholic Church to avoid financial liability. Ms Palmer went on to explain:

The problem that we see is that they get the benefit of holding onto property without then dealing with the flip side of that benefit, which is liability in the event that it is impossible to bring a claim against the church or any religious organisation and the property trusts effectively take advantage of that in denying liability or association.⁶⁰

There is some evidence that in the United States of America, where religious organisations including the Catholic Church are most commonly incorporated as 'non-profit corporations', victims are able to identify appropriate defendants to civil litigation in the Catholic Church.⁶¹

The Committee notes that the *Roman Catholic Church Trust Property Amendment (Justice for Victims) Bill 2011* was introduced in the New South Wales Parliament in 2011, but has not been adopted.⁶² This proposed legislation sought to amend the relevant Catholic property trust statute in order to:

- deem the Trustees liable as if they were the relevant party against whom a case is brought

56 The Original Catholic Encyclopedia *Civil incorporation of Church Property*. Accessed on 10 August 2013 from <http://oce.catholic.com>.

57 See for example, *Submission S011*, Australian Lawyers Alliance, p. 2.

58 *Transcript of evidence*, Law Institute of Victoria, Melbourne, 17 December 2012, p. 5.

59 *Transcript of evidence*, Ryan Carlisle Thomas Lawyers, p. 7.

60 *Transcript of evidence*, Law Institute of Victoria, p. 5.

61 For example, the Committee is aware of 43 documented civil trials in the United States since the mid-1980s, however it notes that thousands of other cases that have been commenced did not proceed to trial: BishopAccountability.org *Documenting the abuse crisis in the Roman Catholic Church*.

62 Parliament of New South Wales *Parliament of New South Wales*. Accessed on 1 June 2013 from www.parliament.nsw.gov.au.

- ensure that the funds and property held in trust are available to satisfy any compensation awarded by a court.

Although the Victorian Government could consider adopting such legislation here, the Committee considers that this approach is not far-reaching enough. Amending specific legislation that establishes religious trusts is unlikely to resolve the broader issue of establishing the legal identity of unincorporated associations. This is because trust structures are used widely and for a variety of reasons, in both the for-profit and not-for-profit sectors.

Some Inquiry participants recommended that Victoria amend its corporations law.⁶³ The law dealing with companies in Victoria is set out in Federal legislation (*Corporations Act 2001* (Cth)) and changes are a matter for the Federal Government.⁶⁴ The Committee notes, however, that any changes would need to be considered carefully, as the current legislation does not appear to include a clear mechanism for requiring or deeming incorporation.

The Committee's view is that Victoria needs a joint Victorian–Commonwealth approach to require non-government organisations to incorporate. For example, the Committee understands that administrative and financial incentives in the United States have made incorporation of religious non-government organisations commonplace. Similarly in Victoria, the Committee recommends that all service organisations funded by the Victorian Government be required to be incorporated as a condition of receiving any such funding. Furthermore, incorporation should constitute one of the eligibility criteria for Victorian Government tax exemptions for non-government organisations (including land tax, council rates and other entitlements).

Solicitors Ryan Carlisle Thomas, for example, recommended that:

... in recognising the difficulty that applicants have in taking civil action against unincorporated religious or charitable organisations, the Government examine whether it would be either an appropriate or a feasible incentive to incorporation, to make the availability of tax concessions to charitable, religious and not-for-profit organisations dependent on, or alternatively linked to, them being incorporated under the corporations act or under state incorporated associations statutes.⁶⁵

In Australia, the Federal Government has recently established a body to regulate charities—the ACNC. In its submission to the Inquiry, the ACNC advised that it would have a role in the regulation of matters being considered by this Inquiry. One of the responsibilities of the ACNC is to ensure that charities meet a minimum standard of governance.⁶⁶ The ACNC Amendment Regulation 2013 (No. 1), which sets out the minimum governance standards with which charities must comply, commenced operation on 1 July 2013. The ACNC explained that:

The ACNC may have legislative power to consider action if, by allowing the criminal abuse of children in its care:

- the charity committed a serious offence or serious breach of a law that would result in a breach of the pending governance standards

63 See for example, *Submission S193*, Lewis Holdway Lawyers, p. 16.

64 The Commonwealth power to legislate with respect to incorporation in Victoria is sourced from powers referred by Victoria to the Commonwealth.

65 *Submission S195*, Ryan Carlisle Thomas Lawyers, p. 8.

66 *Submission S423*, Australian Charities and Not-for-profits Commission, p. 8.

- a person responsible for governing the charity had breached their duty of care to the charity (including its beneficiaries) as required under the common law, statute and the pending governance standards
- the degree and extent of the harm caused meant that the charity would no longer be for the 'public benefit', as required under the legal definition of charity.⁶⁷

However, the ACNC pointed out that there are some significant limitations to its powers regarding bodies that are 'basic religious charities' as defined in the *Australian Charities and Not-for-profits Commission Act 2012* (Cth). The ACNC notes that:

The result of the definition of 'basic religious charity' is that, in cases of criminal abuse involving religious congregations or other purely religious organisations, that are not corporate structures, the ACNC could not rely on a breach of the governance standards to justify an investigation and could not suspend or remove a person on the governing body found to be in breach of those obligations.

The ACNC could, however, consider evidence of whether the harm caused by the congregation is such that it is no longer for the 'public benefit', and could revoke the registration of a religious congregation (including its access to tax concessions) in that event. However, this is a more difficult route than if the governance standards applied to such charities.⁶⁸

Finding 26.3

Trusts are used widely in Victoria in the for-profit and not-for-profit sectors. Amending specific statutes that establish trustee corporations for some organisations is unlikely to resolve the issue of establishing the legal identity of unincorporated associations and ensuring appropriate governance structures to address civil claims for criminal child abuse.

Finding 26.4

There is no evidence that non-government organisations have deliberately been structured to avoid liability for criminal child abuse claims. However, the lack of incorporation by non-government organisations that work with children can make it difficult for victims of abuse in organisational settings to identify an appropriate entity to sue for damages.

→ Recommendation 26.1

That the Victorian Government consider requiring non-government organisations to be incorporated and adequately insured where it funds them or provides them with tax exemptions and/or other entitlements.

→ Recommendation 26.2

That the Victorian Government work with the Australian Government to require religious and other non-government organisations that engage with children to adopt incorporated legal structures.

⁶⁷ *Submission S423*, Australian Charities and Not-for-profits Commission, p. 5.

⁶⁸ *Submission S423*, Australian Charities and Not-for-profits Commission, p. 7.

26.3. Statute of limitations

As outlined in Part B of this Report, many victims of criminal child abuse do not disclose their experiences or act on them until decades after the abuse. This has significant implications for seeking compensation or pursuing common-law actions, due in particular to the statutes of limitations.

The Australian Lawyers Alliance noted that victims commonly delay acting on the abuse for decades, for a variety of reasons:

Victims are often too ashamed to disclose the truth. They may confuse a totally inappropriate relationship with a loving one. They may have been threatened, either directly or through their families, should they reveal the truth. They may be quite unaware of the extent of the damage done to them until much later. They may have attempted to put the abuse out of their minds whilst trying to get on with their lives as best they can.⁶⁹

Particularly disadvantageous to victims are the ‘long-stop’ limitation provisions in the *Limitation of Actions Act 1958* (Vic). These set an absolute maximum period of 12 years from the time of the abuse (or in some cases from the age of 25 of the victim), regardless of whether the victim knew or understood that the criminal child abuse had caused them injury.

The extended 25 year long-stop period applies under the *Limitation of Actions Act* in cases where a child is injured by a parent or a person in a close relationship with the child’s parent.⁷⁰ It is arguable that personnel in non-government organisations could fall within this provision. The Committee notes that in response to the Inquiry, Archbishop Hart of the Catholic Archdiocese of Melbourne indicated that the Archdiocese would support extending the statute of limitations to run from the age of 25 years.⁷¹

However, because many victims of criminal child abuse fail to link their condition to the harm from abuse suffered many years before, and frequently do not identify or reveal this until well into adulthood, many victims of criminal child abuse are precluded from using the ‘long-stop’ provision. Therefore, even if the limitation period for claims arising out of criminal child abuse were extended to run from the age of 25, some victims, who do not reveal their abuse or link their condition to the harm such abuse caused, would not be able to initiate legal action, having passed the cut-off age.

The Committee heard that there is some discretion in applying the statute of limitations. Firstly, a defendant in a criminal child abuse case may choose not to use a limitation-of-action defence. Secondly, judges have discretion to extend the time limit in certain circumstances. However, the Committee considered that the discretion of the defendants and the courts regarding whether to argue or apply the limitation creates an imbalance that can work against claimants.

Statute of limitations—

in contrast to criminal matters, the statute of limitations in Victoria (the Limitation of Actions Act 1958 (Vic)) restricts the time within which a party can issue a civil case for compensation. In cases of criminal child abuse, the limitation period varies depending on the circumstances. Victims can be barred from bringing a civil claim in their teens, twenties or thirties. The statute of limitation rules are outlined in Box 26.3.

69 *Submission S011*, Australian Lawyers Alliance, p. 2.

70 *Limitation of Actions Act 1958* (Vic) s.271.

71 Archbishop Denis Hart, Letter to the Family & Community Development Committee, received 16 May 2013, p. 4.

Some organisations told the Committee they do not rely on the statute of limitations in considering claims settlement negotiations. As noted earlier, Captain Malcolm Roberts of the Salvation Army, for example, told the Committee that the Salvation Army has ‘never relied on limitations of action to avoid anything’.⁷² The evidence, however, indicates that other organisations have aggressively pursued the limitation defence in civil litigation cases involving claims of child sexual abuse.⁷³ The Committee considers that reliance by non-government organisations (and particularly religious ones) on the statute of limitations in such matters is wholly inappropriate.

Furthermore, the Committee heard that the existence of the limitation defence can influence settlement negotiations. The Law Institute of Victoria (LIV), for example, noted that ‘the Victorian government ... does not in practice refuse to engage in mediation or settlement discussions where a matter is statute barred.’⁷⁴ However, the LIV notes that a defendant may use the availability of a defence based on the fact that the action is statute barred as a reason to offer a lower settlement amount.

The Committee considers that the application or otherwise of the limitation period in respect of claims arising from criminal child abuse should not be at the discretion of the organisation or the court. Not only does this rely on the goodwill of the organisation in allowing a court claim to proceed, but the very existence of this statutory limitation undoubtedly strengthens the organisation’s bargaining position when settling a claim. Similarly, the Committee heard that despite the power of the court to grant an extension of time under the Limitation of Actions Act, applications for extensions of time are ‘hard fought’ and rarely successful.⁷⁵

It is greatly in the public interest to give victims access to the court system (described below). Therefore the Committee recommends that the Victorian Government should legislate to ensure that victims of criminal child abuse are able to issue civil claims relating to that abuse regardless of when the criminal child abuse occurred.

Finding 26.5

The application of the statute of limitations is currently at the discretion of the defence and judges. However, there is evidence that non-government organisations have aggressively pursued the limitation defence in civil trials. There is also evidence that the limitation defence adversely affects the bargaining position of victims in settlement negotiations for victims.

72 *Transcript of evidence*, Salvation Army, p. 16. Similarly, Archbishop Hart indicated that in the Melbourne Response and Towards Healing, the Archdiocese does not rely on the statute of limitations to prevent payment of compensation: *Transcript of evidence*, Catholic Archdiocese of Melbourne, p. 46.

73 For example, the Court in the case of *Ellis v Pell* [2006] NSWSC109. This case was required to make a determination on the application of the statute of limitations.

74 *Submission S226*, Law Institute of Victoria, p. 17.

75 *Submission S226*, Law Institute of Victoria, p. 25.

Box 26.3: Limitation of Actions Act 1985 (Vic)

In claims for personal injury to a minor, such as in the case of criminal child abuse, the limitation period is six years from the date on which the cause of action is 'discovered' by the victim, or 12 years after the date on which the act of abuse occurred (known as the 'long-stop' period), whichever is earlier.

In determining when a victim discovers they have a cause of action, the courts may take into account the delayed understanding of the harm caused by the abuse. Justice Osborn did this in the case of *GGG v YYY*. Furthermore, a court may suspend the period of limitations for a minor who is not in the care of a capable parent or guardian.

Nevertheless, the long-stop limitation period of 12 years from the date the abuse occurred means that a victim can be no more than 30 years old in order to be within the limit to bring a claim, and in many cases would be much younger.

The Limitation of Actions Act allows a longer limitation period if a child is injured by a parent or a person in a close relationship with the child's parent. In such cases, the cause of action may be discoverable when the victim turns 25 years of age or when the action is actually discoverable by the victim (whichever is later). The long-stop period for bringing such a case is 12 years from when the victim turns 25. This provision was introduced in 2003 following the 2002 *Review of the Law of Negligence* (known as the *Ipp Report*). This review recognised the delayed psychological effect of sexual or other abuse and the need to give victims 'a reasonable time to be free of the influence of the parent, guardian or potential defendant (as the case may be) before having to commence proceedings'. But even under this provision, a victim is likely to run out of time to bring a case between the ages of 31 and 37, although under transitional provisions this is likely to be limited to 24 years of age.

A victim may apply for an extension of time under the Limitation of Actions Act. However, the Committee heard that such applications may not succeed. The Law Institute of Victoria noted in its submission:

LIV members report that this process is typically difficult and hard-fought ... and is usually not successful without a claimant being able to provide a compelling reason for not commencing proceedings within the relevant time limit.⁷⁶

Source: Compiled by the Family and Community Development Committee.

The recent Victorian Supreme Court decision in *GGG v YYY* demonstrates the courts' preparedness to extend the limitation period in cases of criminal child abuse.⁷⁷ In that case, Justice Osborn awarded \$267,000 in total damages to a victim of criminal child abuse, despite a period of 33 years between the abuse taking place and the case coming to court. Justice Osborn was persuaded by the fact that the significant delay was caused by the plaintiff not being 'psychologically able to publicly acknowledge the fact of the abuse, and not relevantly aware of his psychiatric injury, until 2009.' Justice Osborn also decided that because the abuse 'occurred covertly and in the absence of others', the delay had not disadvantaged the defendant because it did not result in a loss of witnesses.⁷⁸

The Committee concluded that the Limitations of Actions Act does not allow enough time for victims to bring a case for criminal child abuse. Furthermore, the Committee considers that limiting the period during which a victim may bring a civil case for criminal child abuse does not serve the public interest.

⁷⁶ *Submission S226*, Law Institute of Victoria, p. 25

⁷⁷ *GGG v YYY* [2011] VSC 429.

⁷⁸ *GGG v YYY* [2011] VSC 429, paragraph 207.

Finding 26.6

Statutes of limitations disadvantage victims of child sexual abuse because these victims typically take decades to understand the harm arising from their abuse and to act on that understanding and decide to issue proceedings.

26.3.1. Balancing the public interest of statutes of limitations

The Committee found that many of the public-interest arguments supporting a statute of limitations are unconvincing in the context of criminal child abuse. The public policy justifications for limitation periods for civil claims were outlined in the 2002 *Ipp report*:

- As time goes by, relevant evidence is likely to be lost.
- It is oppressive to a defendant to allow an action to be brought long after the circumstances that gave rise to it occurred.
- It is desirable for people to be able to arrange their affairs and utilise their resources on the basis that claims can no longer be made against them after a certain time.
- The public interest requires that disputes be settled as quickly as possible.⁷⁹

However, the Committee determined that the lifelong consequences of criminal child abuse outweigh the public benefit of giving certainty to defendants and speeding up the litigation process. The Committee agreed with the finding of Justice La Forest of the Supreme Court of Canada in a case of criminal child abuse:

There comes a time, it is said, when a potential defendant should be secure in his reasonable expectation that he will not be held to account for ancient obligations. In my view this is a singularly unpersuasive ground for a strict application of the statute of limitations in this context. While there are instances where the public interest is served by granting repose to certain classes of defendants ... there is absolutely no corresponding public benefit in protecting individuals who perpetrate incest from the consequences of their wrongful actions. The patent inequity of allowing these individuals to go on with their life without liability, while the victim continues to suffer the consequences, clearly militates against any guarantee of repose.⁸⁰

Evidence provided to the Inquiry strongly supported this view. For example, Dr Wangmann told the Committee that justice is not served by applying the statute of limitations to cases of criminal child abuse:

The policy reasoning behind a statute of limitations is basically that there is a point where they move on, but surely the justice in these cases requires that we should at least hear the case on its merits, that the justice actually sits somewhere else in relation to the policy things that underpin a statute of limitations.⁸¹

Similarly, the Law Council of Australia in its 2011 review of limitation periods across Australia recommended that there should be a special limitation period for child

79 Panel of Eminent Persons to Review the Law of Negligence (the 'Ipp Committee') (2002) *Review of the law of negligence: Final report*. Canberra, Commonwealth of Australia, p. 86. These factors are based on a description by McHugh J in *Brisbane South Regional Health Authority v Taylor* [1996] 186 CLR 541, paragraph 552.

80 Quoted by Justice Osborne in *GGG v YYY* [2011] VSC 429, paragraph 187.

81 *Transcript of evidence*, Dr Jane Wangmann, p. 13. See also Lisa Sarvas (2012) 'Mixed messages on sexual assault and the statute of limitations: *Stingel v Clark*, the IPP "reforms" and an argument for change'. *Melbourne University Law Review*, Vol. 32, p. 609.

sexual abuse victims.⁸² The review advocated that the courts should be given a direct basis for extending statutes of limitations in child abuse cases.

The Committee considers that on balance it is not in the public interest to allow perpetrators of abuse or culpable organisations to avoid the consequences of their actions. Such avoidance contributes to an ongoing risk to children, such as in the case of Fr Kevin O'Donnell and Fr Gerald Ridsdale, whose crimes spanned several decades.⁸³

Archbishop Hart indicated to the Committee in May 2013 that the Catholic Archdiocese of Melbourne supports legislative reform to clarify that longer limitation periods apply in cases of criminal child abuse.⁸⁴ However, the Archbishop conceded only that the law should be amended to clarify the delay in commencing the long-stop limitation provisions until the victim turns 25. This extension would give victims until the age of 37 years at the latest to bring a claim. The Committee considers this extension to be inadequate, as many victims of abuse are incapable of issuing proceedings until much later in their lives.

Table 26.1 demonstrates how the public policy justifications in the *Ipp report* do not apply in the context of criminal child abuse.

Table 26.1: Lack of public policy justification for limitation of actions in cases of child abuse

Justification	Application to child abuse cases
Potential disadvantage to defendants due to loss of evidence.	In criminal child abuse cases, there is rarely a great deal of evidence, because the perpetrator is likely to take extensive precautions to ensure secrecy and to elicit the victim's silence. Accordingly, the argument that limitations statutes are needed because evidence is lost is not relevant in cases of criminal child abuse.
Delay may cause some difficulty for defendants in presenting their case.	In cases of criminal child abuse, the passage of time also significantly prejudices the victim's claim. Victims are likely to face even greater difficulty in proving the case, because they are unlikely to have the benefit of the records maintained by the organisation, nor any corroborating evidence to prove their claim.
The need to ensure certainty for defendants in arranging their affairs.	Given the harm and lifelong disadvantage caused to victims by criminal child abuse, as described throughout this Report, it is not desirable that perpetrators should be able to arrange their affairs as though they will never be held to account for their crime. In the case of organisations, the Committee understands that many settle claims of criminal child abuse despite the expiration of limitation periods and can therefore expect to allocate resources to dealing with such claims regardless of whether statutory limits apply.
Public interest in precluding cases that are not brought quickly.	The inability of victims to discover or attribute the harm they have suffered as a consequence of criminal child abuse results in their being unfairly prejudiced by limitation periods that do not take into account this reason in explaining the delay. The Victorian statute already takes account of delayed discoverability in the case of asbestos and tobacco claims, and the Committee considered that there is an analogy between such claims and the delay in discoverability of injury arising from criminal child abuse.

Source: Compiled by the Family and Community Development Committee.

82 Law Council of Australia (2011) *A model limitation period for personal injury actions in Australia: Position paper*. Canberra.

83 C. Foster & P. Kennedy (2011) *Hell on the way to heaven*. North Sydney, Random House Australia.

84 Archbishop Denis Hart, Letter to the Family & Community Development Committee, received 16 May 2013.

The Committee recognises that statutes of limitations for civil personal injury claims operate differently across Australian jurisdictions. This creates complexities and uncertainties across the nation and significant disparities for criminal child abuse victims.

Victoria's limitation periods relating to personal injury of children appear to favour victims more than those in some other Australian jurisdictions do. But the long-stop provision potentially disadvantages Victorian criminal child abuse victims, compared with victims from other jurisdictions.⁸⁵ Therefore, the Committee considers the Victorian Government should lead the way with model limitation provisions for criminal child abuse cases.⁸⁶

Finding 26.7

There is no public policy justification for applying limitation periods to civil cases relating to criminal child abuse.

26.3.2. The example of British Columbia's statute of limitations

The Committee recommends that the Victorian Government adopt the approach of some states in Canada in abolishing limitation periods for sexual assault civil actions.⁸⁷ An example is British Columbia's recently revised *Limitation Act [SBC 2012]*, which expressly prevents limitations periods from applying in sexual and physical assault cases involving minors (see Box 26.4).

British Columbia excluded sexual assault from its statute of limitations in 1992, in order to protect victims of childhood sexual abuse.⁸⁸ It added the exemption for physical assault of minors in the recent revision of the Limitation Act. In doing this, the British Columbian Government wished to further protect vulnerable people from the operation of limitation periods. The government rejected the suggestion that this action would open the floodgates for claims, recognising the practical difficulties inherent in pursuing civil litigation:

It is not anticipated that this exemption will open the floodgates for claims. This has not occurred in other provinces that have included exemptions for physical abuse. It would be unlikely that frivolous claims will be advanced due to the fact that it is difficult and expensive to pursue a civil damage claim.⁸⁹

The Committee considers there is policy justification to extend the exclusion to historical cases of child abuse, in light of the significant delay in reporting. Because

85 In most jurisdictions, victims generally have until the age of 21 to institute proceedings, however some jurisdictions do not have long-stop provisions and therefore could allow cases to proceed where the discovery of injury has been significantly delayed. Lisa Sarmas (2012) 'Mixed messages on sexual assault and the statute of limitations', p. 636; Law Council of Australia (2011) *A model limitation period for personal injury actions in Australia: Position paper*.

86 British Columbia, Manitoba, Newfoundland, the Northwest Territories, Nova Scotia, Nunavut, Ontario, Saskatchewan and the Yukon: Ben Mathews (2004) 'Post-Ipp special limitation periods for cases of injury to a child by a parent or close associate: New jurisdictional gulfs'. *Torts Law Journal*, Vol. 12, No. 3, pp. 239–58, pp. 5, footnote 23. See also *Transcript of evidence*, Dr Jane Wangmann, p. 3.

87 British Columbia, Manitoba, Newfoundland, the Northwest Territories, Nova Scotia, Nunavut, Ontario, Saskatchewan and the Yukon: Ben Mathews (2004) 'Post-Ipp special limitation periods for cases of injury to a child by a parent or close associate', pp. 5, footnote 23. See also *Transcript of evidence*, Dr Jane Wangmann, p. 3.

88 British Columbia Ministry of Attorney General Justice Services Branch Civil Policy and Legislation Office (2010) *White Paper on Limitation Act reform: Finding the balance*.

89 British Columbia Ministry of Justice (2013) *New Limitation Act: Questions and answers*. Accessed on 26 June 2013 from www.ag.gov.bc.ca.

discretion to extend the limitation exists in relation to certain cases of criminal child abuse already, the limitation provisions could be regarded as a procedural bar to civil action in such cases rather than a substantive right of defendants to be protected from civil litigation. The evidence heard by the Committee certainly justifies the removal of this procedural bar for victims of child abuse.

Box 26.4: British Columbia's *Limitation Act* [SBC 2012]

Section 3(1) This Act does not apply to the following: [...]

- i) a claim relating to misconduct of a sexual nature, including, without limitation, sexual assault,
- ii) if the misconduct occurred while the claimant was a minor, and
- iii) whether or not the claimant's right to bring the court proceeding was at any time governed by a limitation period;
- (j) a claim relating to sexual assault, whether or not the claimant's right to bring the court proceeding was at any time governed by a limitation period;
- (k) a claim relating to assault or battery, whether or not the claimant's right to bring the court proceeding was at any time governed by a limitation period, if the assault or battery occurred while the claimant:
 - i) was a minor, or
 - ii) was living in an intimate and personal relationship with, or was in a relationship of financial, emotional, physical or other dependency with, a person who performed, contributed to, consented to or acquiesced in the assault or battery.

Source: British Columbia Limitation Act [SBC 2012]

Finding 26.8

Because reporting in cases of criminal child abuse is typically delayed for several decades, it is necessary to amend the *Limitation of Actions Act 1958* (Vic) to allow victims of criminal child abuse sufficient time to initiate civil legal action.

→ Recommendation 26.3

That the Victorian Government consider amending the *Limitation of Actions Act 1958* (Vic) to exclude criminal child abuse from the operation of the limitations period under that Act.

26.4. Direct liability of non-government organisations and duty of care

The Committee considered that non-government organisations have a duty of care to take reasonable steps to prevent criminal child abuse from taking place in their organisation.

The Committee identified that in the past non-government organisations have generally taken the approach that the responsibility for criminal child abuse in their organisation lies with the perpetrator of that abuse. While it accepts the attribution of responsibility to the perpetrator, the Committee nevertheless considers that organisations should also bear some responsibility in these cases.

Some non-government organisations have acknowledged responsibility in circumstances of specific knowledge of criminal child abuse, perpetrated by their member. For example, Cardinal Pell admitted that by their inaction, Bishop Ronald Mulkearns and Archbishop Frank Little allowed abuse to happen.⁹⁰ He also acknowledged that direct knowledge of criminal child abuse would give rise to a responsibility to act:

I am not responsible in law for the crimes that someone, say, a priest or an employee of the Catholic Church, has committed—technically. I am technically responsible if I was warned about this person and did nothing.⁹¹

However, the Committee considered that duty of care extends beyond the need to act based on direct knowledge.

Organisations' duty of care includes a responsibility to screen, monitor and keep records in order to take reasonable steps to prevent abuse of children by members who misuse the trust generated by their association with the non-government organisation.

The Committee found that non-government organisations not only rely on the reputation of their members, but those members gain that reputation substantially as a consequence of their relationship with the body concerned. Organisations hold out members, employees, volunteers and others who represent them in the community as credible and trustworthy individuals. Parents only entrust their children to the non-government organisation because of this special relationship of trust.

The special nature of the relationship between a religious organisation and its members was considered by Lord Justice Longmore of the England and Wales Court of Appeal in *Maga v Trustees of the Birmingham Archdiocese of the Roman Catholic Church*.⁹² In accepting that the priest in question was an employee of the archdiocese in question, Lord Justice Longmore stated:

Regardless of general policy considerations, however, it seems to me to be important to look at the nature of the employer in this particular case ... The Archdiocese is a Christian organisation doing its best to follow the precepts of its Founder ... Like many other religions, it has a special concern for the vulnerable and the oppressed ...

In the case of the Roman Catholic Church, this situation is further emphasised by its claim to be the authoritative source of Christian values. For centuries the Church has encouraged laypersons to look up to (and indeed revere) their priests. The Church clothes them in clerical garb and bestows on them their title Father, a title which Father Clonan was happy to use. It is difficult to think of a role nearer to that of a parent than that of a priest. In this circumstance the absence of any formal legal responsibility is almost beside the point.⁹³

While criminal child abuse is generally not perpetrated with the consent or even direct knowledge of non-government organisations, the perpetrators nevertheless rely on their reputation within the organisation in developing trusting relationships with children. Because of this special relationship of trust, an organisation has a

90 *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 14.

91 *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 18.

92 *Maga v Trustees of the Birmingham Archdiocese of the Roman Catholic Church* [2010] EWCA Civ 256.

93 *Maga v Trustees of the Birmingham Archdiocese of the Roman Catholic Church* [2010] EWCA Civ 256, paragraph 83.

duty of care to take reasonable steps to protect children from abuse by employees, volunteers and others whom it has engaged.

26.5. Duty of care and vicarious liability

The Committee was informed that in Australia, the civil law has not developed to recognise liability of non-government organisations described above for the criminal abuse of children perpetrated by their representatives. Although the law recognises that such organisations may owe a duty to ensure that reasonable care is taken, that duty does not extend to intentional or criminal acts perpetrated by their representatives.

However, as discussed in Part D, non-government organisations are responsible for creating special relationships of trust between their members and individuals in the broader community. Furthermore, perpetrators rely upon that trust created through their association with the organisation to establish relationships with victims, to offend against children and to prevent detection and reporting of the abuse. Organisations are aware of the vulnerability of children in their care and the fact that parents and others rely on the organisation and its members to look after the wellbeing of those children.

Therefore, the Committee found that organisations should have a clear legal duty to take appropriate measures to minimise the risk of abuse that arises because of the creation of relationships of trust for which they are responsible. The current legal position on the duty of organisations under the *Wrongs Act 1958* (Vic) and vicarious liability at common law are discussed below.

26.5.1. Non-delegable duty of care

A non-delegable duty of care is a duty owed to an individual or group to take reasonable care to ensure the safety and protection of the individual or group. Even if the care of the individual or group is given to a servant or agent, the duty itself (and liability for the breach of the duty) cannot be delegated to another person. The law has developed to include a number of recognised categories where a non-delegable duty is owed. The most relevant to this Inquiry is the duty of care owed by an education authority to its students. That duty cannot be delegated to a teacher.

Those to whom organisations or individuals owe this non-delegable duty are frequently in a more vulnerable position. For this reason there is an imbalance of power between the parties. The duty of care extends to making a party liable for the negligent acts of another, but does not extend to cases involving intentional or criminal wrongdoing causing the protected party to suffer damage.

In situations of criminal child abuse in an organisation, the argument that criminal child abuse is a breach of non-delegable duty of care by the organisation has not been successful in Australian courts. The majority of the High Court in *State of New South Wales v Lepore* decided that a non-delegable duty of care does not extend to liability for intentional

Non-delegable duty of care—a duty that requires a party to take reasonable care to ensure the safety of individuals, which cannot be assigned to someone else. An example is the relationship between a school authority and its students. A school authority has a duty to take reasonable care to ensure that any act or omission by a teacher does not cause reasonably foreseeable injury to students.⁹⁴

94 Fitzroy Legal Service *The Law Handbook Online*. Accessed on 29 May 2013 from www.lawhandbook.org.au (Chapter 6, Section 3).

acts such as criminal child abuse by an employee or volunteer. This case is discussed in more detail in relation to vicarious liability.

26.5.2. Vicarious liability

Victims of criminal child abuse in organisational settings have sued organisations on the basis that they are vicariously liable for harm caused to victims through the actions of their employees or personnel.⁹⁵ However, recent cases indicate that Australian courts are reluctant to hold an organisation vicariously liable for criminal child abuse perpetrated by its members. This is based on two reasons:

- Courts consider criminal child abuse a deliberate illegal act that cannot be regarded as being undertaken in the course of employment.
- Courts are reluctant to find vicarious liability exists where no employment or similar relationship exists between the organisation and the perpetrator, as in the case of some religious personnel.

Vicarious liability for deliberate criminal acts

The leading case in Australia on vicarious liability is the High Court case of *State of New South Wales v Lepore*.⁹⁷ In that case, a majority of the High Court was reluctant to conclude that an employer could ever be vicariously liable for the deliberate illegal acts of an employee.

Although Chief Justice Gleeson indicated that an employer may be vicariously liable for the acts of an employee, even where there has been serious misconduct, the other judges disagreed. The case failed to provide clear guidance on the question of when vicarious liability could be established in these circumstances.

In Victoria, courts have found that unauthorised actions of an employee do not fall within vicarious liability. The Victorian Court of Appeal recently decided in *Blake v JR Perry Nominees Pty Ltd* that an employer is not liable for the unauthorised actions of its employees, if the action was beyond the employer's reasonable control.⁹⁸ The court discussed a number of bases on which the employer could be vicariously liable, but rejected such liability in each instance. Similar difficulties are likely to be encountered in establishing vicarious liability for criminal abuse of children in organisations.

Vicarious liability—the legal liability of one person for the misconduct of another, despite the first person being free from fault. It has traditionally applied to employment of service and has been applied to some similar relationships such as contractors. However, vicarious liability does not apply in all types of relationships. At present vicarious liability generally applies only in employer–employee and contractor–principal relationships.⁹⁶

95 For example, as in the case of *State of New South Wales v Lepore* [2003] 212 CLR 511.

96 Queensland Law Reform Commission (1995) *Vicarious liability: Discussion paper WP 48*.

97 *State of New South Wales v Lepore* [2003] 212 CLR 511.

98 *Blake v JR Perry Nominees Pty Ltd* [2012] VSCA 122.

Box 26.5: Cases concerning vicarious liability for deliberate acts

State of New South Wales v Lepore (2003) 212 CLR 511 (High Court of Australia)

In 1978 a teacher in a government school sexually assaulted Lepore (aged seven) under the guise of punishment for misbehaviour. Lepore sought to recover damages from the State. The trial judge found that the State had not failed to exercise proper care. On appeal, the New South Wales (NSW) Court of Appeal held that non-delegable duty of care extended to ensuring that students are not injured (negligently or intentionally) at the hands of an employed teacher.

The High Court case joined the case of Lepore with the cases of Rich and Samin, who were victims of child sexual assault at a government school in rural Queensland in the 1960s. The High Court majority rejected the NSW Court of Appeal's approach to non-delegable duty of care. It decided instead that the appeal should be dealt with on the basis of vicarious liability. The High Court allowed the appeal in part and ordered a new trial in the District Court.

The majority of the High Court rejected the application of non-delegable duty of care, questioning the liability for intentional criminal acts in such circumstances. Rather, the majority considered that vicarious liability was the more appropriate way to view the responsibility of an organisation for criminal child abuse occurring within it. However, the majority expressed differing views on how vicarious liability should arise, being concerned not to make it too broad.

The High Court discussed the application of vicarious liability for criminal child abuse in organisational settings. However, the majority was divided as to whether an employer could ever be vicariously liable for a deliberate illegal act of an employee. Members of the court expressed different approaches to this issue. Some of the arguments suggested that vicarious liability could possibly be established in the following situations:

- if unauthorised acts are so connected with authorised acts to be regarded as a mode (although an improper mode) of doing an authorised act—as opposed to an independent act⁹⁹
- if a 'close connection' could be established between the unauthorised act and employment¹⁰⁰
- if the acts were done in the course of employment—three factors that negate vicarious liability include:
 - i) no fault on part of employer;
 - ii) person having no actual or apparent authority to do the act;
 - iii) act not in the course of employment (deliberate breach of contract of employment).¹⁰¹
- if the employment itself increases the risk of offending—where employee's conduct is closely tied to a risk that the employer's enterprise has placed in the community.¹⁰²

99 As noted by C. J. Gleeson in *State of New South Wales v Lepore* [2003] 212 CLR 511, paragraph 42. See also J. Callinan at paragraph 352.

100 As noted by J. Gaudron in *State of New South Wales v Lepore* [2003] 212 CLR 511, paragraph 132.

101 As noted by Gummow and J. J. Hayne in *State of New South Wales v Lepore* [2003] 212 CLR 511, paragraph 204–42.

102 As noted by J. Kirby in *State of New South Wales v Lepore* [2003] 212 CLR 511, paragraph 316.

Box 26.5: Continued

Blake v JR Perry Nominees Pty Ltd [2012] VSCA 122 (Victorian Court of Appeal)

This case concerned the injury of a truck driver (Blake) by another driver (Jones) employed by JR Perry. The injury was caused by a practical joke, which Blake argued was motivated by boredom due to the drivers being required to wait a long time for refuelling. Blake sought to establish that JR Perry was vicariously liable for his injury. The case failed at first instance and Blake appealed to the Court of Appeal. The Court of Appeal held that vicarious liability was not established, because the act that caused the injury was beyond the reasonable control of the employer and was not sufficiently connected with Jones' employment as a truck driver for JR Perry.

As a consequence of the differing approaches expressed in the High Court, the law remains unclear on whether an organisation may ever be held vicariously liable for any acts of its members that are criminal child abuse.

Source: Adapted from the *State of New South Wales v Lepore* (2003) 212 CLR 511 (High Court of Australia), *Blake v JR Perry Nominees Pty Ltd* [2012] VSCA 122 (Victorian Court of Appeal)

Nature of the relationship and vicarious liability

The legal notion of vicarious liability is not confined to employment relationships. However, the courts have generally taken the view that a relationship similar to employment is needed in order to establish vicarious liability. If that relationship between a representative of an organisation and the organisation itself cannot be established, that is an additional hurdle for victims to overcome in holding the organisation liable. For example, where the perpetrator is one of the organisation's religious personnel, the courts have held that no relationship similar to employment exists.

The Committee concluded that, although there is no employment relationship, some members of religious or non-government organisations do have a relationship with characteristics similar to formal employment. Fr Kevin Dillon, for example, explained how it felt 'disengaging' when the Church considered him to be self-employed or a contractor:

It is genuinely meant to be a vocation and a sense of calling. To be told by the institution, 'No, you are not employed; you are self-employed or a contractor', is disengaging. I use that word because it comes up a lot in conversation. There is a sense of being cut off: 'If it doesn't suit us, we really don't want to know you'. I have been a priest for 44 years. I started studying for the priesthood in 1962. I have spent all my life in parishes, and I am grateful that I have. I would not call it an insult to be told that I am self-employed or a contractor, but I would call it disengaging. There is a sense of not belonging.¹⁰³

Fr Dillon suggested that for tax purposes, priests are seen as employees, and commented—'It seems that we are employees on one hand and we are not employees on the other.'¹⁰⁴

The Committee notes that religious personnel generally receive a salary or stipend from the diocese, order or congregation they represent, and are also usually provided with housing. They are considered employees for fringe benefits tax purposes and

¹⁰³ *Transcript of evidence*, Father Kevin Dillon, Geelong, 15 February 2013, p. 6.

¹⁰⁴ *Transcript of evidence*, Father Kevin Dillon, p. 6.

their income is subject to income tax.¹⁰⁵ Furthermore, the conditions of employment and the directions placed upon ministers of religion are often more demanding than that of ordinary employees. According to Sydney Archdiocese Vocation Centre:

A diocesan priest doesn't make vows. He promises a commitment to celibacy and obedience to his bishop when he becomes a deacon. He does not take a vow of poverty, but a diocesan priest receives a minimal salary enabling him to pay for his living expenses. Along with all committed Christians he is challenged to live simply.¹⁰⁶

This suggests that ministers of religion are far from independent of the religious organisation they represent.

Recent decisions in the United Kingdom suggest that it is possible to establish vicarious liability for criminal child abuse by religious personnel, despite the lack of any formal employment relationship.¹⁰⁷ This approach recognises that there is a sufficient connection between the risk of criminal child abuse and the opportunity for intimacy and power, the circumstances of which were created by the organisation.¹⁰⁸

Box 26.6: Cases concerning vicarious liability and the nature of the relationship

Maga v Trustees of the Birmingham Archdiocese of the Roman Catholic Church [2010] EWCA Civ 256 (England and Wales Court of Appeal).

Fr Clonan, an assistant priest in the Catholic Church, abused Maga as a boy. Maga alleged that Fr Clonan's superiors had been aware of prior abuses by him but had taken no action. Initially the court found that the Birmingham Archdiocese was not vicariously liable for the abuse by Fr Clonan, and that the archdiocese owed no duty to Maga.

The Court of Appeal then took a different view. It held that Fr Clonan's sexual abuse was so closely connected with his employment as a priest at the church that it would be fair and just to hold the archdiocese vicariously liable. The court found that the priest's position of power and authority enabled him to establish an intimate relationship with the victim. This connection was strong enough to establish vicarious liability. The court held that because of the complaint, the priest's superior had a duty to keep a careful eye on Fr Clonan. The court found that if the superior had done this, 'he would have seen enough' to be persuaded that action had to be taken.¹⁰⁹

105 For example, religious practitioners who receive a stipend or other form of remuneration (including non-cash benefits) are employees for the purposes of the *Fringe Benefits Tax Assessment Act (FBTAA) 1986* (Cth). See section 136 and 221A of the FBTAA and Taxation Ruling 92/17.

106 Sydney Archdiocese Vocations *Vocation Centre: Frequently Asked Questions*. Accessed on 10 August 2013 from <http://www.vocationcentre.org.au/faqs/>.

107 For example, *Maga v Trustees of the Birmingham Archdiocese of the Roman Catholic Church* [2010] EWCA Civ 256 and *JGE v The English Province of Our Lady of Charity and The Trustees of the Portsmouth Roman Catholic Diocesan Trust* [2011] EWHC 2871 and [2012] EWCA Civ 938 and *The Catholic Child Welfare Society and others (Appellants) v Various Claimants (FC) and The Institute of the Brothers of the Christian Schools and others (Respondents)* [2012] UKSC 56 (United Kingdom Supreme Court). See also *Submission S226A*, Law Institute of Victoria, p. 23.

108 In contrast, Australia courts have not yet adopted this position. See for example, J. Gibbs in *Attorney-General (NSW) v Grant* [1976] 135 CLR 587, p. 600. Gibbs considered that 'a church in Australia is a voluntary organisation of members'.

109 *Maga v Trustees of the Birmingham Archdiocese of the Roman Catholic Church* [2010] EWCA Civ 256.

Box 26.6: Continued

JGE v The English Province of Our Lady of Charity and The Trustees of the Portsmouth Roman Catholic Diocesan Trust [2011] EWHC 2871 (High Court of England and Wales)

In this case, 'JGE' alleged that a Catholic priest, Fr Baldwin, raped her in a children's home in the early 1970s. Fr Baldwin died before the case was heard and JGE argued that the Trustees of the Portsmouth Roman Catholic Diocesan Trust should be held vicariously liable for Fr Baldwin's alleged abuse.

The initial judgement and the subsequent judgement of the Court of Appeal upheld the argument that in appointing the priest the Trustees of the Diocese created a risk of harm to others and should be vicariously liable for the abuse.

The Court accepted that priests and religious were not employees in the usual vicarious liability sense but were nevertheless akin to employees for the purposes of vicarious liability. Lord Justice Ward found that 'there is an organization called the Roman Catholic Church with the Pope in the head office, with its "regional offices" with their appointed bishops and with "local branches", the parishes with their appointed priests. This looks like a business and operates like a business'. The Court found that the remuneration, accountability and other requirements suggested a relationship of employment rather than that of an independent contractor.¹¹⁰

The Catholic Child Welfare Society and others (Appellants) v Various Claimants (FC) and The Institute of the Brothers of the Christian Schools and others (Respondents) [2012] UKSC 56 (United Kingdom Supreme Court)

This case involved an action by 170 men in respect of abuse they alleged to have been subjected to at a residential institution run by Brothers of the Christian Schools (an institute founded by the De La Salle Brothers). The case was brought against the organisation which took over the management of the school (the Middlesborough defendants) and also the De La Salle defendants on the basis of vicarious liability. In that case, the court extended the concept of vicarious liability, stating that 'it is fair, just and reasonable, by reason of the satisfaction of the relevant criteria, for the Institute to share with the Middlesborough defendants vicarious liability for the abuse committed by the brothers.'¹¹¹

Source: Adapted from the judgement of *Maga v Trustees of the Birmingham Archdiocese of the Roman Catholic Church* [2010] EWCA Civ 256, *JGE v The English Province of Our Lady of Charity and The Trustees of the Portsmouth Roman Catholic Diocesan Trust* [2011] EWHC 2871, *The Catholic Child Welfare Society and others (Appellants) v Various Claimants (FC) and The Institute of the Brothers of the Christian Schools and others (Respondents)* [2012] UKSC 56.

Existing legislative models for vicarious liability

The Committee identified that statutory models for establishing vicarious liability of organisations already exist in the equal opportunity area. In Victoria, vicarious liability has been legislated in the discrimination provisions of the *Equal Opportunity Act 2010* (Vic). This holds employers and those who engage agents under contract vicariously liable for discriminatory acts by employees or agents in the course of employment or while acting as an agent, unless reasonable precautions were taken to prevent the

110 *JGE v The English Province of Our Lady of Charity and The Trustees of the Portsmouth Roman Catholic Diocesan Trust* [2011] EWHC 2871, paragraph 75–84.

111 *The Catholic Child Welfare Society and others (Appellants) v Various Claimants (FC) and The Institute of the Brothers of the Christian Schools and others (Respondents)* [2012] UKSC 56, paragraph 94.

behaviour (s.109, see Box 26.7). The Commonwealth *Sex Discrimination Act 1984* contains similar vicarious liability provisions (s.106, see Box 26.7).

The Victorian Equal Opportunity Act imposes a positive duty on organisations to take reasonable and proportionate measures to eliminate discrimination, sexual harassment and victimisation as far as possible. As noted by the Victorian Equal Opportunity and Human Rights Commission, ‘instead of allowing organisations to simply react to complaints of discrimination when they happen, the Act requires them to be proactive about discrimination and take steps to prevent discriminatory practices.’¹¹²

Box 26.7: Vicarious liability in discrimination legislation

Equal Opportunity Act 2010 (Vic)

s.109. Vicarious liability of employers and principals

If a person in the course of employment or while acting as an agent—

- (a) contravenes a provision of Part 4 or 6 or this Part [Discrimination provisions of the Act]; or
 - (b) engages in any conduct that would, if engaged in by the person’s employer or principal, contravene a provision of Part 4 or 6 or this Part—
- both the person and the employer or principal must be taken to have contravened the provision and a person may bring a dispute to the Commissioner for dispute resolution or make an application to the Tribunal against either or both of them.

Section 110. Exception to vicarious liability

An employer or principal is not vicariously liable for a contravention of a provision of Part 4 or 6 or this Part by an employee or agent if the employer or principal proves, on the balance of probabilities, that the employer or principal took reasonable precautions to prevent the employee or agent contravening this Act.

Sex Discrimination Act 1984 (Cth)

s.106. Vicarious liability, etc.

(1) Subject to subsection (2), where an employee or agent of a person does, in connection with the employment of the employee or with the duties of the agent as an agent:

- (a) an act that would, if it were done by the person, be unlawful under Division 1 or 2 of Part II (whether or not the act done by the employee or agent is unlawful under Division 1 or 2 of Part II); or
- (b) an act that is unlawful under Division 3 of Part II;

this Act applies in relation to that person as if that person had also done the act.

(2) Subsection (1) does not apply in relation to an act of a kind referred to in paragraph (1)(a) or (b) done by an employee or agent of a person if it is established that the person took all reasonable steps to prevent the employee or agent from doing acts of the kind referred to in that paragraph.

Source: Adapted from the *Equal Opportunity Act 2010 (Vic)*, *Sex Discrimination Act 1984 (Cth)*

112 Victorian Equal Opportunity and Human Rights Commission (2011) *Positive duty: Know your responsibilities*. Accessed on 26 June 2013 from www.humanrightscommission.vic.gov.au.

Finding 26.9

Because perpetrators of criminal child abuse in organisational settings derive their credibility from their association with the organisation, there is a need to recognise the legal obligation of organisations to reasonably ensure the safety of children who come into contact with their members. This includes implementing effective employment controls and adopting best practice in relation to risk management and prevention.

The Committee determined that there are two options for legislative change that would legally require organisations to take reasonable care to protect children from abuse by members of their organisation. The two possible options for reform are:

- legislating non-delegable duty of care in the Wrongs Act. For example, that organisations have a non-delegable duty to take reasonable care to prevent intentional injury to children in their care
- a provision regarding vicarious liability in the Wrongs Act based on the examples in the Victorian and Commonwealth discrimination legislation.

Both options could extend the duty of care to putting in place appropriate employment controls and adopting effective practices in risk management and prevention as identified in Part D of this report.

Organisations need to recognise that an abuser gains access to children by virtue of the abuser's relationship to, and membership of, the organisation, and because the organisation holds the abuser out to be a trustworthy person. This places an obligation on the organisation to take reasonable care to protect children exposed to risk because they are entrusted to the organisation. This obligation includes rigorous screening practices to ensure that only appropriate people have access to children, that risk management measures are undertaken, and that there exists an adequate system of monitoring and record keeping.

The Committee concluded that a legislative approach would encourage non-government organisations to take reasonable precautions and to strengthen preventive measures discussed in Part D of this Report.

→ Recommendation 26.4

That the Victorian Government undertake a review of the *Wrongs Act 1958 (Vic)* and identify whether legislative amendment could be made to ensure organisations are held accountable and have a legal duty to take reasonable care to prevent criminal child abuse.

Chapter 27

An alternative to civil litigation—the Victims of Crime Assistance Tribunal

AT A GLANCE

Background

In Victoria, government financial assistance through the Victims of Crime Assistance Tribunal (VOCAT) provides an alternative to civil litigation for victims of criminal child abuse.

Key findings

- VOCAT provides a viable alternative to civil litigation for victims of criminal child abuse because of its ability to provide an independent acknowledgement of harm, its non-adversarial approach, and the supports provided for victims.
- Limitations of VOCAT include the application of a two-year time limit on claims, the limited compensation available and the lack of ongoing financial support for victims.

Recommendation

- That the Victorian Government consider amending the *Victims of Crime Assistance Act 1996* (Vic) to specify that no time limits apply to applications for assistance by victims of criminal child abuse in organisational settings.

In Victoria, victims of crime may apply for government assistance through the Victims of Crime Assistance Tribunal (VOCAT) as an alternative to civil litigation. Victims of criminal child abuse in organisational settings fit into this category.

Although very few victims spoke about VOCAT, a number of Inquiry participants raised VOCAT as an alternative avenue to civil litigation for victims (the Law Institute of Victoria, South Eastern Centre for Sexual Assault and the Office of the Child Safety Commissioner).

Despite the small amount of evidence received, the Committee considered VOCAT a viable alternative to civil litigation for victims of criminal child abuse in non-government organisational settings and identified a number of improvements that take into account the specific needs of victims of child abuse.

The Committee also identified that some elements of VOCAT, such as its experience in supporting victims of crime, could be used in developing a new, independent alternative justice avenue for criminal child abuse in organisational contexts, as discussed in Chapter 28.

27.1. VOCAT's role and process

VOCAT administers Victoria's state-funded compensation scheme that assists victims to recover from a crime by providing financial assistance for expenses incurred, or reasonably likely to be incurred, as a direct result of the crime. It also provides financial assistance to secondary and related victims in certain circumstances.¹¹³ The scheme is funded from consolidated revenue.¹¹⁴

In order to make an application to VOCAT, a victim must establish that they have suffered from a criminal act of violence that directly resulted in injury or death. There is no need to identify, prosecute or establish the guilt of the offender, however the criminal act must have been reported to police within a reasonable time, unless there are special circumstances. The VOCAT process is shown in Figure 27.1.

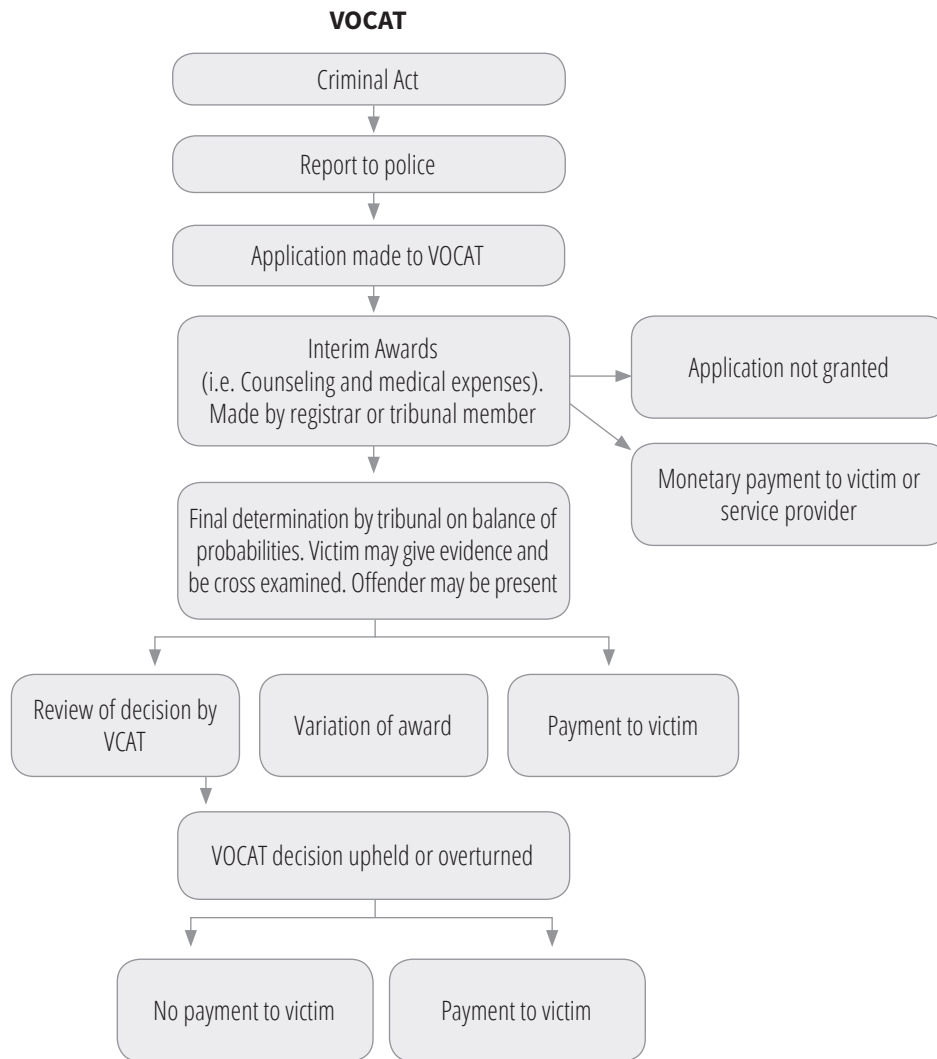
VOCAT can award the following types of assistance:

- Interim awards for immediate assistance such as medical and counselling fees.
- Assistance to cover expenses such as counselling and medical fees, loss of earnings, and other expenses in exceptional circumstances. Primary victims receive up to \$60,000 to cover expenses. Loss of earnings can make up a maximum of \$20,000 of this amount.
- Special financial assistance is available for pain and suffering (capped at \$10,000).

¹¹³ Financial assistance is provided to primary victims and, in certain circumstances, secondary victims (witnesses and parents/guardians) and related victims (close family and dependents). Victims of abuse may also apply for compensation under the *Sentencing Act 1991* (Vic) from an offender found guilty or convicted of a crime. However, the Committee is aware that this avenue relies on the perpetrator who is found guilty of a crime to pay compensation. In many cases this is not possible and in any event no such compensation has ever been applied in cases of child abuse in organisational settings. Accordingly, this avenue was not considered in detail by the Committee.

¹¹⁴ *Victims of Crime Assistance Act 1996* (Vic) s.69(1).

Figure 27.1: VOCAT process



Source: Adapted from the Department of Justice (2009) *Reviewing victims of crime compensation: sentencing orders and state-funded awards: Discussion paper*, p.20.

27.2. Independent acknowledgement of harm

The Committee determined that one of the strengths of Victoria’s approach to victims of crime compensation is that cases are determined by a magistrate.¹¹⁵ This gives authority and legitimacy to victims’ claims.

27.3. Non-adversarial approach

VOCAT provides an avenue for victims to tell their story to a tribunal member or have the matter dealt with administratively without having to attend a hearing. Although VOCAT makes a determination based on the civil standard of proof

115 However, victims can choose to have the matter determined by an administrative process rather than attending a hearing.

(the balance of probabilities), the applicant is rarely required to give evidence or be cross-examined.¹¹⁶

Victims can receive financial assistance through VOCAT even if the offender has not been identified or charged, and regardless of whether the perpetrator is convicted.

Also, VOCAT is not restricted by the limitations of civil litigation outlined in Chapter 26, such as the barriers to the establishment of liability or problems with identification of a legal entity. Furthermore, VOCAT is not required to consider the financial circumstances of the offender in awarding compensation. Similarly, the victim is not required to take action to recover funds from the offender.

Provided the Tribunal is satisfied that a crime has been perpetrated against the victim and that crime has been reported to police, financial assistance should be available to the victim.

27.4. Support for victims

Although VOCAT itself focuses on financial assistance, it is part of a broader government approach to victims of crime coordinated by the Victims Support Agency (VSA). The Committee observed that considerable government expertise in responding to victims of crime is available to support those who make applications to VOCAT. For example:

- The VSA, Victims Assistance and Counselling Program (VACP) and Victims of Crime Helpline already support victims and provide pathways to independent resolution of their claims through VOCAT and the courts.
- The VACP and VOCAT programs operate within the framework of a Victims' Charter, which is focused on ensuring respect for, engagement with, and informed choice of victims.
- The Victims' Charter Enquiries and Complaints Line provide an avenue for complaints about services within the victims of crime sphere.

VOCAT will also usually cover legal fees incurred in making an application to the Tribunal.¹¹⁷ According to a 2009 review of VOCAT conducted by the Department of Justice, although funds can be sought to be recovered from the perpetrator, in practice this option has not been exercised.¹¹⁸

Finding 27.1

VOCAT provides a viable alternative to civil litigation for victims of criminal child abuse because of its ability to provide an independent acknowledgement of harm, its non-adversarial approach, and the supports provided for victims.

¹¹⁶ Department of Justice (2009) *Review of victims of crime compensation: Sentencing orders and state-funded awards: Discussion paper*.

¹¹⁷ Department of Justice (2010) *2010 Victims of Crime Compensation Review: Framework Report*.

¹¹⁸ Department of Justice (2010) *2010 Victims of Crime Compensation Review: Framework Report*, p. 27.

27.5. Limitations of VOCAT

The Committee heard little evidence from victims about their experience of VOCAT. Of the evidence received by the Committee, key areas of criticism related to:

- the application of limitation periods to claims
- limited compensation available through the process
- VOCAT's inability to accommodate victims who suffer ongoing or permanent injury
- the absence of a mechanism for organisations to contribute to the assistance paid to victims of criminal child abuse in those organisations.

Finding 27.2

Limitations of VOCAT include the application of a two-year time limit on claims, the limited compensation available and the lack of ongoing financial support for victims.

27.5.1. Application of limitation periods

The Committee heard some criticism of the two-year limitation period for bringing claims through VOCAT.¹¹⁹ An application to VOCAT for financial assistance must generally be made within two years of the crime occurring. However, the Committee notes that extensions of time have been granted in certain circumstances, including in criminal child abuse cases.¹²⁰ Considerations for granting an extension of time include, for example:

- the age of the applicant at the time of the alleged act of violence
- whether the applicant is intellectually disabled or mentally ill
- whether the alleged perpetrator was in a position of power, influence or trust in relation to the applicant.¹²¹

→ Recommendation 27.1

That the Victorian Government consider amending the *Victims of Crime Assistance Act 1996* (Vic) to specify that no time limits apply to applications for assistance by victims of criminal child abuse in organisational settings.

27.5.2. Limited compensation

Participants in the Inquiry told the Committee that compensation awarded through VOCAT is substantially less than the amount of damages that can be obtained in a successful civil claim. For example, the Law Institute of Victoria commented that:

A victim applying to VOCAT with the strongest possible claim might be awarded up to \$70,000 (that is, the maximum \$60,000 award plus \$10,000 in special financial assistance). If the same person were to succeed in a civil claim for the same abuse,

119 *Submission S226*, Law Institute of Victoria, p. 22.

120 Victims of Crime: Department of Justice (Victoria) *Compensation and expenses*. Accessed on 10 May 2013 from <http://www.victimsofcrime.vic.gov.au/>. See also Fitzroy Legal Service *The Law Handbook Online*.

121 *Victims of Crime Assistance Act 1996* (Vic) s.29(3).

if they suffered a substantial loss of earnings or significant pain and suffering, our members report that the damages could exceed \$200,000.¹²²

Furthermore, although claimants do not need to await trial in order to commence proceedings in VOCAT, claimants are obliged to refund the amount of assistance provided by VOCAT if they subsequently receive damages.¹²³

27.5.3. Lack of ongoing financial support of victims

A further limitation of VOCAT highlighted by Inquiry participants is its inability to assist victims who suffer ongoing or permanent injury. This is a significant limitation for criminal child abuse victims, many of whom suffer lifelong psychological harm. Many victims who participated in the Inquiry told the Committee that there was a strong need for long-term, ongoing support.

Mr Peter Blenkiron, for example, spoke of the need to provide a ‘safety net’ to support those who find it hard to maintain a consistent level of functioning. He gave the example of how the Department of Veterans’ Affairs (DVA) Repatriation Health Card can help in this regard:

I know a guy who is on it who came back from the Gulf War. He was suicidal for years. He got [the card]. He said, ‘It’s a safety net’ ... He works when he can. He might be able to do a day a week, some weeks ... He will do a day’s work, perhaps two, but then he will spend the rest of the week in bed. But he keeps trying; and when he falls, there is a safety net. If he becomes fully functional again, there is no problem; he can just start earning his own money. But if he falls again in three months time, the safety net drops back in.¹²⁴

The Committee identified that other compensation models, such as the Victorian Transport Accident Commission (TAC) and the DVA compensation schemes, could be useful models for meeting victims’ needs for ongoing support (for a further discussion of the DVA approach, see Section 28.2).

The TAC is a statutory scheme that provides compensation to individuals injured in a transport accident.¹²⁵ Victims may be entitled to compensation for medical and other services relating to the injury and common-law damages for serious injury due to an accident where someone else was at fault. The TAC also has the ability to pay income assistance on a temporary basis until the victim makes sufficient recovery to return to work.¹²⁶

Although the TAC scheme does not pay compensation indefinitely, it is designed to cater to the ongoing costs incurred by the victim in order to recover from their injury. These ongoing costs are partly funded by specific revenue from vehicle registration fees and insurance.

Government could consider a similar dedicated funding stream, paid for by contributions from non-government organisations to address the limited compensation under VOCAT. However, the Committee notes that there would be

¹²² *Submission S226*, Law Institute of Victoria, p. 22.

¹²³ *Victims of Crime Assistance Act 1996* (Vic) s.62.

¹²⁴ *Transcript of evidence*, Ballarat & District Group, p. 18.

¹²⁵ Some Inquiry participants referred to the TAC as a possible model of compensation. See for example *Submission S067*, Mr Andrew Collins, p. 3; *Submission S338A*, Mr Bernd Bartl, p. 7.

¹²⁶ *Transport Accident Act 1986* (Vic).

significant challenges in determining the level of any such contributions from various non-government organisations.

The TAC protocols recognise the role played by legal advisers and allows costs to be payable upon resolution of claims, even if legal proceedings have not been issued.¹²⁷

The Committee also noted that some other Australian jurisdictions require perpetrators to pay the compensation awarded under their victims of crime assistance processes. This could help VOCAT fund ongoing support of victims. In the context of criminal child abuse in organisations, the contribution ought to be made by the organisation as well as the perpetrator as a consequence of their breaches of duties and obligations to the victims.

27.5.4. Victims of crime schemes in other Australian jurisdictions

All Australian jurisdictions have victims of crime schemes (refer to Table 27.1). A recent review of these schemes by the Department of Justice showed that Victoria's approach provides outcomes that are comparable to, or better than, other jurisdictions.

However, victims of crime schemes in other Australian jurisdictions may offer lessons for Victoria in expanding the funding model to allow compensation for more serious and ongoing injuries from child abuse to be compensated. For example, several other jurisdictions impose a levy on offenders for the purpose of raising funds to compensate victims (for example, Queensland and South Australia).¹²⁸ In Victoria, VOCAT has the power to recoup compensation from offenders, although this has not been carried out in practice.¹²⁹

Another possible approach can be seen in the Victims of Crime Compensation Fund in South Australia. This fund accumulates money from a number of sources—confiscated proceeds of crime, a levy on convictions, traffic fines and funds provided by the Government. Any money awarded through Victims of Crime Compensation is drawn from the Victims of Crime Compensation Fund, which is administered by the Attorney-General's Department. The amount that a victim can claim depends, primarily, on the severity of their injuries.¹³⁰

127 *Transport Accident Commission Transport Accident Commission*. Accessed on 17 September 2013 from <http://www.tac.vic.gov.au>.

128 *Transport Accident Commission Transport Accident Commission*.

129 Department of Justice (2009) *Review of victims of crime compensation: Sentencing orders and state-funded awards: Discussion paper*.

130 Victim Support Service Incorporated *Victims of Crime Compensation*. Accessed on 29 July 2013 from <http://www.victimsa.org>.

Table 27.1: Government funded victim compensation schemes in Australia—Funding approaches

	Vic	ACT	NSW	NT	Qld	SA	Tas	WA
Maximum award	\$70,000	\$50,000	\$50,000	\$40,000	\$75,000	\$50,000	\$30,000 ¹³¹	\$75,000
Offender levy	No	Yes, \$50 for most offences.	Yes, ranges from \$60 to \$140.	Yes, ranges from \$10 to \$200 (\$200 for corporations).	No	Yes, ranges from \$20 to \$120.	Yes, ranges from \$20 to \$50.	No
A specific state-funded compensation fund	No, funded from consolidated revenue.	No	Yes, called the Victims Compensation Fund.	Yes, the Victims Assistance Fund.	No, funded from consolidated revenue.	Yes, the Victims of Crime Compensation Fund.	Yes, the Criminal Injuries Compensation Fund.	No, funded from consolidated revenue.
Can the state take action against the offender for repayment of state awards?	Yes, the state may apply to the court to order a convicted offender to pay the state the amount of assistance granted.	Yes, but last financial year this only occurred in seven cases.	Yes, state pursues recovery from the offender in every case where there is a relevant conviction.	Yes, the territory may bring an action in court against the offender to repay the amount awarded.	Yes, the debt is enforced under the Qld state penalties enforcement scheme when there is a relevant conviction.	Yes.	Yes, property may be restrained or forfeited to satisfy debt; an order may be enforced as a judgement.	

Source: Extract from Department of Justice (2009) *Reviewing victims of crime compensation: Sentencing orders and state-funded awards: Discussion Paper*, pp.59–60.

131 For one offence. \$50,000 for more than one offence.

Chapter 28

An independent alternative justice avenue for criminal child abuse victims

AT A GLANCE

Background

There is currently no alternative justice avenue for victims of child abuse in organisational settings that is paid for by non-government organisations and administered by the Victorian Government. Inquiry participants proposed a number of alternative justice models, including:

- a government-funded redress scheme
- a compensation scheme funded by non-government organisations
- a government compensation fund.

Key finding

The elements of a successful alternative justice approach include:

- independence and authority
- respect, engagement and support for victims
- contribution by non-government organisations
- opportunity for appeal and review.

Recommendation

That the Victorian Government review the functions of the Victims of Crime Assistance Tribunal (VOCAT) to consider its capacity to administer a specific scheme for victims of criminal child abuse that:

- enables victims and families to obtain resolution of claims arising from criminal child abuse in non-government organisations
- is established through consultation with relevant stakeholders, in particular victims
- encourages non-government organisations to voluntarily contribute a fee to administer the scheme
- ensures non-government organisations are responsible for the funding of compensation, needs and other supports at amounts agreed through the process.

Due to the limitations of the existing alternative justice avenues, the Committee determined that Victoria needs a state-run alternative justice avenue to resolve claims of criminal child abuse in organisational settings. Therefore, the Committee determined that a non-adversarial alternative approach is needed that:

- necessitates that the crime be reported to police
- provides a platform for helping victims of criminal child abuse to reconstruct their lives as much as possible
- supports victims through the process
- acknowledges what has occurred
- engages non-government organisations in providing acknowledgement and funding compensation and support
- provides an avenue through which families and communities affected by criminal child abuse can be supported and rehabilitated.
- Table 28.1 illustrates the current Victorian justice approaches and what the Committee determined is needed in the future.

Table 28.1: Victorian justice approaches relevant to child abuse in organisational settings—where Victoria is now and what is needed

Where we are now	What is needed
<p>Courts</p> <ul style="list-style-type: none"> • litigation • mediated settlements 	<p>Courts</p> <ul style="list-style-type: none"> • litigation • mediated settlements
<p>VOCAT</p> <ul style="list-style-type: none"> • State-funded compensation 	<p>VOCAT</p> <ul style="list-style-type: none"> • State-funded compensation
<p>Non-government approaches</p> <ul style="list-style-type: none"> • private settlement negotiation • private settlement determinations • pastoral support • counselling • apology 	<p>New independent alternative justice avenue</p> <ul style="list-style-type: none"> • independent dispute resolution to facilitate negotiation between victims and non-government organisations • financial, other compensation and counselling funded by non-government organisations
	<p>Non-government approaches</p> <ul style="list-style-type: none"> • pastoral support • apology

Source: Compiled by the Family and Community Development Committee.

This chapter outlines the necessary elements for a successful alternative justice avenue for victims of criminal child abuse in organisational settings, considers the proposed alternative justice models, and makes a case for a new Victorian independent dispute resolution body for victims of criminal child abuse in organisational settings.

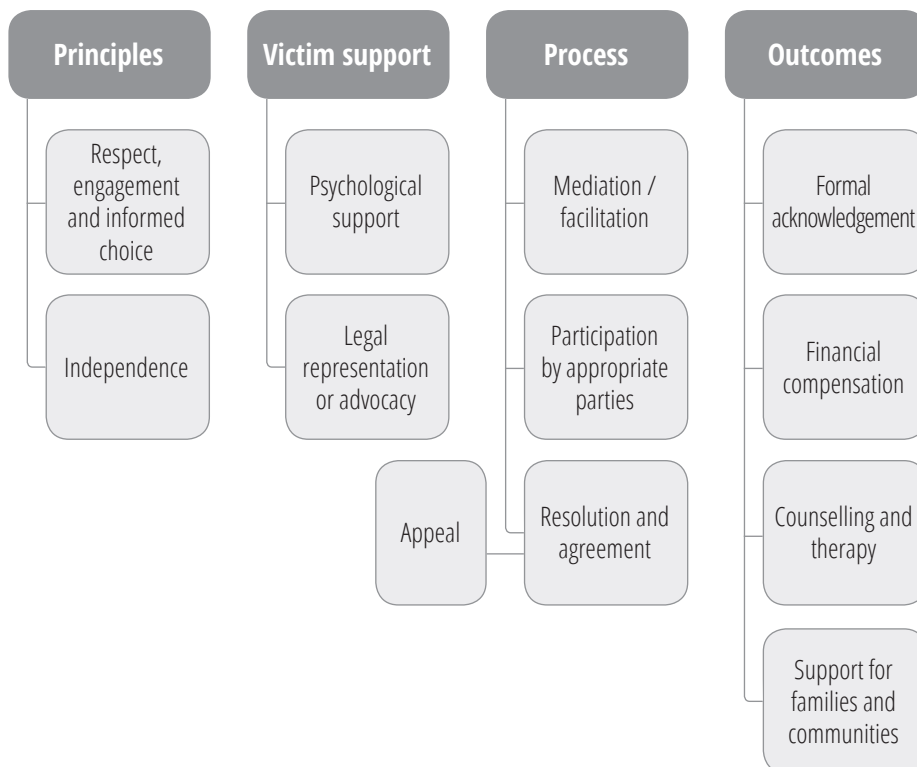
28.1. What elements are needed for a successful alternative justice approach?

Throughout the Inquiry, the Committee received and heard a large amount of evidence about what works and what does not work in resolving claims of criminal child abuse in non-government organisations. Based on its evidence and additional research, the Committee determined that a successful alternative justice avenue for victims of criminal child abuse in organisational settings must have the following features:

- It needs to be independent and have sufficient authority to ensure that the right parties come to the table to resolve claims.
- It needs to respect and properly engage victims in the process and support them throughout by ensuring access to counselling support and legal assistance.
- It needs to have a strong focus on the needs of victims, families and communities, and not be bound by legal parameters in determining outcomes that respond to the multiple needs of victims.
- As part of the process, relevant organisations need to take responsibility for delivering outcomes, including the funding of compensation and services.
- Should be able to continue regardless of a parallel investigation by police.
- There needs to be a clear avenue to appeal decisions.

These elements are illustrated in Figure 28.1. The Committee identified some key questions for the Victorian Government to consider when formulating an alternative justice approach, which it has noted throughout the following sections.

Figure 28.1: Elements of a successful alternative justice approach



Source: Compiled by the Family and Community Development Committee.

28.1.1. Independence and authority

The Committee heard that the independence of any alternative justice process is critical to its credibility with victims. As described throughout this Report, a perceived lack of independence was one of the key areas of criticism by victims who accessed the internal processes of non-government organisations. For examples, see Part F.

The Law Institute of Victoria also recommended the establishment of an independent body to deal with complaints:

We would support an oversight body to oversee the internal complaints processes of religious organisations and possibly to receive direct complaints and mediate those complaints in accordance with restorative justice principles.¹³²

Similarly, Berry Street recommended that the Government develop a model complaints process and reparations agreement for care leavers and establish an independent reparations board to manage the investigation of allegations.¹³³

There was also strong support for the process to have the authority to discover the relevant facts and the circumstances that allowed the abuse to occur. The Committee's research pointed also to the need for the process to be fair to all parties involved.¹³⁴

28.1.2. Respect, engagement and support

The Committee found no evidence that victims had been consulted or involved in the development of the existing non-government or civil approaches to justice. Inquiry participants told the Committee that many victims felt disempowered by existing justice avenues. The civil, statutory and organisational processes have provided little opportunity for victims to have a say on the process or outcomes they seek.

The Inquiry's evidence and research makes it clear that the process through which outcomes are achieved is critical for victims.¹³⁵ This has also been recognised internationally. For example, in its report on the Canadian responses to criminal child abuse in institutions, the Law Commission of Canada concluded that two fundamental values should guide any attempt to understand and respond to the needs of survivors of child abuse:

First, one must respect survivors and engage them to the fullest extent possible in any redress process. Second, survivors must be given access to information and support so that they can make informed choices about how to deal with their experience of abuse.¹³⁶

The involvement of victims has proven to be effective in designing state redress approaches in other jurisdictions. In Canada, for example, the success of the Grandview Agreement in meeting the needs of abuse victims has been largely

132 *Transcript of evidence*, Law Institute of Victoria, p. 2. See also *Submission S226A*, Law Institute of Victoria.

133 *Submission S262*, Berry Street, p. 14.

134 Fred Kaufman (2002) *Searching for justice: An independent review of Nova Scotia's response to reports of institutional abuse* Province of Nova Scotia, p. 455.

135 Reg Graycar & Jane Wangmann (2007) 'Redress packages for institutional child abuse: Exploring the Grandview Agreement as a case study in 'alternative' dispute resolution'. *University of Sydney, Legal studies research paper 07/50*.

136 Law Commission of Canada (2000) *Restoring dignity: Responding to child abuse in Canadian institutions*. Ottawa, Law Commission of Canada, p. 3.

attributed to the involvement of victims in its design. This is discussed further in Section 28.4.

The Committee learned that supporting victims through the process is critical. This includes encouraging people to have support persons present, and giving them access to funded legal and counselling services to support them throughout the process.

The Committee also saw a strong role for a relevant statutory body (as recommended in Part E) to make victims aware that they can apply to have claims resolved through the new avenue. Similarly, this statutory body should fulfill an educational role for non-government organisations, making them aware of their rights and responsibilities under the process.

28.1.3. The role of non-government organisations

The Committee heard that a critical part of any alternative justice scheme for victims of criminal child abuse in non-government organisational settings is the contribution by the relevant non-government organisation. For example, in relation to the Catholic Church, Mr Joseph Saric told the Committee:

The Catholic Church should be taken out of future rehabilitation schemes to help victims, except for providing extensive financial input to these schemes and developmental input on a best practice pastoral care program.¹³⁷

Some international approaches have established a precedent for the cocontribution by non-government organisations to victim compensation schemes. For example, the Committee is aware of state-operated redress schemes in Canada and Ireland that have adopted such a model.¹³⁸ However, the Committee considered that the way in which the contribution of non-government organisations is managed would be fundamental to the successful implementation of any alternative justice approach by the Victorian Government. This is discussed further in Section 28.2 and 28.5.

28.1.4. Opportunity for appeal and review

The Committee considered the ability to appeal decisions to be a critical element of any alternative justice avenue. This was highlighted by a number of Inquiry participants and the experience of victims who went through the Catholic Church processes and found they had no alternative but to accept the determinations offered. Fr Kevin Dillon, for example, was highly critical of the lack of an effective appeal avenue in the Catholic Church approach. He told the Committee:

There is no appeal. This is what we do; this is our decision—take it or leave it. If you do not like it, you can pursue it through the courts. We know how successful that can be; there are all sorts of ties and escape clauses.¹³⁹

The Commissioners when they appeared before the Committee relied on judicial review, including Order 56 of the Supreme Court Rules, as a response to the suggestion that there was no avenue of appeal from a decision of theirs or the Compensation Panel.¹⁴⁰ Whilst judicial review is theoretically available, this is not the same as an

¹³⁷ *Transcript of evidence*, Mr Joseph Saric, Geelong, 15 February 2013, p. 3.

¹³⁸ *Supplementary evidence*, Questions on notice, Dr Jane Wangmann, Lecturer, Faculty of Law, University of Technology Sydney, 19 December 2012.

¹³⁹ *Transcript of evidence*, Father Kevin Dillon, p. 3.

¹⁴⁰ *Transcript of evidence*, Melbourne Response, Melbourne, 30 April 2013, p.29.

automatic statutory appeal in a hierarchy of supervisory courts. Nor as a practical proposition does it constitute an appropriate forum for review on behalf of a victim. Rather than support the process, the suggestion that this is an avenue for recourse could be seen to constitute a criticism of it.

In addition, the process should be subject to regular audit and review, to ensure it continues to meet the needs of victims.

Finding 28.1

The elements of a successful alternative justice approach include:

- independence and authority
- respect, engagement and support for victims
- contribution by non-government organisations
- opportunity for appeal and review.

28.2. Proposed models of alternative justice

The Committee considered a number of alternative justice models proposed by Inquiry participants, including:

- government-funded redress scheme
- compensation scheme funded by non-government organisations
- government compensation fund.

Each of these models is discussed below.

28.2.1. Government-funded redress schemes

Statutory redress schemes relating to criminal child abuse in care have operated in Tasmania, Western Australia, Queensland and South Australia (outlined in Table 28.2 below).

Although these schemes have been limited to children who were wards of the State, many cases have involved care leavers who resided in institutions run by non-government organisations. Despite this, the Committee is not aware of any government-operated scheme in Australia that has been co-funded by the non-government organisations involved in the claims.

Although there was significant support among Inquiry participants for a state redress scheme, the Committee identified that such schemes have a number of limitations, particularly when responding to abuse in non-government organisations. For example, the 2010 *Review of government compensation payments* conducted by the Australian Parliament Senate Legal and Constitutional Committee identified the following limitations:

- Time limits and eligibility criteria imposed by redress schemes have meant that some claimants missed out.
- Because most schemes impose a limit on the quantum of compensation, for some victims the assistance was inadequate.

- Some victims found the application process traumatic.¹⁴¹

Table 28.2: Australian statutory redress schemes

Scheme	Period of operation	Eligibility criteria	Features
Tasmanian Government Abuse in State Care Review Program	Operated from 2005 to 2007—re- opened for new applications until 15 February 2013.	Children abused while in state care.	Initially payments capped at \$60,000. Claims from August 2008 capped at \$35,000.
Redress WA	Announced December 2007 and closed June 2011.	Children abused or neglected while in state care.	Four pillars of support: <ul style="list-style-type: none"> • an opportunity to make a police referral • a personal apology from Premier and Minister for Community Services • provision of support and counselling services • ex gratia payments (four broad levels, ranging from \$5,000 minimum to \$45,000 maximum).¹⁴²
Queensland Government Redress Scheme	Opened in May 2007 and closed September 2008.	Children abused or neglected while in institutional care.	Eligible applicants received an ex gratia payment, ranging from \$7,000 to \$40,000.
South Australian ex gratia compensation scheme	Announced in 2008—no closing date announced.	Children sexually abused while in state care.	Ex gratia compensation based on the severity of the abuse and seriousness of the harm suffered: up to \$30,000, or up to \$50,000 in extreme cases. ¹⁴³

Source: Compiled by the Family and Community Development Committee.

28.2.2. Compensation scheme funded by non-government organisations

Ireland and some Canadian provinces have established compensation schemes covering criminal child abuse in institutional settings, with joint funding from non-government organisations.

¹⁴¹ Senate Legal and Constitutional Affairs Committee (2010) *Review of government compensation payments*. Canberra, Australian Government.

¹⁴² Department for Families, Housing, Community Services and Indigenous Affairs *Find and Connect: Redress WA (2008–2011)*. Accessed on 2 May 2013 from <http://www.findandconnect.gov.au>.

¹⁴³ 2010 Application guidelines for ex gratia payments for former residents in state care who experienced sexual abuse as children.

The experience in Canada and Ireland highlights the challenges in engaging non-government organisations in government-operated compensation processes. In Canada, two government redress schemes, the Helpline Agreement and the Indian Residential Schools Settlement Agreement, involved co-contributions by religious organisations. In both cases, the non-participation of some religious entities in the operation of the scheme caused significant dissatisfaction and discrepancy in outcomes for victims.¹⁴⁴

The experience of the Irish Residential Institutions Redress Board (the Redress Board) highlights the potential pitfall of failing to source sufficient financial contributions for a government-operated redress scheme from non-government organisations.¹⁴⁵ The relatively low level of contributions by the religious organisations to the Irish redress scheme has not only been problematic for the Victorian Government, but has also disappointed victims and the community, who see the need for the Catholic Church to demonstrate its acknowledgment of responsibility by providing funds.

In Victoria, additional challenges will arise from the long-term operation of internal organisational protocols such as those of the Catholic and Anglican churches. A large number of settlements have already been negotiated under existing systems. Most of these are subject to legally binding agreements that prevent further claims by victims.

Although some organisations offered nominal support for a government-run approach funded by non-government organisations, the details would need to be carefully considered. For example, the Anglican Church told the Committee that it would only be open to contributing to a government-run scheme if consideration were given to the lower level of claims against the Anglican Church compared with other non-government organisations.¹⁴⁶

144 The Helpline Agreement was established to provide compensation to boys who had been abused while attending one of a number of training schools operated by two faith-based organisations. In his review of the scheme in 2002, retired judge Fred Kaufman noted that the non-participation of one of the faith-based organisations caused unequal access to compensation and disagreement between parties. Fred Kaufman (2002) *Searching for justice: An independent review of Nova Scotia's response to reports of institutional abuse*. In 2003, an alternative dispute resolution process was established for the Indian Residential School system (now superseded by the Indian Residential Schools Settlement Agreement). One of the main criticisms of this process was that some religious entities involved in the operation of the schools did not participate, causing unequal access to compensation for survivors. See the detailed critique of the 2003 alternative dispute resolution process by the Assembly of First Nations (2004) *Assembly of First Nations Report on Canada's Dispute Resolution Plan to Compensate for Abuses in Indian Residential Schools*, available at http://epub.sub.uni-hamburg.de/epub/volltexte/2009/2889/pdf/Indian_Residential_Schools_Report.pdf.

145 The Irish Residential Institutions Redress Board was established in 2002 to compensate former residents of industrial and reformatory schools, orphanages and children's homes who had suffered abuse. Most of these institutions were run by religious orders. Despite attempts by the Irish Government to split the contribution for its redress scheme with religious orders on a 50/50 basis, as at May 2012, the state had received only €126 million of the €1.47 billion compensation allocated. In 2009, following the report of the Commission to Inquire into Child Abuse (also known as the Ryan Report), congregations agreed to contribute more cash and property to the state to reduce the shortfall. However, legal and economic issues appear to have slowed the transfer of property to the state and reduced its benefit. *Supplementary evidence*, Questions on notice, Dr Jane Wangmann, Lecturer, Faculty of Law, University of Technology Sydney, 19 December 2012; Carl O'Brien 'Cost of State redress for abused up to nearly €1.5bn', *The Irish Times*, 4 May 2012; Parliamentary Debates, Minister for Education and Skills (Deputy Ruairi Quinn)—Residential Institutions Statutory Fund Bill 2012: Second Stage Dáil Éireann Debate, Dáil Éireann (Ireland), vol. 764, no. 3, 8 May 2012.

146 *Transcript of evidence*, Anglican Diocese of Melbourne, p. 23.

As Dr Jane Wangmann told the Committee, there is a need ‘for open and transparent negotiations and a commitment on behalf of those organisations to provide measures of redress at the outset.’¹⁴⁷

28.2.3. Government compensation fund

Some Inquiry participants supported the establishment of a government compensation fund for victims of criminal child abuse. In particular, several Inquiry participants referred to the Department of Veterans Affairs (DVA) and commented favourably on its dispute resolution process. Some participants suggested that the DVA response to returned service personnel and their families would be a good model for compensating victims of criminal child abuse.

The DVA compensates veterans and their families for injury, disease or death related to service. It does this through claims made to the Military Rehabilitation and Compensation Commission (MRCC). Decisions of the MRCC can be reviewed by the Veterans’ Review Board. The Veterans and Veterans’ Families Counselling Service (VVCS) provides free counselling and group programs to veterans and their families.¹⁴⁸

Mr Joseph Saric identified some components that could be modelled on the Department of Veterans’ Affairs scheme:

- educational programs for victims
- psychiatric support
- live-in and outpatient facilities
- specialist drug and alcohol programs
- financial counselling
- support for secondary victims and families.¹⁴⁹

The Committee heard that victims of criminal child abuse often suffer post-traumatic stress disorder (PTSD), which is discussed in Chapter 4 in Part B. Some Inquiry participants suggested that the Government could draw on DVA as best practice for assisting claimants who have PTSD.

As noted above, Inquiry participants also spoke positively about the DVA’s provision of health cards to veterans who have suffered injury or disease as a result of service in the Australian Defence Force. The DVA provides varying levels of support to eligible veterans, based on need and the person’s level of disability or injury. The highest level of support (‘gold card’) provides for all medical treatment and pharmaceutical benefits, some services and a financial supplement. The lower-level support card gives more limited benefits, aiming to alleviate costs associated with specific injuries.¹⁵⁰

For example, Mr Saric told the Committee:

As a Vietnam veteran who suffers from chronic PTSD and holds a gold card

¹⁴⁷ *Supplementary evidence*, Questions on notice, Dr Jane Wangmann, Lecturer, Faculty of Law, University of Technology Sydney, 19 December 2012, p.3.

¹⁴⁸ Department of Veterans Affairs *Welcome to the Department of Veterans Affairs*. Accessed on 30 July 2013 from <http://www.dva.gov.au/>.

¹⁴⁹ *Transcript of evidence*, Mr Joseph Saric, p. 4.

¹⁵⁰ Department of Veterans Affairs *Veterans’ Health Cards*. Accessed on 30 July 2013 from <http://www.dva.gov.au/>.

as a returned soldier with total and permanent disability since July 1997, it is my experience that the only way to move forward with the Catholic Church's response to victims of clergy sexual abuse is to adopt the Department of Veterans' Affairs and the Department of Repatriation's responses to returned soldiers and their families as a working model. This is Australia's best practice and could also serve Australian clergy victims. I have put this forward to the Committee as world best practice in caring for survivors through papers I provided to the Committee earlier this week.¹⁵¹

Mr Saric recommended that the Victorian Government draw on the work of the Australian Centre for Post-traumatic Mental Health which, he emphasised, already works with the Federal Government to inform best practice in response to PTSD and other significant traumas experienced by veterans.¹⁵²

Fr Kevin Dillon also noted that the DVA had some good practices for establishing support networks. For example, he explained how the DVA organised group gatherings for people to attend to discuss 'how they are going'.¹⁵³

The Committee concluded that Victoria can learn some important lessons from the DVA model when developing a scheme to compensate and support victims of criminal child abuse.

28.3. The case for a new, independent alternative justice avenue

As discussed in Chapter 24, the Committee determined that there is no dedicated organisation or body in Victoria that focuses on alternative resolution of claims between victims of criminal child abuse and non-government organisations. The Committee considered that an independent alternative avenue that draws on the expertise of VOCAT would be an effective basis for providing justice for these victims.

28.3.1. Utilising the expertise of VOCAT

The Committee considers that using VOCAT's expertise to support an independent service could be an effective and efficient basis for an alternative justice avenue for victims of criminal child abuse, for a number of reasons:

- VOCAT is independent and accountable, and is seen as credible by victims and support organisations.
- VOCAT judgements are delivered by magistrates. This gives an avenue for acknowledging the harm done to victims.
- VOCAT's framework for determining compensation could be built upon to develop a framework for mediated outcomes.
- Crucial victim support services are already largely in place.

In addition, placing an alternative justice scheme within a whole-of-government approach to victims of crime would enable the Victorian Government to respond to victims of criminal child abuse in an integrated way. Dr Wangmann, for example, warned against possibly compartmentalising the response to victims:

151 *Transcript of evidence*, Mr Joseph Saric, p. 4.

152 *Transcript of evidence*, Mr Joseph Saric, p. 4.

153 *Transcript of evidence*, Father Kevin Dillon, p. 4.

I think it is important to think about the way in which we tend to compartmentalise these actions. So Australia, in particular, has been very good at having inquiries at one stage, having an apology at another stage and talking about compensation at another stage. For survivors these are all integrated, and each time there is a gap between each stage it dilutes the importance of each mechanism. So we need to think about the way in which all of these components work together to provide an effective mechanism around reparation. So I do not think you can talk about reparation separately to an inquiry or a fact-finding process and separate from an apology.¹⁵⁴

An important challenge for the justice approach will be how to deal with any claims from victims who are dissatisfied with settlements that have already been negotiated under existing systems. The Committee heard that some victims were extremely dissatisfied with the amount of compensation awarded under internal organisational processes. However, most of these victims have signed release papers stating they had no further claim against the organisation.

As noted at the beginning of this part of the Report, the Committee was encouraged by the cooperation of non-government organisations throughout the Inquiry and notes that most undertook to comply with the Committee's recommendations. For example, as quoted earlier, Cardinal Pell indicated that:

I am certainly totally committed to improving the situation; I know the Holy Father is too. I know there are significant persons in the community and in the Church who believe, rightly, that we have failed ... We have done quite a deal. I commit myself to doing whatever further is required and appropriate so that we can bring a bit more peace.¹⁵⁵

The Committee considers that the willingness of organisations to engage with victims through the VOCAT dispute resolution process in order to review their existing settlements will demonstrate the genuineness or otherwise of such undertakings.

28.3.2. Determining outcomes

The Committee considers that an approach that responds flexibly to the needs of victims could potentially overcome some of the limitations of other avenues, including government redress schemes outlined in Section 28.2.¹⁵⁶

Although flexibility is important, the Committee recognises that there is a need for a consistent and transparent approach to determining outcomes. Many victims spoke of their dissatisfaction with the inconsistent compensation received by different victims in seemingly similar situations. It is therefore essential that the process includes:

- consistent eligibility criteria
- sensitive treatment of victims
- an assessment process that minimises trauma and supports victims throughout.

Furthermore, outcomes must reflect the severity of both the abuse and its impact on the victim. As described in Part B of this Report, abuse can affect different victims in different ways.

¹⁵⁴ *Transcript of evidence*, Dr Jane Wangmann, p. 5.

¹⁵⁵ *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 57.

¹⁵⁶ Senate Legal and Constitutional Affairs Committee (2010) *Review of Government compensation payments*.

Provision could also be made for victims to choose the mode of compensation. For example, Fr Paul Walliker noted that compensation payments can affect social security payments. Creating a choice in whether to receive compensation in instalments or a lump sum may address such concerns.¹⁵⁷

28.4. Involving victims and organisations in the design of the alternative justice approach

It is essential that the Victorian Government involve victims in the process of designing an alternative justice avenue for criminal child abuse in organisational settings.

Inquiry participants emphasised the importance of this type of consultation with victims. For example, Fr Kevin Dillon explained:

I think if we are trying to help victims, surely they are the first people who need to be asked, 'How can we help you? What do you need? You have been through one of two systems. Were there any good things there that need to be retained?' The failings have been pretty well documented, but maybe there are some good things and good strategies that could be incorporated into something totally independent.¹⁵⁸

Involving victims and victim advocacy groups in the design and development of solutions for victims has led to successful outcomes in other jurisdictions. A good example of victim engagement is the Grandview Agreement in Canada. This was a settlement package for wards of the State who attended the Grandview Training School for Girls in Ontario, Canada, in the mid-1960s and early 1970s. A defining feature of the scheme was involving victims (represented by the Grandview Survivors Support Group) in the design of eligibility and adjudication processes. The Grandview Agreement was developed through negotiations between the Government and the Grandview Survivors Support Group, and was accepted by a vote of the women who participated in the process.¹⁵⁹

28.5. Role of non-government organisations

Given the nature and extent of the damage caused by criminal child abuse, it is critical that the non-government organisations that participated in this Inquiry endorse and implement the reforms recommended in this Report. This would be an important step towards improved child safety, and an essential act of good faith in easing and making amends for damage caused by those organisations to victims, their families and the broader community of Victoria.

The Committee acknowledges that many victims have already had their claims dealt with through existing avenues. Nevertheless, the Committee is strongly of the view that in light of evidence provided to this Inquiry, these victims should have an opportunity to have their claims revisited.

¹⁵⁷ *Transcript of evidence*, Father Paul Walliker, Bendigo, 14 March 2013, p. 6.

¹⁵⁸ *Transcript of evidence*, Father Kevin Dillon, p. 5.

¹⁵⁹ Goldie Shea (1999) *Redress programs relating to institutional child abuse in Canada*. Ottawa, Law Commission of Canada, p. 29.

The Committee understands that victims are likely to face a number of barriers in having their claims revisited, not least of which is the fact that most would have signed release papers as a condition of their settlements with non-government organisations, stating they had no further claim against the organisation. The Committee considers the willingness of organisations to review these earlier settlements will be a measure of how genuine their undertakings are.

The community is well acquainted with a variety of organisations established to act as independent, dispute resolution bodies to which industry contributes towards the cost of its administration.

The Committee considers that the key question of independence could be addressed by extending VOCAT to include an independent dispute resolution mechanism with a strong focus on the needs of victims and families with compensation paid for by the non-government organisations in which criminal child abuse has occurred and not the people of Victoria.

→ Recommendation 28.1

That the Victorian Government review the functions of the Victims of Crime Assistance Tribunal (VOCAT) to consider its capacity to administer a specific scheme for victims of criminal child abuse that:

- enables victims and families to obtain resolution of claims arising from criminal child abuse in non-government organisations
- is established through consultation with relevant stakeholders, in particular victims
- encourages non-government organisations to voluntarily contribute a fee to administer the scheme
- ensures non-government organisations are responsible for the funding of compensation, needs and other supports at amounts agreed through the process.

Beyond the Inquiry—responsibilities

Throughout its deliberations and in the pages of this Report, the Committee has endeavoured to accurately and faithfully reflect the voices of those people who were criminally abused as children (and their families) and who had the courage to come forward to help the Committee with its Inquiry.

While mindful of the limitations in trying to repair the sometimes irreparable, having confronted and exposed the truth of these experiences, the community cannot ignore its obligations to assist the victims of criminal child abuse in non-government organisations and to provide greater protection for children in the future.

The Committee's recommendations are directed to the achievement of these objectives as far as reasonably possible.

The organisations and individuals who were at least morally complicit in the crimes with which the Inquiry has been concerned, cannot be permitted to make superficial and professionally constructed gestures of regret and effectively walk away.

Failure in either of these respects would constitute another reprehensible betrayal.

Adopted by the Family and Community Development Committee
55 St Andrews Place, East Melbourne
28 October 2013

APPENDICES



Appendix 1—Submission guide

INQUIRY INTO THE HANDLING OF CHILD ABUSE BY RELIGIOUS AND OTHER ORGANISATIONS

SUBMISSION GUIDE

1. WHO CAN MAKE SUBMISSIONS?

All interested parties can make submissions to the Inquiry. The bi-partisan Family and Community Development Committee is seeking submissions from both individuals and organisations in relation to its Terms of Reference to the Inquiry.

The Committee welcomes submissions from victims of child abuse and others who have been affected by the consequences of such abuse.

It acknowledges that preparing submissions and giving evidence to such an Inquiry can be a very difficult experience for victims of child abuse and their supporters. This Guide is intended to assist in the process of preparing a submission.

2. WHAT EVIDENCE CAN SUBMISSIONS INCLUDE?

The Committee is seeking information relating to:

- The causes and effects of criminal abuse within religious and other non-government organisations.
- Whether victims were in any way discouraged from reporting such abuse, either within the relevant organisation or to the police.
- If such abuse was reported, how the reporting of their experience of abuse was handled.
- The consequences of abuse, including the effect on the victims and others, and the consequences for the perpetrator(s).
- The adequacy of the policies, procedures and practices within religious and other non-government organisations that relate to the prevention of, and response to, child abuse.
- Suggestions for reform, to help prevent abuse and ensure that allegations of abuse are properly dealt with. This includes both reforms to Victorian laws and reforms to the policies, procedures and practices within religious and other non-government organisations.

3. WHAT SORT OF SUBMISSIONS CAN BE MADE?

Submissions may be in writing or, where an individual does not wish to make a written submission, on a verbal basis only.

All submissions are treated as public, unless otherwise requested. The Committee can receive written and oral evidence on a confidential basis where this is requested and agreed to by the Committee. This will generally be in situations in which victims believe that giving evidence publicly may have an adverse effect on them or their families.

Please indicate if you want your submission treated as confidential and provide a brief explanation.

4. TERMS OF REFERENCE

The Committee has been asked by the Victorian Government to consider and report to the Parliament on the processes by which religious and other non-government organisations respond to the criminal abuse of children by personnel within their organisations, including:

1. the practices, policies and protocols in such organisations for the handling of allegations of criminal abuse of children, including measures put in place by various organisations in response to concerns about such abuse within the organisation or the potential for such abuse to occur;
2. whether there are systemic practices in such organisations that operate to preclude or discourage the reporting of suspected criminal abuse of children to State authorities; and
3. whether changes to law or to practices, policies and protocols in such organisations are required to help prevent criminal abuse of children by personnel in such organisations and to deal with allegations of such abuse.

In undertaking the Inquiry, the Committee has been asked not to impinge on the responsibilities of police or the courts in relation to particular cases or prejudice the conduct or outcome of investigations or court proceedings.

Parliamentary Committees do not have a role in investigating criminal matters.

This Guide is intended to assist organisations and individuals who want to make a written submission and/or who would like to present evidence before the Committee at a public hearing.

The questions in this Guide provide an indication of the issues the Committee will be considering, but they are not intended to be exhaustive. It is not necessary to address all the questions in a submission.

5. SCOPE OF INQUIRY

This Inquiry considers how religious and other non-government organisations respond to the criminal abuse of children by personnel within their organisations.

The Terms of Reference cover:

- All religions and denominations.
- Non-government organisations providing child related services or activities (in areas such as welfare, education, sport or recreation).

The Inquiry will not be assuming responsibility for investigating individual cases that are currently under investigation by police, but will be able to refer particular matters to the police for investigation.

6. CONDUCT OF THE INQUIRY

The Committee will conduct a thorough, evidence-based Inquiry that is sensitive to the needs and concerns of all individuals affected by child abuse in religious and other organisations.

In conducting its investigations, the Committee will seek written submissions up to 31 August 2012. It will also hold public hearings from September 2012.

In addition to submissions and hearings, under the *Parliamentary Committees Act 2003*, the Committee has the legal power to compel the attendance of persons and the production of documents and other things.

The Committee will generally take evidence in public. That is, it will publish the submissions it receives on its website and will undertake hearings in public.

However, the Committee also has the power to receive evidence on a confidential basis where this is requested. All parties making submissions are encouraged to indicate whether they would like their evidence to be treated as confidential.

The circumstances under which the Committee may consider receiving evidence confidentially include whether victims believe that giving evidence publicly may have an adverse effect on them or their families. Oral evidence may also be received on a confidential basis if requested.

The Committee may use confidential evidence in its deliberations, but will not quote from confidential evidence in its report.

7. EVIDENCE FROM VICTIMS OF CRIMINAL CHILD ABUSE

The Terms of Reference ask the Committee to examine the processes and procedures that are used by religious and other organisations to respond to suspected, alleged and proven instances of criminal child abuse.

The views of victims regarding the effectiveness or otherwise of processes will be critical in informing the Committee's investigations.

There is no single way for any person or organisation to approach a submission. The Committee understands that people will want to approach their submissions differently.

The Committee seeks to ensure it minimises any experiences through the Inquiry that may further traumatise victims of abuse and/or their families and supporters).

The Committee emphasises that for those people who do not want to retell their experience of abuse, the Terms of Reference enable them to focus specifically on the response to the experience by the organisation. At the same time, the Committee also recognises that for some people, retelling their experience will be an important part of their submission.

The Committee acknowledges that revisiting issues relating to experiences of abuse may be distressing and traumatic.

Many individuals have existing supports that can provide assistance with writing submissions and participating in public hearings.

For those people who feel they need support to prepare a submission, but do not have existing support, please contact the Committee to discuss your support requirements.

Please indicate in your submission if you want:

- Your submission considered confidential
- To appear before a public hearing.

8. DEFINITIONS AND TERMINOLOGY

The Committee acknowledges that there are terms and definitions relating to the Terms of Reference that require further clarification.

Criminal abuse of children

In the context of criminal abuse of children, criminal abuse generally includes:

- Unlawful physical assaults.
- Sexual abuse offences, such as rape or indecent assault under the *Victorian Crimes Act 1958*.
- Any acts of criminal neglect that may give rise to child protection intervention under the *Children, Youth and Families Act 2005*.
- Facilitating such offences by others.

Sexual and other forms of physical abuse are often linked with demeaning or degrading behaviour that include verbal and emotional abuse. The Terms of Reference allow for consideration of such behaviour that may lead to criminal abuse or allow it to occur.

Religious organisations

The Committee is seeking submissions from all religious and spiritual faiths.

The term 'religious personnel' covers both 'ministers of religion' and other lay personnel.

- 'Ministers of religion' refers to those who perform spiritual functions associated with beliefs and practices of religious faiths and provide motivation, guidance and training in religious life for the people of congregations and parishes, and the wider community.
- 'Religious personnel' also includes employees and volunteers acting within religious bodies or related organisations.

Non-government organisations

The Terms of Reference for the Inquiry extend to include abuse occurring within secular, non-government or community organisations.

Organisations that provide child related activities or services (such as welfare, education, sport or recreation) are relevant to the Terms of Reference.

The Committee is seeking submissions relating to how criminal abuse of children is handled in non-government organisations. This includes measures that may exist to prevent abuse.

9. BACKGROUND AND CONTEXT

In January 2011 the *Protecting Victoria's Vulnerable Children Inquiry* was launched to investigate Victoria's child protection system and make recommendations to strengthen and improve the protection and support of vulnerable young people.

The Inquiry was chaired by former Supreme Court Justice, the Hon Phillip Cummins and reported in January 2012.

The Report considered the issue of the sexual and other abuse of children by personnel in religious organisations, including:

- Whether mandatory reporting of child abuse should be extended to religious personnel.
- Whether the *Working with Children Act 2005* and its vetting procedures apply to religious organisations.
- The internal processes and practices that may operate within religious organisations to preclude or discourage reporting of criminal abuse to the police or other state authorities.

The Inquiry Report recommended that:

A formal investigation should be conducted into the processes by which religious organisations respond to the criminal abuse of children by religious personnel within their organisation. Such an investigation should possess the powers to compel the elicitation of witness evidence and of documentary and electronic evidence.

10. RESPONSES TO CHILD ABUSE—VICTIM EXPERIENCES

The Committee is seeking information from victims relating to:

- The causes and effects of criminal abuse within religious and other non-government organisations.
- Whether they were able to report such abuse, either within the relevant organisation or to the police.
- If such abuse was reported, how the reporting of their experience of abuse was handled.

Reporting the abuse

- 10.1 Could you tell anyone about what happened?
- 10.2 Did you feel discouraged from reporting the abuse?
- 10.3 Who did you tell about what happened?
- 10.4 How long after the abuse occurred did you tell someone?
- 10.5 Did you tell the religious body or other organisation about the abuse?
- 10.6 If you delayed in telling or reporting what prevented you from disclosing earlier?

Response to the disclosure

- 10.7 What was the initial response from the organisation?
- 10.8 If there was an investigation of the abuse, how was it conducted?
- 10.9 What meetings or other interactions did you have with the organisation?
- 10.10 Were you encouraged or supported to report your abuse to the police? Did you do this? If not, why not?
- 10.11 What were the consequences for the perpetrator(s)?
- 10.12 What were the effects of the response to the disclosure on the victim and other individuals? (eg. Family members, other members of the organisation)

Support

- 10.13 Were you supported by the organisation? If so, how?
- 10.14 Did you receive counselling or psychological help? If so, who provided it?
- 10.15 Did you receive an apology or an acknowledgment of the abuse you had suffered?
- 10.16 How adequate was the support that was offered?

Result

- 10.17 Did the religious or other organisation accept responsibility for what happened?
- 10.18 What was the consequence for the perpetrator(s)?
- 10.19 Were you offered an apology, compensation or other forms of assistance? If so, were there any conditions attached to accepting that compensation or assistance?
- 10.20 As a result of your complaint to the religious or other organisation what actions were taken by them?
- 10.21 How long did it take to achieve a result?
- 10.22 Were you satisfied with the process in dealing with the complaint and/or the result?
- 10.23 What was your view of the effectiveness and adequacy of any compensation, either offered or received?
- 10.24 What were the effects of the result on you and other individuals? (eg. Family members and supporters)

11. RESPONSES TO REPORTS OF CHILD ABUSE—RELIGIOUS AND OTHER ORGANISATIONS

The Committee's Terms of Reference ask it to investigate the practices, policies and protocols in religious and other organisations.

In considering these practices, it is seeking submissions on:

- The nature of the policies and their effectiveness
- The implementation of policies and how they are complied with
- Processes for review or evaluation of policies

- Any accountability mechanisms surrounding them
- How supports are provided to victims
- The approach to monetary and other forms of compensation.

Current policies, protocols and frameworks

- 11.1 What policies, protocols, frameworks and/or charters are currently in place in Victorian religious and secular non-government organisations to address child abuse within those organisations?
- 11.2 What is the nature of the policy?
- 11.2.1 Is it proactive/reactive?
- 11.2.2 Is it publicly available (if so, how)?
- 11.2.3 Is it time limited?
- 11.3 Who is responsible for the policy? Is the policy internal or external to the governing bodies of the religious or other organisation?
- 11.4 How are alleged and proven offenders dealt with?

Accountability mechanisms

- 11.5 What accountability mechanisms apply to the organisation’s policy? Is it open to outside scrutiny or review?
- 11.6 Is there an appeal process or dispute resolution process for victims or offenders?

Supports for victims

- 11.7 What supports are available to victims and other family members or significant others?
- 11.8 Can victims seek independent support?
- 11.9 What is the role of counsellors in religious and other organisations?

Compensation and reparation

- 11.10 Do systems for addressing abuse within the organisation allow for monetary or other forms of compensation?

11.11 How is the compensation system/ procedure run? Is it independent from the operations of the organisation? Is it overseen by a panel?

11.12 Does the acceptance of one form of compensation prevent victims pursuing other forms of compensation?

The Committee is seeking copies of documents used by religious and other organisations in responding to child abuse.

12. INVESTIGATING REPORTS OF CHILD ABUSE

The Committee is seeking submissions about internal investigation processes used by religious and other organisations in relation to child abuse.

It is also seeking information about processes for referring reports of child abuse to the police.

The Committee would appreciate receiving any internal documentation from religious and other organisations relating to investigation and referral processes in the context of child abuse.

12.1 What processes for internal investigation exist in religious and other organisations?

12.2 Have allegations of child abuse been reported to police when the organisation is made aware of them?

12.3 What processes are in place for reporting cases of alleged child abuse to the police?

12.4 In what circumstances, if any, would the alleged abuse not be reported?

13. LAW AND LEGAL PROCESSES

The Committee recognises that the processes to address child abuse within their organisations might involve consideration of doctrinal laws, customs and ethical codes specific to a religion.

Regardless of observance of religious laws, customs and ethical codes, state laws regarding criminal child abuse must be observed and given precedence.

The Committee is seeking submission on areas of law and legal processes that include but are not limited to:

- Religious laws and practice

- Mandatory reporting
- Working with children checks
- Potential new laws.

Religious laws and practice

The Protecting Victoria's Vulnerable Children Inquiry noted that while internal complaint and redress systems may have a role to play, in many cases their processes and procedures are not necessarily subject to public scrutiny.

- 13.1 In what ways are religious laws and procedures used to address abuse within the organisation?
- 13.2 Have internal systems of investigation discouraged reporting of criminal acts to the police?
- 13.3 Have internal systems of redress discouraged or prevented civil legal action being taken by victims?
- 13.4 Under what circumstances is it appropriate for religious organisations to apply internal sanctions to offenders, such as expulsion or laicisation [defrocking]?
- 13.5 Have the legal structures used by religious bodies to manage their affairs and their assets acted to discourage or prevent civil legal action being taken by victims against offenders?

Mandatory reporting

The Protecting Victoria's Vulnerable Children Inquiry considered the issue of extending mandatory reporting of abuse under the Victorian *Children, Youth and Families Act 2005* to religious personnel.

Mandatory reporting is a function of the statutory child protection system rather than the criminal law.

It also considered that the Victorian Government should impose an appropriate penalty for a failure to report suspected abuse under the *Crimes Act 1958*.

- 13.6 Should mandatory reporting of cases of alleged criminal abuse be extended to ministers of religion?

- 13.7 To what extent should the reporting of suspicions of abuse be circumscribed by laws, customs and ethical codes of religions? (For example, should the sacrament of the Catholic confessional remain sacrosanct in these circumstances?)
- 13.8 What consequences may flow from the extension of mandatory reporting to ministers of religion?

Working with children checks

Another issue considered by the Protecting Victoria's Vulnerable Children Inquiry was whether the *Working with Children Act 2005* (WWC Act) should apply to religious personnel.

The WWC Act established a system to prevent people who are not suitable from working with children.

The WWC Act applies to personnel in religious organisations who regularly work or volunteer with children and young people.

- 13.9 What procedures do religious and other organisations have in place to ensure the suitability of employing people in the organisation who work with children?
- 13.10 Are these in addition to those required to be undertaken by state law?
- 13.11 How is the *Working with Children Act 2005* applied in the context of ministers of religion?

Potential new laws

The Committee notes that, internationally, some countries have explored the creation of laws that hold administrators in religious or other organisations legally responsible for the criminal actions of those working or volunteering within the organisation for whom they have responsibility.

In addition to civil liability on the organisation, in some cases these laws include criminal penalties. This is particularly the case where it can be shown that individuals in the hierarchy of the organisation were aware of the abuse and either ignored it or actively covered it up.

- 13.12 Are new laws required to more effectively address the institutional abuse of children?
- 13.13 Should officials in religious and other organisations be held criminally responsible for the actions of offenders of child abuse in their employ or for whom they have responsibility? Under what circumstances should this apply?

14. RESPONDING TO OFFENDERS AND ALLEGED OFFENDERS

The Committee is interested to hear about how religious and other organisations aim to protect the rights of children against personnel who abuse their position of trust.

In particular, the Committee is seeking to hear about how religious and other bodies handle instances in which there is suspected abuse, but insufficient evidence to charge or convict an alleged offender.

- 14.1 Are there formal or informal practices or guidelines for the personnel accused, suspected or convicted of criminal or other abuse?
- 14.2 How should cases be dealt with when there is suspected abuse but insufficient evidence?
- 14.3 How do religious and other organisations protect victims when alleged offenders have not been charged or convicted of a criminal offence?

15. DATA, PRIVACY AND PUBLIC INTEREST

The Committee is seeking information about how data is recorded by religious and other organisations in the context of reports on child abuse.

It is also seeking submissions on the relationship between privacy and public interest. For example, concerns have been raised in numerous inquiries that the laity in Christian denominations are often not told about the crimes of suspected crimes of religious personnel within their communities.

- 15.1 Does the organisation maintain comprehensive records data on the incidence and prevalence of abuse against children in the organisation? If so, are such records publicly available?
- 15.2 Do organisations share information regarding proven or suspected cases of abuse to other agencies even in cases where it is not compelled to do so (for example, schools, Department of Human Services)? What confidentiality/privacy considerations flow from this?
- 15.3 Do religious organisations inform the laity and other members of the religious or wider community about abuses committed by its members? Should it do so?
- 15.4 How can the wider community be informed about child abuse/child protection issues or suspicions?

16. PREVENTION

The Committee's Terms of Reference ask it to consider the prevention of criminal abuse of children.

Other Inquiries into child abuse within religious organisations have emphasised the importance of religious and other organisations being proactive in establishing preventive policies and procedures.

The Committee is seeking information about approaches to risk management of child abuse, such as early identification of patterns of behaviour by offenders and potential offenders.

It is also seeking submissions about proactive approaches.

- 16.1 Are there education or prevention programs/policies with regard to the abuse of children and other vulnerable people in religious and other organisations?
 - 16.1.1 What type of programs? Are they one-off or ongoing?
 - 16.1.2 Who is responsible for developing the programs?
 - 16.1.3 Are these programs internally/externally run? Or both?

<p>16.1.4 Who attends the education programs? Is it compulsory?</p> <p>16.2 For organisations responsible for the accreditation of ministers of religion, do the curricula include training regarding sexual and other forms of abuse (for example, at seminaries)?</p> <p>16.3 Have these programs been evaluated? To what extent have they been successful in addressing or raising awareness of these forms of criminal abuse?</p> <p>16.4 Does the organisation's framework or policy have provisions or guidelines for proactively encouraging/facilitating the reporting of criminal (or other) abuse of children by people within the organisation? Are new laws required to more effectively address the institutional abuse of children?</p>	<p>Victoria Police</p> <p>17.1 Do any formal/written protocols exist between religious / non-government organisations and Victoria Police?</p> <p>17.2 Are Victoria Police guidelines and procedures for investigating child abuse consistently applied across religious or other organisations? Are there any guidelines specific to the investigation of ministers of religion?</p> <p>17.3 Does Victoria Police have liaison officers that are dedicated to working with religious organisations on cases of criminal abuse? If not, should there be?</p>
<p>17. RELATIONSHIPS WITH EXTERNAL BODIES AND ORGANISATIONS</p> <p>Criminal abuse of children is primarily and ultimately a matter for investigation by police and child protection personnel and prosecution by state authorities.</p> <p>The Committee is seeking information about the relationship between religious and other organisations and external bodies, such as the police.</p> <p>The Protecting Victoria's Vulnerable Children Inquiry reported that religious organisations have a responsibility to encourage victims to report criminal behaviour to the police.</p> <p>The Committee is interested to hear about the role of specialist police departments, such as Victoria's Sexual Offences and Child Abuse Unit, in responding to reports of child abuse in religious and other organisations. This includes the role of the police in developing a prosecution case.</p> <p>It is also interested to learn about the role of independent support and advocacy groups, such as those that respond to the trauma associated with rape and sexual assault such as the Centre Against Sexual Assault (CASA).</p>	<p>Department of Human Services</p> <p>17.4 Do religious and other organisations have any formal protocols with the Department of Human Services? If not, what form should they take?</p> <p>Other organisations</p> <p>17.5 Are there formal or informal protocols or relationships between religious and other organisations and non-government bodies, such as CASA? If not, what form should they take?</p> <p>17.6 Are there relationships or liaisons between religious and other organisations and victims advocacy groups?</p> <p>17.7 Do the organisations network with religious and other organisations to address abuse? For example, interfaith bodies?</p>

18. SUBMISSIONS

The Committee welcomes written submissions addressing one, multiple or all Terms of Reference of the Inquiry.

Submissions close on **31 August 2012**.

Submissions can be provided in either hard copy or by email to the Executive Officer.

Electronic submissions should be sent via:

- The eSubmission form on the Committee's website: <http://www.parliament.vic.gov.au/fcdc>
- Or by email to: fcdc@parliament.vic.gov

Hard copy submissions should be sent to:

Family and Community Development Committee
Parliament House
Spring Street
EAST MELBOURNE VIC 3002

The Committee draws your attention that **all submissions are public documents unless confidentiality is requested**.

Please contact the Committee if confidentiality is sought, as this has bearing on how evidence can be used in the report to Parliament.

19. MAKING A WRITTEN SUBMISSION

Who can make a submission?

Any person or organisation can make a submission to a Committee. Individuals, community groups, private organisations, representatives of government departments and agencies and anyone else interested in an inquiry currently before the Committee are encouraged to make a submission.

Terms of Reference

Before preparing your submission, it is important that you read the Inquiry's Terms of Reference, as your submission must be relevant to the committee's Inquiry. If you do not have a copy of the Terms of Reference, please contact the Committee's office.

Please indicate in your submission whether you wish to give verbal evidence to the Committee. The Committee will indicate to you whether it would like to appear at a hearing to give verbal evidence.

Preparing a submission

Your submission may address all or part of the terms of reference. You do not have to comment on every aspect of the Terms of Reference, nor are you confined to just one aspect.

The Terms of Reference are intended to cover a wide range of issues relating to the causes and effects of child abuse, whether such abuse is responded to, and the adequacy of such responses.

The Terms of Reference enable individuals to recount their experiences of instances of abuse, the response to such abuse and the consequences of such abuse.

Your submission can contain factual information, opinion or both. You may want to draw the attention of the Committee to something relevant to the Inquiry. You may choose to emphasise solutions to the matter or issue before the committee. This is entirely your choice.

Your submission will be welcomed by the Committee provided it is relevant, not frivolous or offensive in nature, and addresses the terms of reference.

Submission format

There is no specific method for organising or presenting a submission. Your contribution can take the form of a letter, a short summary paper or a longer research document. You can include relevant data in appendices or incorporate them in the body of the text. It is important that the structure, argument and conclusions of your submission are clear.

Hard copy or electronic submissions

You can send your submission in hard copy, or electronically. If you send it in hard copy, a typed document on A4 paper is preferred. If this is not possible, a handwritten submission is acceptable.

Electronic submission

You can provide your submission electronically, by email, on CD/DVD or by eSubmission (see the Committee website). If you have any questions about the suitability of your file format/size, please contact the committee office.

Verification of your details

Please sign the submission. Sign on behalf of yourself, or on behalf of the organisation you are representing. If you are representing an organisation, please indicate your position in the organisation. If relevant, specify at what level the submission has been authorised: branch, executive, president, sub-committee, executive committee, national body, etc. If you are sending your submission electronically, please provide your name, and relevant contact details (such as address or phone number).

Supplementary material

You may wish to support your submission with other forms of material, such as a video, photographs or objects. Please contact the staff of the Committee if you plan to do this, so that appropriate arrangements can be made. This may involve material in your possession being loaned or donated to the Committee. Any material borrowed by the Committee will be returned on completion of the Inquiry.

Tone of submissions

Submissions form part of the Committee's proceedings, and help inform the Committee about matters relevant to the investigations. Most submissions are made public by the committee, and can be published on the committee's website. Submissions should be relevant, not contain offensive language or remarks, and should not be vexatious. A Committee can choose not to accept a submission if the Committee feels it breaches any of these guidelines.

The Committee may return any evidence that it considers irrelevant to its proceedings, offensive or possible defamatory.

Parliamentary Privilege

A submission to a Committee becomes a Committee document once the Committee formally decides to accept it as a submission. A Committee may decide not to accept a submission as evidence if it is not relevant to the Terms of Reference, or is offensive.

Once the Committee has authorised the release of a submission, any subsequent publication of it by the Committee is protected by parliamentary privilege. This means that what you say in your

submission cannot be used in court against you or anyone else.

Parliamentary privilege only extends to submissions that are published by the Committee. If a submission is published in another form or for another purpose, that publication will not be protected by parliamentary privilege. This means that you should not reproduce the submission in another format or context. You can, however, refer others to your submission on the Committee's website, or advise them to contact the Committee directly.

It is against parliamentary rules for anyone to try to stop you from making a submission by threats or intimidation. It is also a breach of these rules for anyone to harass you or discriminate against you because you have made a submission, and Parliament can take action against this behaviour.

Confidentiality

If you wish to have your submission kept confidential, please say so clearly at the top of the submission or in a covering note, explaining why you want it to be kept confidential. If you want part of the submission to be confidential, please put that part on a separate page. The committee will respect requests for confidentiality. If you have concerns about confidentiality, please discuss these with the Committee's Executive Officer before you make a submission.

Public hearings

Please indicate in your submission whether you wish to give verbal evidence to the Committee. The Committee will indicate to you whether it would like to appear at a hearing to give verbal evidence.

For more information about appearing at a public hearing, see the Parliament of Victoria's Guide to *Giving Evidence at a Public Hearing to a Parliamentary Committee* (available on its website).

Appendix 2—Letter to organisations requesting information (5 September 2012)

PARLIAMENT OF VICTORIA
Family and Community Development Committee



5 September 2012

Dear Stakeholder Organisation,

The Family and Community Development Committee has been asked by the Victorian Government to consider and report to the Parliament on the processes by which religious and other non-government organisations respond to the criminal abuse of children within their organisation ('the Inquiry').

The closing date for written submissions was recently extended to close on 21 September 2012. It is anticipated that public hearings will commence soon after the close of submissions.

As part of the Inquiry, the Committee seeks the assistance of your organisation to provide additional information regarding various matters relevant to the Inquiry. This letter has been sent to a significant number of organisations identified by the Committee as relevant to the Inquiry.

Information is sought regarding the treatment of complaints if any, of criminal abuse of children by personnel, if any, within your organization ('complaints'). The terms of reference are not limited to processes currently in place but also processes that existed, if any, prior to the current treatment of complaints by your organisation.

In particular, the Committee seeks information from your organisation regarding the following:

Process:

- i) The number and dates of complaints that have been received;
- ii) The manner in which the complaints were or are treated or the processes, if any, put in place to deal with complaints including:
 - a) The date the process was put in place;
 - b) The level within your organisation that was/is responsible for the handling of complaints;
 - c) Any instructions issued within your organisation regarding reporting of complaints;
 - d) Whether there was any follow up in your organisation on receipt of a complaint, regarding the possibility of similar conduct the subject of the complaint in respect of others;
 - e) Was there any change in the process if the person the subject of the complaint had previously been the subject of another complaint;
 - f) Any instruction or documentation setting out the protocols for dealing with complaints. If so, please provide the Committee with copies of such documents.

- iii) Whether the manner in which the complaints were treated or the processes of dealing with them has changed, and if so, the details of those changes including:
 - a) The date that changes to the process were introduced;
 - b) The level within your organisation that is responsible for the handling of complaints;
 - c) Any instructions issued within your organisation regarding reporting of complaints;
 - d) Whether there is any follow up in your organisation on receipt of a complaint, regarding the possibility of similar conduct the subject of the complaint in respect of others;
 - e) Was there any change in the process if the person the subject of the complaint had previously been the subject of another complaint;
 - f) Any instruction or documentation setting out the protocols for dealing with complaints. If so, please provide the Committee with copies of such documents;
- iv) If the manner in which the complaints were treated or processed has changed, the number and dates of complaints received since those changes were implemented;
- v) If the manner in which complaints were treated or processed has changed, whether those who made previous complaints were informed of those changes or their complaint reconsidered in accordance with those changes;
- vi) Whether complaints amounting to criminal conduct were or are referred to police and if so;
 - a) The number and dates of the complaints that were referred to police;
 - b) Any process, instructions or recommendations within your organisation made to facilitate police inquiries on receipt of a complaint. Please provide the Committee with copies of any relevant documents.
- vii) What process is in place in your organisation if a complaint is rejected.

Compensation/Support

- i) Whether the person making the complaint (a complainant) has received financial compensation from your organisation;
- ii) The number of complainants who have received financial compensation from your organisation;
- iii) Whether any financial compensation received by a complainant is the subject of a confidentiality agreement. If so, please provide the Committee with the form of confidentiality agreement;
- iv) Were there any instances where a person's conduct was the subject of more than one confidentiality agreement. If so, the number and dates of occasions that this occurred;
- v) When, if at all, was insurance taken out by your organisation to cover liability arising from a complaint;
- vi) Whether your organisation has set up its own process for claiming and determining compensation as a consequence of a complaint;
- vii) If your organisation has set up a process for compensation, does that preclude a complainant applying for compensation elsewhere;
- viii) If your organisation has set up a process for compensation, is the process conducted by an external body, an external body appointed by your organisation or an internal body of your organisation;
- ix) What supports, if any, including counselling, was or is a complainant offered once a complaint is made.

Consequences of complaint

- i) What procedures are adopted in respect of the person the subject of a complaint;
- ii) Whether your organisation or an external agency is responsible for any disciplinary action being taken against the person the subject of a complaint;
- iii) Whether the details of a complaint and the person the subject of a complaint are recorded and available to others in the organisation or to the public.
- iv) What procedures or processes if any are adopted to reduce the risk the person the subject of the complaint will re-offend;
- v) When were such procedures or processes to reduce the risk the person would re-offend put in place.

Review/Policy

- i) Whether there are avenues for review/appeal of a decision made regarding a complaint;
- ii) Whether any review/appeal is carried out by an external body, an external body appointed by your organisation or your organisation;
- iii) What, if any accountability mechanisms apply to your organisation's policy/process and are they open to outside scrutiny or review.

If you have any queries regarding this letter, please contact the Committee Secretariat on 03 8682 2843, by email to (fcde@parliament.vic.gov.au) or by post to:

Family and Community Development Committee
Parliament House
Spring Street
East Melbourne VIC 3002

Your assistance in providing this information to the Committee is greatly appreciated.
The Committee look forward to receiving your response to this letter.

Yours sincerely,



Georgie Crozier, MP
Chair, Family & Community Development Committee

Appendix 3—Penalties for sexual assault offences in Victoria

Penalties for rape		
	s.40(1) Rape.	Death penalty.
Crimes Act 1928 (Vic) In force from 12/02/1929	s.40(2) Rape with mitigating circumstances.	Imprisonment not more than 10 years.
	s.41 Attempt/Assault with intent to commit rape.	Imprisonment not more than 10 years.
Crimes Act 1949 (Vic) In force from 07/06/1949	s.2(1)(c)(i) amendment to death penalty for rape in 1928 Act.	Not more than 20 years imprisonment.
	Other offences.	Penalties remain the same.
Crimes Act 1957 (Vic) and Crimes Act 1958 (Vic)	All offences.	Penalties remain the same.
Crimes (Sexual Offences) Act 1980¹ (Vic) In force from 01/03/1981	s.45(1) Rape.	Imprisonment for not more than 10 years.
	s.45(2) Attempt/Assault with intent to commit rape.	Imprisonment not more than 5 years.
	s.45(3) Rape with aggravating circumstances.	Imprisonment not more than 20 years.
	s.45(4) Attempt/Assault with intent to commit rape and aggravating circumstances.	Imprisonment not more than 10 years.
Crimes (Rape) Act 1991² (Vic) In force from 01/01/1992	s.38(1) Rape.	Imprisonment maximum 25 years.

1 s. 5 substituted new provisions S.45 in the *Crimes Act 1958* (Vic).

2 s.3 substituted new provisions S.38 in the *Crimes Act 1958* (Vic).

Penalties for buggery of a child under 14		
	s.65(1) Buggery of any person under 14, or any person with violence and without consent.	Death.
Crimes Act 1928 (Vic) In force from 12/02/1929	s.65(2) Buggery in any other situation.	Imprisonment not more than 15 years.
	s.65(3) Attempt/Assault with intent to commit buggery or any indecent assault on any male.	Imprisonment not more than 10 years.
Crimes Act 1949 (Vic) In force from 07/06/1949	s.2(1)(e) substitutes death penalty at s.65(1) of 1928 Act.	Imprisonment not more than 20 years.
	Other offence.	Penalties remain the same.
Crimes Act 1957 (Vic) and Crimes Act 1958 (Vic)	All offences.	Penalties remain the same.
Crimes (Sexual Offences) Act 1980³ (Vic) In force from 01/03/1981	Buggery offences against children replaced with 'Sexual Offences against Young Persons'—new Part 8A <i>Crimes Act 1958</i> (Vic).	

3 s.6 repeals these offences.

Penalties for sexual penetration of a child under 10⁴		
Crimes Act 1928 (Vic) In force from 12/02/1929	s.42 Unlawful carnal knowledge and abuse of any girl under 10.	Death.
	s.43 Attempt/Assault with intent to commit unlawful carnal knowledge and abuse of any girl under 10.	Imprisonment not more than 10 years.
Crimes Act 1949 (Vic) In force from 07/06/1949	s.2(1)(d) amends s.42 of 1928 Act: Unlawful carnal knowledge and abuse of a girl.	Imprisonment not more than 20 years.
	Attempt/Assault.	Penalty remains the same.
Crimes Act 1957 (Vic) and Crimes Act 1958 (Vic)	All offences.	Penalties remain the same.
Crimes (Sexual Offences) Act 1980⁵ (Vic) In force from 01/03/1981	s.47(1) Person who takes part in act of sexual penetration with a child under 10 years. Inserted in the Crimes Act 1958: s.47(2) Attempt/Assault with intent to take part in act of sexual penetration with a child under 10 years.	Imprisonment not more than 20 years. Imprisonment not more than 10 years.
Crimes (Sexual Offences) Act 1991⁶ (Vic) In force from 05/08/1991	s.45(1) Act of sexual penetration with a child under age of 10.	Imprisonment for 20 years [emphasis added].
Crimes (Amendment) Act 2000⁷ (Vic) In force from 22/11/2000	s.45(2)(a) Act of sexual penetration with a child under age of 10 at time of offence.	Imprisonment 25 years maximum.
Crimes Legislation Amendment Act 2010⁸ (Vic) In force from 17/03/2010	s.45(2)(a) Act of sexual penetration with a child under age of 12 at time of offence [emphasis added].	Imprisonment 25 years maximum.

4 The predecessors of this offence were unlawful carnal knowledge and abuse of a girl under 10 years of age, and buggery.

5 s.5 substitutes the relevant sections of the *Crimes Act 1958* (Vic) relating to carnal knowledge with new Sexual Offences against Young Persons including s.47.

6 s.3 inserts s.45(1) *Crimes Act 1958* (Vic).

7 s.5 substitutes new s.45 *Crimes Act 1958* (Vic).

8 s.3(1) substitutes ages cited in s.45 *Crimes Act 1958* (Vic).

Penalties for sexual penetration of a child between the ages of 10 and 16 under the care, supervision or authority of the offender		
	s.44(1) Unlawful carnal knowledge of girl of or above 10 and under the age of 16.	Imprisonment not more than 10 years.
	s.44(1) As above but where offender is a schoolmaster or teacher and the girl is his pupil.	Imprisonment not more than 15 years.
Crimes Act 1928⁹ (Vic) In force from 12/02/1929	s.44(2) Attempt/Assault with intent.	Imprisonment 3 years.
	s.44(2) Attempt/Assault with intent by a male schoolmaster or teacher and the girl is his pupil.	Imprisonment not more than 5 years.
	s.47 Offence against a girl of or above 12 years.	No prosecution shall be commenced more than 12 months after its commission.
Crimes Act 1957 (Vic) and Crimes Act 1958 (Vic)	Offences remain the same.	Penalties remain the same.
Crimes (Sexual Offences) Act 1980¹⁰ (Vic) In force from 01/03/1981	s.48(1) Sexual penetration with a person of or above age 10 but under 16 years of age.	Imprisonment not more than 10 years.
	s.48(2) Attempt/Assault with intent in these circumstances.	Imprisonment not more than 5 years.
	s.48(3)(a) Sexual penetration with a person of or above age 10 but under 16 years of age, and victim is under the care, supervision or authority of the defendant.	Imprisonment not more than 15 years.
	s.48(3)(b) Attempt/Assault with intent, and victim is under the care, supervision or authority of the defendant.	Imprisonment not more than 7 years.
	s.48(6) Offences committed with/upon a person of or above twelve years of age.	No prosecution to be commenced for more than twelve months after their commission.
Crimes (Sexual Offences) Act 1991¹¹ (Vic) In force from 05/08/1991	s.46(1)(a) Sexual penetration of a child aged between 10 and 16 and at time of offence child under the care, supervision or authority of the defendant.	Imprisonment for 15 years.
	s.46(1)(b) In any other case.	Imprisonment for 10 years [emphases added].

9 Offence does not include reference to 'abuse' as it does for victims aged under 10.

10 s.5 substitutes the relevant sections of the *Crimes Act 1958 (Vic)* relating to carnal knowledge with new Sexual Offences against Young Persons.

11 s.3 substituted new provisions in the *Crimes Act 1958 (Vic)*.

Penalties for sexual penetration of a child between the ages of 10 and 16 under the care, supervision or authority of the offender		
Crimes Legislation Amendment Act 2010¹² (Vic) In force from 17/03/2010	s.45(2)(b) Sexual penetration of a child aged between 12 and 16 and at time of offence under the care, supervision or authority of the accused.	Imprisonment 15 years maximum.
	s.45(2)(c) Sexual penetration of a child aged between 12 and 16 [emphases added].	Imprisonment 10 years maximum.
	Sexual penetration of a child under 12.	25 years imprisonment (see section above referring to sexual penetration of a child under age of 10).

¹² s.5 substitutes ages cited in s.45 of the *Crimes Act 1958* (Vic).

Appendix 4—Occupational categories and child-related work in Victoria

Occupational categories under the *Working with Children Check 2005 (Vic)*

- Camps (all overnight camps for children).
- Child care services (child care services, centre based long day care, occasional care, family day care, in home care and outside school hours care).
- Child employment—Supervisors (supervision of a child in employment—where the child is under 15 years of age—pursuant to the *Child Employment Act 2003 (Vic)*).
- Childminding (babysitting or childminding services arranged by a commercial agency).
- Child protection services.
- Children’s services (that are required to be regulated under the *Children’s Services Act 1996 (Vic)*) including kindergartens or preschools.
- Clubs & associations (clubs, associations or movements of a cultural, recreational or sporting nature).
- Coaching & tuition (coaching or tuition services of any kind for children).
- Counselling services (counselling or other support services for children).
- Educational institutions (educational institutions for children, specifically:
 - ♦ state Schools (including all primary, secondary, technical and special State schools)
 - ♦ non-Government schools (including all primary, secondary and special non-Government schools)
 - ♦ TAFE colleges and TAFE Divisions of universities providing VCE and/or Victorian Certificate of Applied Learning (VCAL) subjects
 - ♦ some adult education providers providing VCE and/or VCAL subjects
 - ♦ other institutions providing children’s study or training programs.
- Entertainment & party services (commercial entertainment or party services for children unless they are merely incidental to or in support of other business activities).
- Foster Care (fostering children).
- Gym or play facilities (commercial gym or play facilities for children unless they are merely incidental to or in support of other business activities).
- Out of home care services (out of home care services—that are established or approved under the *Children, Youth and Families Act 2005 (Vic)*).
- Paediatric wards (paediatric wards of public, private or denominational hospitals as defined in the *Health Services Act 1988 (Vic)*).
- Photography services (commercial photography services for children unless they are merely incidental to or in support of other business activities).
- Refuges (refuges or other residential facilities used by children).

- Religion (religious organisations).
- School crossings (school crossing services).
- Talent & beauty competitions (commercial talent or beauty competitions for children unless they are merely incidental to or in support of other business activities).
- Transport (publicly funded or commercial transport services specifically for children).
- Youth justice.

Source: Adapted from Department of Justice Table of Occupational Categories, Working with Children Check website, Accessed 28 October 2013.

Child-related work under the *Working with Children Check 2005 (Vic)*

Child-related work is paid or unpaid work involving regular direct and unsupervised contact with a child when working with or caring for children in any of the occupational categories listed in the Act.

You do not require a Working with Children (WWC) Check if you:

- are involved in a private or domestic arrangement that exists between family and friends and where no payment is involved
- participate in an activity with a child on the same basis as the child for example in the same team
- supervise a student in practical training organised by their educational institution.

You need to apply for and pass the WWC Check if you meet all 1-4 criteria:

- 1) You are engaged in child-related work as:
 - an employee or
 - a self-employed person or an independent contractor or
 - a volunteer or
 - a supervisor of child employees or
 - part of practical training through an educational or vocational course or
 - unpaid community work under a court order or
 - a minister of religion or performing duties of a religious vocation or
 - an officer of a body corporate or
 - a member of a committee of management of an unincorporated body or
 - a member of a partnership.
- 2) Your contact with a child is with any of the occupational categories listed in the Act. Occupational categories are not titles of people's jobs but broad descriptions of services or places where people work with or care for children. See Occupational categories included in the Act
- 3) Your work involves regular direct contact with a child, who is under 18 years of age.

- Regular contact is contact that is not incidental to but normally part of providing a service or activity for children
- Direct contact with a child involves physical contact, talking face to face or within eyeshot when providing a service or activity for children.

4) Your work is not directly supervised.

Direct supervision is:

- immediate and personal supervision
- undertaken by a person whose role is to supervise your work
- does not require constant physical presence, for example a supervisor may leave the room for a short while to take a phone call.

Source: Adapted from Department of Justice, What is child-related work?, Working with Children Check website, Accessed 28 October 2013.

Appendix 5—Standards: *Safeguarding children program and Choose with care program*

Safeguarding children program

Table 5A.1: Summary of *Safeguarding children standards*

Standard	Overview
1. A commitment to safeguarding children.	<ul style="list-style-type: none"> Through its ‘safeguarding children’ statement, the organisation documents its clear commitment to safeguarding children and young people from abuse and neglect.
2. Personnel roles and conduct.	<ul style="list-style-type: none"> The organisation ensures that each person involved in delivery of services to children and young people understands their role, and the behaviour expected in safeguarding children and young people from abuse and neglect.
3. Recruitment and screening practices.	<ul style="list-style-type: none"> The organisation has appropriate measures in place to minimise the likelihood of recruiting a person who is unsuitable to work with children or young people.
4. Personnel induction and training.	<ul style="list-style-type: none"> The organisation’s induction, education and training programs are a vital part of its commitment to safeguarding children and young people from abuse and neglect.
5. Involving children and parents.	<ul style="list-style-type: none"> In developing a safe, inclusive and supportive environment the organisation involves and communicates with children, young people and their parents. It encourages parental involvement and behaviour that helps to protect children and young people.
6. Child abuse reports and allegations.	<ul style="list-style-type: none"> The organisation has measures in place to ensure that all people who work with children and young people understand their responsibility to report possible abuse or neglect and understand the organisation’s reporting procedures.
7. Supporting a child-safe organisational cultures.	<ul style="list-style-type: none"> The organisation has measures in place to ensure that all people who work with children and young people understand their responsibility to report possible abuse or neglect and understand our reporting procedures.

Source: Australian Childhood Foundation, *Safeguarding children*, <http://www.safeguardingchildren.com.au/the-program/the-seven-key-strategies.aspx>, Accessed on 14 July 2013.

Choose with care program

Table 5A.2: Summary of Choose with Care standards

Standard	Overview
1. Understand child abuse.	<ul style="list-style-type: none"> Importance of understanding the potential risks and indicators of abuse of children. Staff and volunteers using understanding to inform activities.
2. Develop and maintain an open and aware culture.	<ul style="list-style-type: none"> Develop an open and aware culture by being aware of the risks of abuse, appropriate and inappropriate behaviour, feel encouraged and safe to raise any concerns and be open to outside influence and accountability.
3. Identify and manage risks and dangers to children in programs and activities.	<ul style="list-style-type: none"> Identify potential risks and ways children can be harmed in the organisation.
4. Develop a Child Protection Policy.	<ul style="list-style-type: none"> Implement policies and procedures to address and minimise those risks through a child protection policy.
5. Create clear boundaries.	<ul style="list-style-type: none"> Develop a code of conduct that clearly describes appropriate behaviours in relation to children within the organisation and its activities.
6. Adopt best practice in recruitment and selection.	<ul style="list-style-type: none"> Adopt a structured and systematic approach to recruitment and selection for all staff and volunteers to reduce the risk of employing unsuitable people.
7. Screen all staff and volunteers.	<ul style="list-style-type: none"> Screen all staff and volunteers need to be screened to prevent placement of a sex offender or otherwise unsuitable candidate.
8. Support and supervise staff and volunteers.	<ul style="list-style-type: none"> Minimise the opportunity for child abuse by ensuring regular, formal supervision and performance monitoring.
9. Ensure there is a clear complaints procedure for reporting concerns.	<ul style="list-style-type: none"> Establish clear reporting guidelines to maintaining an open and aware culture and deter offenders.
10. Know your legal responsibilities.	<ul style="list-style-type: none"> Organisations have a legal and moral responsibility to protect children in their care and may be held liable for failure to prevent 'foreseeable' abuse.
11. Empower children and encourage participation in the organisation's program.	<ul style="list-style-type: none"> Abuse is more common in organisations where children have no voice. A child safe organisation empowers children so they can speak of their concerns.
12. Provide education and training for all participants.	<ul style="list-style-type: none"> All staff, volunteers, children and their families should be informed and educated on policies and programs to ensure that risk management policies and procedures are widely understood and implemented.

Source: Child Wise, undated, *Choose with Care: 12 steps to a child-safe organisation. An introduction to the Choose with Care program, Building safer organisations for children.*

Appendix 6—Organisation policies: Code of conduct and professional development

Codes of conduct in non-government organisations

Table 6A.1: Examples of codes of conduct relating to protecting children

Date	Organisation	Code name	Type of code
Adopted 2004	Anglican Church	Faithfulness in Service	<ul style="list-style-type: none"> a national code for personal behaviour and the practice of pastoral ministry by clergy and church workers. contains a chapter on children with standards, characteristics of child abuse and offenders and guidelines for ensuring children's safety.
2002	Baptist Union	Duty of Care Policy Our Church is a Safe Place	<ul style="list-style-type: none"> duty of care policy reference to needs of children, inappropriate behaviour, responding to suspicions of abuse and reporting allegations of abuse.
Version 2006	Berry Street Victoria	Code of Conduct	<ul style="list-style-type: none"> outlines organisation values refers to misconduct makes no reference to appropriate boundaries with children.
Adopted 2004	Catholic Church	Integrity in Ministry	<ul style="list-style-type: none"> principles and standards for Catholic clergy and religious section on concern for the dignity and safety of children and youth that outlines expectations of behaviour and understanding of child abuse.
Adopted 2011	Catholic Church	Integrity in the Service of the Church	<ul style="list-style-type: none"> principles and standards for lay workers refers to need for church workers to understand and respect boundaries with children and to be aware of obligations in reporting suspected child abuse.
Adopted 2011	Catholic Church	May our Children Flourish	<ul style="list-style-type: none"> code of conduct for caring for children refers to creating a positive and safe environment, appropriate behaviour for adults and promoting appropriate behaviour for children.
No date	Girl Guides Victoria	Code of Conduct	<ul style="list-style-type: none"> treating young members with respect and being responsible for safety recognition that all forms of abuse unacceptable.

Date	Organisation	Code name	Type of code
No date	Seventh Day Adventist Church	Code of Conduct	<ul style="list-style-type: none"> • the Code of Conduct makes it clear what practices (actions) are supported and what practices are not condoned • list of behaviours that are encouraged and expected of all adults who interact with children and young people • applies to everyone in the church.
Revised 2010	Uniting Church	Code of Ethics and Ministry	<ul style="list-style-type: none"> • applies to both lay and ordained people in the Church • reference to the sensitivities and needs of children and appropriate behaviour.

Source: Compiled by Family and Community Development Committee based on evidence and other information provided to the Inquiry.

Training and education in non-government organisations

Table 6A.2: Examples of training and education in non-government organisations

Organisation	Type of training and education
Anglicare Victoria	<ul style="list-style-type: none"> • Train carers in managing challenging behaviours to prevent the use of abusive disciplinary practices in moments of stress and frustration. • Age appropriate sex education for children in care, including right to reject unwanted advances and strategies for doing so assertively.
Anglican Church	<ul style="list-style-type: none"> • Regular awareness training for clergy and authorised lay workers. • Professional standards training, including a systematic approach to training to enable clergy and church to become aware of their obligations under the code of good conduct (every 3 years). • Use of published materials to raise awareness regarding appropriate behaviour.
Catholic Church	<ul style="list-style-type: none"> • Training on application of code of conduct for priests, parish leaders and agency heads and staff of the Archdiocese. • Under the National Committee for Professional Standards, 'a wide range of initiatives are undertaken to support professional development, community education, and awareness-raising'.¹³
Baptist Union	<ul style="list-style-type: none"> • Train pastoral leaders on power relations. • All ministry leaders trained on duty of care policy.
Rabbinical Council	<ul style="list-style-type: none"> • Training for rabbis to raise consciousness and skill levels in becoming aware of and responding to allegations of child abuse.
The Salvation Army	<ul style="list-style-type: none"> • Provides training based on Child Safe model.
Scouts Victoria	<ul style="list-style-type: none"> • All approved adult leaders receive 'comprehensive and ongoing training in dealing with children'.¹⁴ • Educational material for parents.
Seventh Day Adventist Church	<ul style="list-style-type: none"> • Educational and training resources including workshops on personal boundaries for ministers and students, workshops in writing child protection policies for local churches, in-service training in child protection for school staff.
Yeshivah Centre	<ul style="list-style-type: none"> • Training conducted by government departments on mandatory reporting and child protection. • Protective Behaviour training facilitated by the Crisis Centre for Jewish Women • Youth workers have undergone the Safeguarding Children Program delivered by the Australian Childhood Foundation. • Training for children, such as resiliency programs and age appropriate workshop on how to 'say no'. • Parent education on child protection.

Source: Compiled by Family and Community Development Committee based on evidence and other information provided to the Inquiry.

¹³ *Submission S185, Catholic Church in Victoria, p. 101.*

¹⁴ *Submission S185, Catholic Church in Victoria, p. 101.*

Appendix 9—Complaint files

Introduction

In drafting this Report the Committee examined the complaint files of the following four organisations:

- the Melbourne Response
- Towards Healing
- the Salvation Army
- the Anglican Church.

The Committee chose to concentrate its investigations on these non-government organisations for a number of reasons. Firstly, the vast majority of submissions received from the public related to complaints of criminal child abuse committed by clergy of the Catholic Church, the Anglican Church and Salvation Army officers. Further in evidence to the Inquiry the Victoria Police advised the Committee they had undertaken internal research into the ‘reporting and handling of child sexual assault by the Catholic Church’ and a number of other organisation including the Salvation Army and the Anglican Church.¹⁵

In addition as outlined in Part F of the Report the Committee was aware that the Catholic Church, the Salvation Army and the Anglican Church all introduced internal process and procedures in their respective organisations in the last two decades to deal with complaints of criminal child abuse against members of their organisations. Evidence submitted to the Inquiry from victims, their families and victim advocacy groups indicated that the handling of past complaints was inadequate leaving many victims both angered and upset by the manner in which they were treated when they approached an organisation with a complaint against a member of their organisation.

As a result the Committee decided that an examination of the complaint files was required and requested these organisations to provide the Inquiry with a representative sample of past complaint files to review. This appendix summarises the findings on each organisation’s respective complaint handling process based on its analysis on the files reviewed.

The Melbourne Response

The Committee reviewed 158 out of an estimated total of 330 Melbourne Response complaint files as provided by the Independent Commissioner.

Two members of the legal research team of the secretariat reviewed the complaint files at the office of the Independent Commissioner for Melbourne Response throughout January 2013.

These 158 files were chosen at random and the Committee is confident this number provides a fair and accurate representation of the Melbourne Response process for handling complaints of criminal child abuse.

¹⁵ *Submission S201*, Victoria Police.

Towards Healing

The Committee reviewed 129 out of an estimated total of 800-900 Towards Healing complaint files.

Two members of the legal research team of the secretariat reviewed the complaint files at the office of Sr Angela Ryan in Mildura from 15 to 18 January 2013.

Further analysis was required on the complaint files. Therefore four members of the legal research team of the Secretariat reviewed additional complaint files at the office of Sr Angela Ryan from 18 to 20 March 2013.

These 129 files were chosen at random and the Committee is confident that this number provides a fair and accurate representation of the Towards Healing process for handling complaints of criminal child abuse.

The Anglican Church

The Committee reviewed 33 complaint files from the Anglican Diocese of Melbourne.

Two members of the legal research team of the Secretariat reviewed the complaint files at the Melbourne Diocese office from 2 to 9 July 2013.

Further analysis was required on the complaint files. Therefore one member of the legal research team of the secretariat returned to the Melbourne Diocese office from 5 to 7 August 2013 to further analyse the files.

The Salvation Army

The Committee reviewed 52 complaint files out of an estimated total of 474 Salvation Army complaint files.

Two members of the legal research team of the Secretariat reviewed the Salvation Army's complaint files at the offices of their law firm Nevett Ford from 22 to 27 July.

The 52 files provided to the Inquiry were based on a number of restrictions the Committee placed on the Salvation Army. The file restrictions imposed by the Committee are discussed in further detail in the Salvation Army section of this appendix.

Methodology

The following section describes the method adopted by the legal research team of the secretariat in conducting its research for the Committee. The legal researchers undertook extensive evidence gathering and analysis of documents it accessed from each organisation.

When reviewing the complaint files provided to the secretariat the legal researchers completed detailed worksheets with the required evidence as directed by the committee. The worksheets for each organisation varied somewhat due to the differing internal processes in place. However, the general format of the worksheets as mandated by the Committee was as follows.

The first section collected information relating to the general nature of the complaint.

The second section allowed for collection of data relating to the organisation's handling of the complaints including methods of the first contact with the victim, investigation, confidentiality, police involvement, legal representation, compensation and counselling. The data covered all aspects of the operation of each process.

On occasion information was extremely detailed so it was more practical for the legal researchers to simply draft detailed chronologies summarising the evidence available.

Upon completion of the worksheets and on return to the secretariat office, the legal researchers collated the evidence into spread sheets and databases. New spread sheets and databases were devised for each organisation based on the evidence collected. The spread sheets enabled the legal researchers to summarise different points of interests so the files could be reviewed by the Committee together with extracts of relevant source documents and correspondence.

In total seven legal researchers from the Secretariat undertook both quantitative and qualitative research of the evidence made available in conducting their investigations into the organisations.

Findings

A consistent review of the evidence made available was performed for each organisation in order to establish the findings of the Report. This appendix provides an overview of the each organisations complaint handling process based on the Committee's research into the individual complaint files provided. The following aspects were examined in detail and have been summarised for the purposes of this appendix:

- analysis of complaints
 - ◊ nature of complaints
 - ◊ gender of victims
 - ◊ year of complaints
- findings
 - ◊ initial contact
 - ◊ support on initial contact
 - ◊ legal support
 - ◊ counselling
- referral to police
- investigation process
- settlement process
 - ◊ financial compensation and non-financial assistance
 - ◊ apology
 - ◊ deeds of settlement and release
- review and appeal
- confidentiality

- ♦ confidentiality in process
- ♦ confidentiality in settlement
- victim's satisfaction with the process.

Melbourne Response

Introduction

Victims are required to undergo three stages in the Melbourne Response process:

- The Independent Commissioner
- Carelink
- The Compensation Panel.

Complaints

The Committee reviewed 158 out of an estimated total of 330 Melbourne Response complaint files. The statistics for this appendix are based on 154 files as two related to victims who phoned the office of the Independent Commissioner once and had no further involvement in the process. The other two files concerned victims who were referred to the Towards Healing process immediately on initial contact with the Independent Commissioner resulting in no further involvement with the Melbourne Response process.

Nature of complaints

The majority of complaints made to Melbourne Response were as a result of sexual abuse perpetrated against victims by priests, religious and laypersons in the Catholic Archdiocese of Melbourne. The kind of sexual abuse ranged from severe and ongoing to the less serious and one off incidents.

Gender of victims

The vast majority of victims who approached the Melbourne Response process were male. Table 9A.1 provides a breakdown of the gender of victims in the 154 files reviewed.

Table 9A.1: Gender of victims—The Melbourne Response

Gender	Count of victims	Gender by percentage
Male	120	77.9
Female	34	22.1
Total	154	100.0

Source: Compiled by the Family and Community Development Committee.

Year of complaints

Although the number of complaints made to the Melbourne Response has waned over recent years, the numbers are still consistent. The examination of the files

indicated that the peak years for complaints were 1997 and 2002. Table 9A.2 provides a breakdown of the complaint files reviewed per year.

Table 9A.2: Complaint files received by year—the Melbourne Response

Year	Count of Relevant Year	% Count of Relevant Year
1996	3	1.9
1997	24	15.6
1998	5	3.3
1999	14	9.1
2000	9	5.8
2001	2	1.3
2002	30	19.5
2003	5	3.2
2004	6	3.9
2005	10	6.5
2006	10	6.5
2007	8	5.2
2008	8	5.2
2009	5	3.3
2010	4	2.6
2011	2	1.3
2012	8	5.2
Unknown	1	0.6
Total	154	100.0

Source: Compiled by the Family and Community Development Committee.

Findings—initial contact

The files indicate that victims approached the Melbourne Response / Independent Commissioner through a number of different avenues:

- The majority of victims contacted the Independent Commissioner directly by telephone, letter or email.
- Referrals were also made by outside organisations such as the Catholic Church, Carelink, Towards Healing and victim advocacy groups such as Broken Rites.

Support provided to victim in initiating complaint

Although a victim is allowed to have a support person throughout the Melbourne Response process, the file review suggests that victims were neither offered nor encouraged to do so on initiation of a complaint.

Legal support

In the files reviewed 33 victims were legally represented.

The file review indicated that the Independent Commissioner did not always encourage victims to seek independent legal advice in relation to their complaint. Instead victims were only encouraged to obtain independent advice when:

- there was a contested hearing
- a victim needed more than the usual amount of support
- a victim repeatedly questioned the Independent Commissioner whether they should obtain independent legal advice.

Counselling

Every victim that the Independent Commissioner found in favour of was referred to Carelink for counselling.

Referral to police

The investigation of the files illustrate that the Independent Commissioner did not always encourage the victim to report their abuse to the police.

Of the 154 files reviewed the Committee found evidence of encouragement to go to the police in 58 files with no evidence in 93 files. It was unclear in three files whether any encouragement was given.

In a number of cases there were valid reasons for the Independent Commissioner not providing a police recommendation, such as the perpetrator being dead or the police already being involved. Nonetheless 36 complaints were identified as those where there was no seemingly justifiable reason for the Independent Commissioner not recommending a referral to the police.

Investigation

The Independent Commissioner performed the investigation into the complaints, and his approach varied depending on the circumstances. The investigation always involved an interview or meeting with the victim in his chambers to transcribe and verify their story.

On occasion the Catholic Education Office Melbourne (CEOM) was contacted to confirm the basic facts of the case and the likely contact between the victim and the alleged perpetrator. In addition the Catholic Church was contacted to ascertain whether there were any previous allegations against the alleged perpetrator. In some cases the Independent Commissioner contacted the perpetrator to establish his position in relation to the allegation.

If deemed necessary the Independent Commissioner contacted potential witnesses and the victims' friends and family with consent. Finally if there was prior police involvement the Independent Commissioner contacted the police to investigate the complaint.

The file review highlighted that at times the Independent Commissioner's investigations were extremely detailed. However, generally judgement was made on

a case very quickly resulting in the need for minimal investigation. The Committee found that 46 per cent of cases were determined within the first month of either a victim's interview with the Independent Commissioner or first contact with the Melbourne Response.

Of the 154 files reviewed, the Independent Commissioner found that 125 complaints were established, 25 did not proceed to the stage where a finding could be made and three were not established. The finding of one complaint is unknown.

Settlement

In the files reviewed all complaints which progressed to the stage where an application for compensation could be made were referred to the Compensation Panel.

Table 9A.3 provides a breakdown of referral to the Compensation Panel.

Table 9A.3: Referrals—Compensation Panel

Referral to Compensation Panel	Number of Victims	% Count of Referred Victims
Referral	110	71.4
No referral	29	18.9
Unknown	15	9.7
Total	154	100.0

Source: Compiled by the Family and Community Development Committee.

In evidence to the Committee the Chairperson of the Compensation Panel confirmed that the Compensation Panel has had 287 acceptances out of 290 offers that it has made thus far.¹⁶

Financial compensation and non-financial assistance

The file review did not include those of the Compensation Panel though these were available. In the files reviewed where the settlement amount was known the ex-gratia settlements awards varied and payments ranged from between \$15,000 at the lowest end of the scale to \$50,000 at the highest end.

Apology

A written apology was provided to the victim with the compensation letter of offer. It was identified in the files reviewed that many victims expressed the need for an apology from the Catholic Church either as their sole reason for approaching Melbourne Response or as an additional outcome with another form of recompense.

Deeds of Settlement and Release

A Deed of Release was signed by the victim and the Archbishop of Melbourne as a condition of payment of the ex gratia settlement.

¹⁶ *Transcript of evidence*, Compensation Panel, Melbourne Response, Melbourne, 3 May 2013, p. 16.

The files analysis suggests that until recently victims were not encouraged to obtain independent legal advice pertaining to the effects of the deed.

Review and appeal

There is no formal procedure for initiating a review of any of the Melbourne Response decisions. The file review established that in the situations where a victim requested a review or appeal the Independent Commissioner along with the Catholic Church solicitor appeared to have absolute discretion in deciding whether this should take place.

Confidentiality

Process

The files illustrate that the Independent Commissioner typically stated at the initial interview, that what is said in interviews and subsequent conversations is confidential unless desired otherwise by the victim.

In more recent years the Independent Commissioner, has told the victim that the contents of a contested hearing or compensation hearing are confidential, but not the fact of the abuse or (once an offer of compensation is accepted) the settlement.

It was identified in the files that some victims were concerned with keeping the facts of the abuse silent. However, no cases reviewed suggested that the Independent Commissioner misled victims into thinking that they weren't allowed to talk about the abuse committed against them. However, it is evident that his advice was not always received exactly as intended.

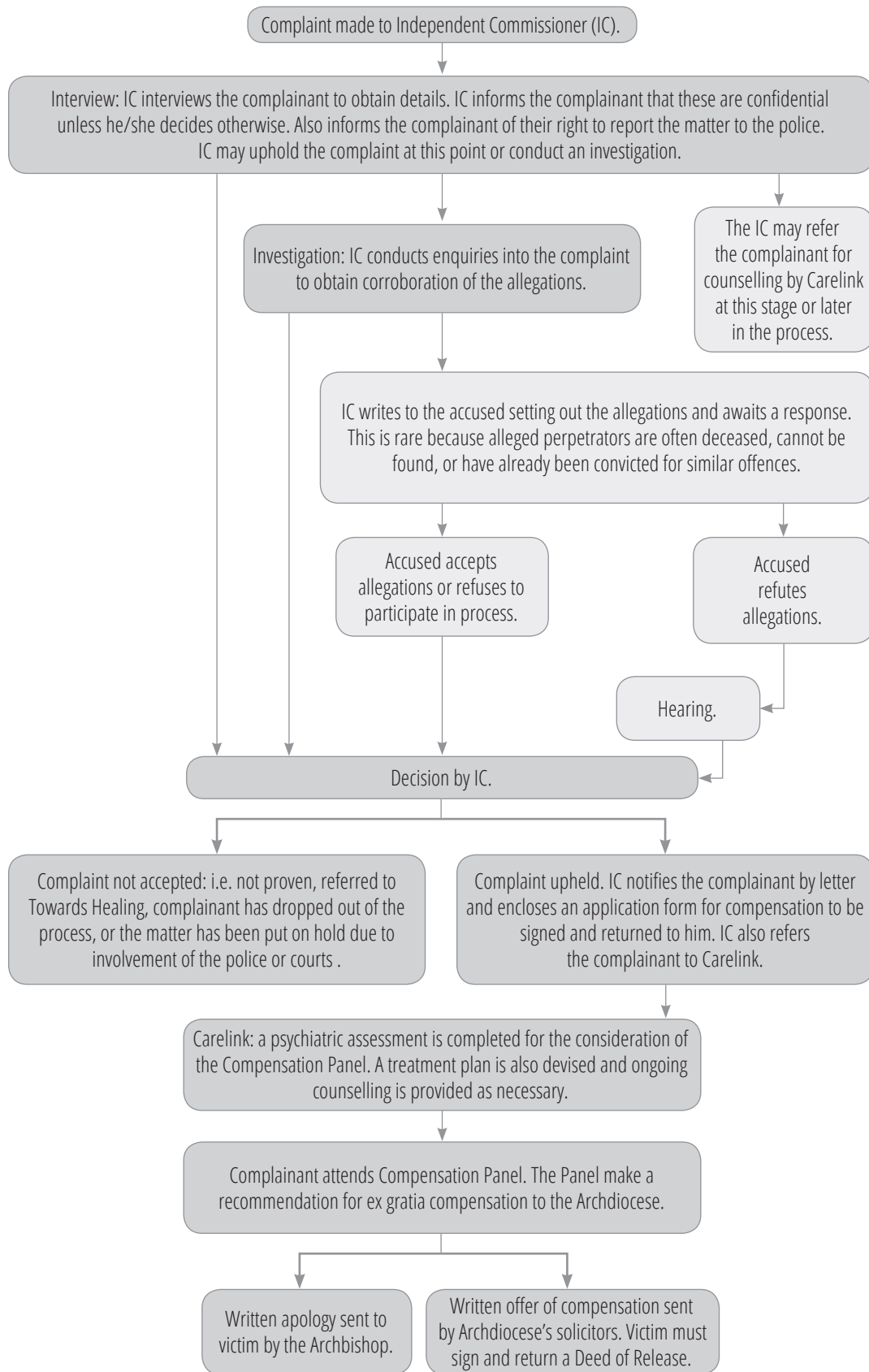
Settlement

The files viewed contained an application for compensation which included a confidentiality provision.

Victims' satisfaction with process

Of the 154 files reviewed six victims expressed thanks or indicated that they had a positive experience with the process, while 20 people criticised the Melbourne Response process. The Committee could not determine the satisfaction level of the remainder 128 victims from the files received from the Independent Commissioner.

Figure 9A.1: The Melbourne response complaint process



Compiled by the Family and Community Development Committee

Towards Healing

Introduction

Towards Healing has three stages that a victim is required to undergo before s/he can receive any form of compensation from the Catholic Church namely:

- contact report/complaint
- assessment
- facilitation.

Complaints

The Committee reviewed 129 out of an estimated total of 800-900 complaints files made to Towards Healing. Although the total number of files in the Towards Healing office is around 800-900, those representing complaints against perpetrators of criminal child abuse represent a number less than that.

The statistics for this appendix are based on the 129 complaint files reviewed.

Nature of complaints

The majority of the complaints made to Towards Healing are as a result of the sexual abuse perpetrated against victims by priests, religious and laypersons.

The vast majority of complaints reviewed concern sexual abuse at different levels of seriousness, perpetrated in the 1960s and 1970s, typically in the contexts of the parish church, church schools, religious orders and orphanages.

Gender of victims

The majority of victims who approached the Towards Healing were male.

Table 9A.4 provides a breakdown on the gender of the victims in the 129 files reviewed.

Table 9A.4: Gender of victims—Towards Healing

Gender	Number of victims	Gender by percentage
Male	118	91.5
Female	11	8.5
Total	129	100.0

Source: Compiled by the Family and Community Development Committee.

Timeframe of complaints

The number of complaints made to Towards Healing has remained consistent since its implementation in 1996. In the files reviewed the peak year for complaints was 2002.

Table 9A.5 provides a breakdown of complaint files per year.

Table 9A.5: Complaint files received by year—Towards Healing

Year	Number of complaints	Percentage of total complaints reviewed
1997	1	0.8
1998	0	0.0
1999	4	3.1
2000	12	9.3
2001	2	1.6
2002	24	18.6
2003	4	3.1
2004	12	9.3
2005	4	3.1
2006	6	4.6
2007	14	10.9
2008	7	5.4
2009	8	6.2
2010	12	9.3
2011	4	3.1
Unknown	15	11.6
Total	129	100.0

Source: Compiled by the Family and Community Development Committee.

Findings—initial contact

Victims approached Towards Healing in a number of ways.

Generally, victims, their representative or a family member contacted the Towards Healing office by telephone, letter, or email. A number of victims were referred to Towards Healing by the Independent Commissioner for Melbourne Response, the Catholic Church or victim advocate groups such as Broken Rites.

Support provided to victim in initiating complaint

The Towards Healing guidance provides documentary information regarding the process should be sent to the victim. The analysis of the files illustrate the documentation was sent to less than half of the victims.

Upon initial contact with Towards Healing a contact person should be appointed. The analysis of the files indicated that a contact person was appointed for 96 of the 129 victims.

A total of eight victims disagreed with their final contact report as drafted by the contact person. In addition a number of victims criticised the level of involvement by contact persons after the contact report stage was completed. In the files reviewed

very rarely did a contact person assist the victim after the initial stage, except to occasionally explain a finding in a later stage of the process.

Legal support

From the analysis of the files it is known that:

- 64 victims were legally represented
- 40 victims were definitely not represented
- 25 victims-the situation is unknown.

Counselling

The analysis of the files indicate that counselling was provided to victims intermittently and where counselling was provided victims had little control over the counsellor or the type of therapy they received. In addition counselling was typically for five sessions at a time and in the files reviewed only six victims received ten or more counselling sessions paid for by Towards Healing. Any settlement sums through facilitation included the cost of future counselling.

Referral to police

In the files reviewed it was difficult to reach a definite figure regarding police referrals made by Towards Healing. However, the files revealed that police were directly involved at some stage in approximately 49 of the complaint files reviewed. In respect of the other 80 files the police were not involved or their involvement was unknown.

Investigation

In the files reviewed an assessment into the complaint did not always take place. Of the 129 files reviewed, 43 cases were assessed. In 55 cases, the assessment was bypassed or had records which erroneously did not include the assessment report. The remaining 31 cases were either dropped, or had records missing.

Of the 39 known cases where a finding was made, 44 per cent were found to be substantiated while 56 per cent were found to be unsubstantiated.

Settlement

Of the files reviewed 82 cases proceeded to the facilitation stage. In a small number of cases a facilitation meeting took place even when a complaint was found to be unsubstantiated. If a victim's claim was found to be unsubstantiated they were referred to a pastoral meeting.

The files indicated that the Director of Professional Standards typically nominated the facilitator with little input from either the Church Authority or the victim.

Facilitators varied in practice—some conducted informal pre-facilitation meetings, some wrote the victim with information as to what to expect though the majority did not.

Facilitations were attended by the victim, a support person (if applicable), the Church authority and the facilitator. On occasion lawyers for the Catholic Church were in attendance as were representative from Catholic Church Insurance.

Analysis of the files suggests that facilitation involves negotiation of an ex-gratia payment in exchange for the victim signing a Deed of Release extinguishing any future claims against the Catholic Church.

File records on facilitations were frequently incomplete. When Towards Healing did receive notification from the facilitator on settlements, there was often a lack of detail regarding what had transpired and the terms of the settlement agreed. The Director did not routinely request information regarding the facilitation result.

In Towards Healing files it was only possible to determine whether a settlement was reached in 54 cases. In addition the financial terms of the settlements were only documented in 34 of these 54 cases.

Financial compensation and non-financial assistance

As indicated above the Committee could only find evidence of a financial settlement in 34 cases. Factors such as the Catholic Church Insurance involvement or whether the victim was legally represented appeared to influence the level of compensation awarded to victims.

The average ex gratia compensation award for represented victims was \$82,872 as opposed to \$29,625 in cases where a victim was not legally represented. Similarly in the cases the Catholic Church Insurances were known to be involved, the average settlement was \$60,424 as opposed to \$32,817 in non-Catholic Church Insurance settlements.

Due to poor records re facilitation it is uncertain if these figures provide an accurate representation of the disparity in the settlements in Catholic Church Insurance settlements and legal representation settlements.

Apology

The apologies were generally in the form of an oral apology but victims were offered a written apology also. The files indicate that the apologies were well received by victims.

Deeds of Release and Settlement

Although victims have always been required to sign a Deed of Release in exchange for the ex gratia compensation payment there was no mention of its condition until recently and there is no evidence that victims were encouraged to obtain independent legal advice pertaining to the effects.

Review and appeal

Of the 129 files reviewed, there was evidence of a review being requested in seven cases.

Of the seven cases reviewed, two changed from unsubstantiated to substantiated. In four of the cases the assessor's finding was maintained and one case was placed on hold because of police involvement.

Confidentiality

Process

Confidentiality was an important part of the Towards Healing for each part of the process.

Settlement

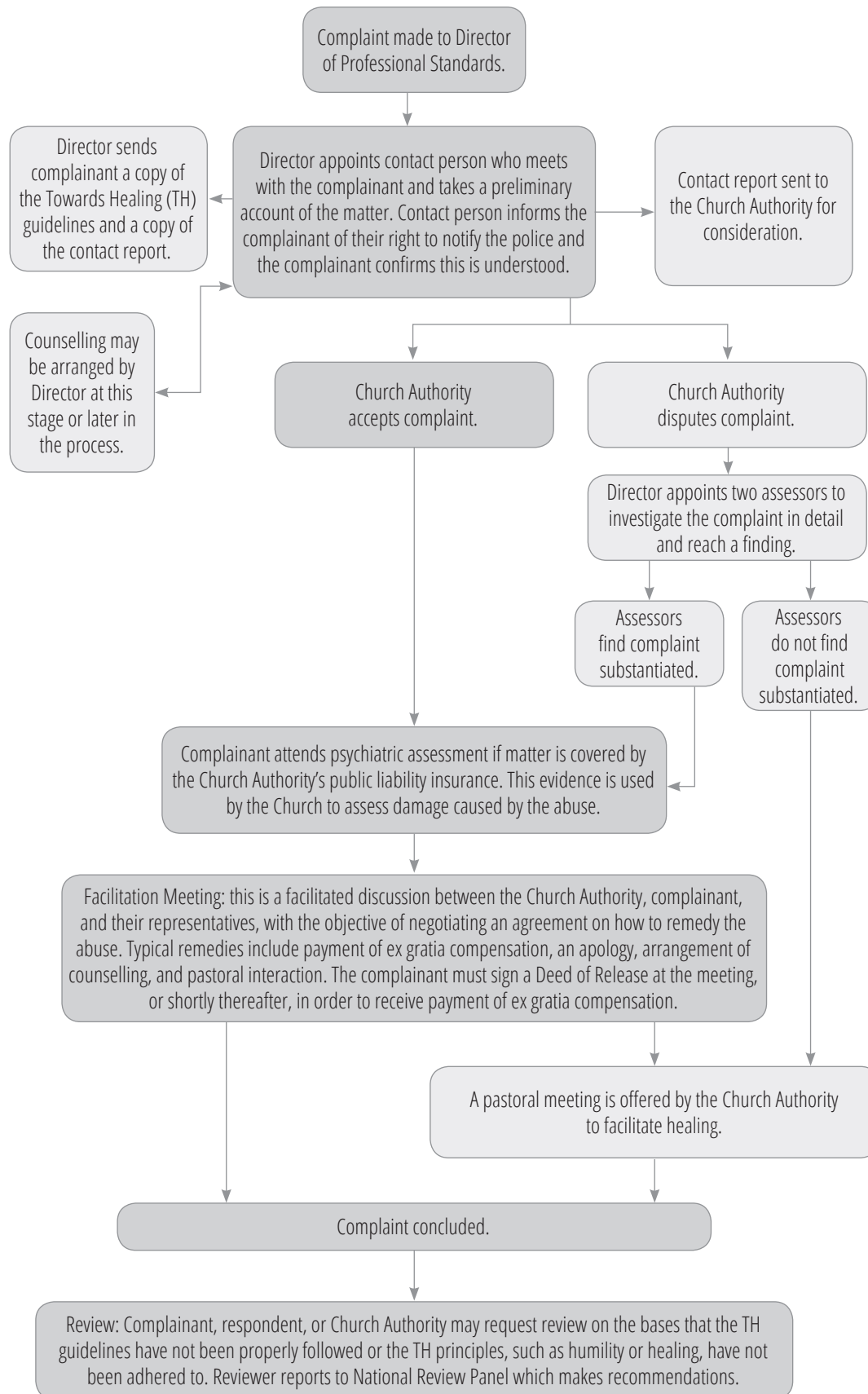
There is insufficient evidence in the files reviewed to determine the extent of a confidentiality clause if any in the Deed of Release.

Victims' satisfaction with the process

It was not possible to determine the victims' overall satisfaction with the process. In 16 cases victims were satisfied with the outcome but the files indicate that 22 victims were dissatisfied with the process.

The Committee could not determine victim's satisfaction with the Towards Healing process in the remainder of the files.

Figure 9A.2: Towards Healing complaint process



Compiled by the Family and Community Development Committee

The Salvation Army

Introduction

Over 99 per cent of complaints that the Salvation Army has received to date are from care leavers who spent time in Salvation Army homes during their childhood.¹⁷ The complaints process was handled either internally by the Salvation Army or externally by their legal firm Nevett Ford. The analysis of the files indicates that the vast majority of complaints were handled by Nevett Ford.

In a letter dated the 27 June 2013 the Committee requested the Salvation Army provide the Inquiry with 10 internal complaint files and 40 complaint files handled by Nevett Ford. The Inquiry received 8 internally handled complaint files and 42 handled by Nevett Ford. In addition the Committee requested a sample of complaint files from a number of different Salvation Army homes spanning a number of decades. The Salvation Army complied with this request and provided files relating to seven homes (one of these homes was a correctional institutional facility) spanning from the 1930s to the 1980s.

If the complaint was upheld, the Salvation Army agreed to enter into negotiation with the victim to try to resolve the complaint.

Complaints

The Committee reviewed 52 out of 474 Salvation Army complaint files. Two complaint files related to criminal child abuse that did not occur in Victoria and are therefore outside the Inquiry's Terms of Reference. The statistics for this appendix are based on 50 complaint files.

Nature of the complaints

The complaints directed at the Salvation Army are as a result of the sexual, physical and emotional abuse. The files revealed that abuse was perpetrated by staff members, cottage parents, holiday parents, visitors, relief workers, teachers and co-residents.

An analysis of the files indicated that 74 per cent of victims were sexually abused at different levels of seriousness whilst in the care of the Salvation Army. 94 per cent of victims endured physical abuse some of it akin to torture during their time in a Salvation Army home.

The examination of the files highlighted that the majority of the criminal child abuse occurred within Salvation Army homes and cottages but there were accounts of abuse in non-Salvation Army home contexts such as trips away with unsupervised visitors and holiday parents.

Gender of victims

In the files reviewed the vast majority of victims who approached the Salvation Army with a complaint were male.

Table 9A.6 provides a breakdown on the gender of the victims in the 50 files reviewed.

¹⁷ In total the Salvation Army has received 477 complaint files of which 470 relate to care leaver's claims and the other 4 are non-care leaver's claims.

Table 9A.6: Gender of victims—Salvation Army

Gender	Count of victims	Gender by percentage
Male	39	78.0
Female	11	22.0
Total	50	100.0

Source: Compiled by the Family and Community Development Committee.

Timeframe of complaints

The number of complaints directed at the Salvation Army has fluctuated over the years with 2006, 2007 and 2009 being peak year for complaints. Table 9A.7 provides a breakdown of the complaint files reviewed by the Committee per year.

Table 9A.7: Complaint files received by year—Salvation Army

Year	Number of complaints	Percentage of total complaints reviewed
2003	1	2.0
2004	2	4.0
2005	1	2.0
2006	11	22.0
2007	10	20.0
2008	7	14.0
2009	10	20.0
2010	5	10.0
2011	2	4.0
2012	1	2.0
Total	50	100.0

Source: Compiled by the Family and Community Development Committee.

Although the care leaver's complaint process was introduced in 1997 the Salvation Army did not provide the Committee with a complaint file prior to 2003.

Findings—initial contact

The files indicate that victims approached the Salvation Army with a complaint in a number of ways:

- Self-represented victims through phone or letter. Four of these complaints were passed to Nevett Ford for handling and the Salvation Army managed seven internally.
- The majority of victims initiated their complaint through a legal representative who contacted Nevett Ford.

- If a legal representative contacted the Salvation Army directly, the Salvation Army forwarded the complaint to Nevett Ford for handling. In the files reviewed the Salvation Army handled one represented victim internally.

Support provided to victim in initiating complaint

Although the majority of victims are represented in the complaints process the Salvation Army does not provide a support person to assist a victim.

There was no evidence in the files that the Salvation Army provided a copy of the complaints process/policy to self-represented victims.

Legal support

The examination of the files indicated that 39 victims out of 50 were legally represented throughout the complaints process.

Nevett Ford handled four self-represented complaints and each were informed of their right to obtain legal advice to assist with the complaint process.

Of the seven self-represented complaints handled by the Salvation Army internally two victims were informed of their right to obtain independent legal advice, though there is no evidence on the files to suggest the other five received that information.

Counselling

The review of the files indicated that minimal counselling was offered to victims. In a letter to the Committee dated the 17 July 2013 Nevett Ford stated that unrepresented victims are offered reasonable counselling generally lasting 10 sessions prior to compensation being paid out. A review of the files did not reflect this. Of the 11 unrepresented victims only two received counselling prior to the ex gratia payment and only six sessions were approved in respect of each victim.

Instead the provision for future counselling is included in the ex gratia payment awarded to victims and it is then at the victims discretion whether they want to continue their counselling.¹⁸ There was only evidence of one victim receiving an award of counselling separate from the ex-gratia settlement payment.

Referral to police

There was no evidence in the files reviewed recommending victims to report their abuse to the police.

Investigation

Very little investigation is performed into a complaint. Of the 50 files reviewed 48 claims were upheld and an ex gratia settlement payment negotiated with the victim.

One complaint was dismissed as the Salvation Army did not believe the credibility of the claim and the other ceased because the victim could no longer engage in the process.

¹⁸ Letter from Nevett Ford to the Chair of the Family and Community Development Committee dated the 17 July 2013.

Settlement

The primary objective of the Salvation Army's complaint process is to arrange for the payment of an ex gratia payment to victims who were found to have been abused during their time in a Salvation Army home.

The files revealed that a number of settlements managed by the Salvation Army were conducted by means of letters and telephone calls with no actual face-to-face meeting. When a meeting did take place this occurred at the Salvation Army headquarters. The Salvation Army dealt with the bulk of self-represented victims themselves, including settlement negotiations. The disparity in ex gratia settlements handled by the Salvation Army as opposed to those handled by Nevett Ford is examined below.

As the vast majority of victims were legally represented Nevett Ford handled the settlement conferences. Representatives from the Salvation Army did not attend these settlement conferences.

Financial compensation and non-financial assistance

An ex gratia payment was awarded to each victim who the Salvation Army or Nevett Ford found to have been abused—The average ex gratia payment was \$23,000.

Settlements handled by the Salvation Army were significantly lower than those handled by Nevett Ford.

A breakdown of the settlement average is as follows:

- Overall average—\$23,000
- Settlements handled by Nevett Ford—\$24,500
- Settlements handled by the Salvation Army—\$15,500.

Overall the amounts paid by the Salvation Army were modest and victims viewed the sums with mixed emotions. The file review indicated that many victims settled for less than initially requested and a couple of victims have contacted the Salvation Army in recent years to express their dissatisfaction at the modest amounts awarded to them.

Apology

A written apology was provided to victims at the conclusion of the settlement process and after the Deed of Release was signed by the victim.

The file analysis illustrated that the apologies provided to the victims were generic in nature and were signed by either the Secretary for Personnel or the Assistant Secretary for Personnel. Additionally if Nevett Ford handled the complaint, there was no interaction between the Salvation Army and the victim. Instead Nevett Ford organised that the 'standard apology' to be sent to the victim on Salvation Army letterhead.

Although the apologies provided to victims were quite generic the file review revealed that there was a long and short version. The language adopted for the short version was less guarded and only contained the phrase 'what you say occurred' once. The long version is extremely guarded and legalistic in nature and phrases such as 'what you say occurred' or 'what you say you suffered' are found throughout the text of the apology.

Generally the apologies did not acknowledge sexual abuse had occurred and instead categorised the abuse as mistreatment.

Deeds of Release and Settlement

A Deed of Release was signed by the victim and an authorised representative of the Salvation Army as a condition of the ex-gratia payment.

Not all the Deeds of Release were identical but all denied liability for the criminal child abuse suffered and settled any potential legal claim(s) that the victim could have had against the Salvation Army in the future. In the files reviewed 35 per cent of the Deeds of Release contained a confidentiality clause restricting disclosure on the facts and terms of the deed to any person including the media.

The analysis of the files suggests that unrepresented victims were not specifically encouraged to obtain independent legal advice in relation to the effects of the Deed. However, as indicated above the majority of the victims were legally represented.

Review and appeal

The Salvation Army does not have a review or an appeals process in place if a victim is unhappy with the settlement of their complaint.

Confidentiality

Process

No information about advice regarding confidentiality relating to the process.

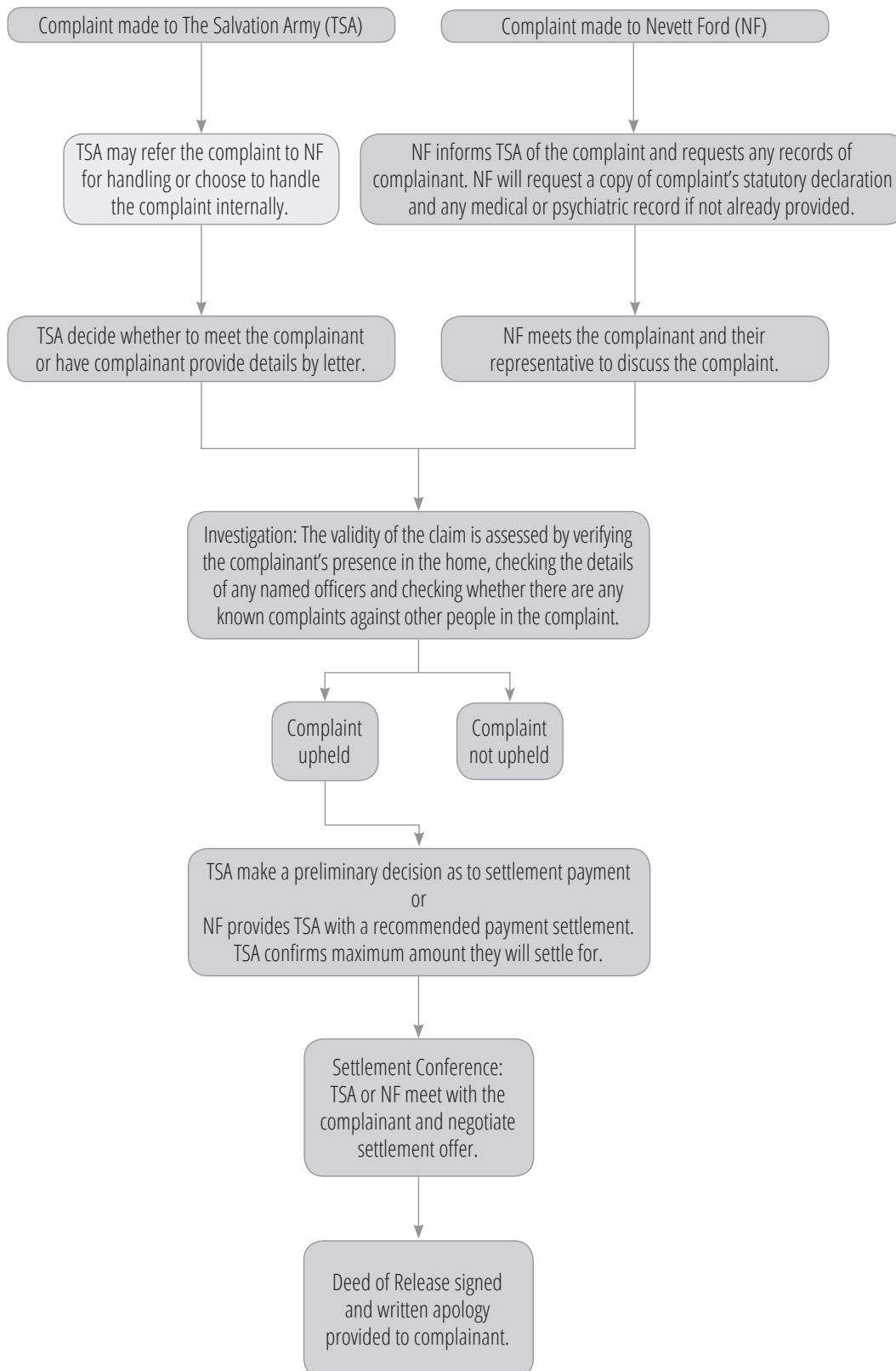
Settlement

Just over 35 per cent of the Deeds of Release reviewed contained a confidentiality clause which restricted the victim from disclosing the fact and terms of the settlement.

Victim's satisfaction with the process

It was not possible to determine victim's overall satisfaction level. Three victims were satisfied with the outcome of the process and sent thank you cards/letters. However, three complaints voiced their anger and criticised the process.

Figure 9A.3 The Salvation Army’s complaint process



Compiled by the Family and Community Development Committee

The Anglican Church

Introduction

A complaint received in the Anglican Church involves the Director of Professional Standards, who co-ordinates for the victim each step in the process.

Complaints

The Committee reviewed 33 professional standards complaint files from the Diocese of Melbourne. The statistics for this appendix are based on 32 files as one of the complaint files did not relate to criminal child abuse.

Nature of the abuse

The complaints directed at the Anglican Church had a sexual element and varied in the severity of allegations. The files revealed that criminal child abuse was perpetrated by clergy, lay volunteers and church employees. The complaints arose from situations in parishes, youth groups, and a school.

Gender of the victims

In the files reviewed the majority of victims who approached the Anglican Church with a complaint were male.

Table 9A.8 provides a breakdown on the gender of the victims in the 32 files reviewed.

Table 9A.8: Gender of victims—Anglican Church

Gender	Count of victims	Gender by percentage
Male	23	71.9
Female	9	28.1
Total	32	100.0

Source: Compiled by the Family and Community Development Committee.

Timeframe of complaints

In the files reviewed the number of complaints directed at the Anglican Church has fluctuated over the years. Table 9A.9 provides a breakdown of the complaint files reviewed by the Committee per year.

Table 9A.9: Complaint files received by year—Anglican Church

Year	Number of complaints	Percentage of total complaints reviewed
2002	2	6.25
2003	6	18.75
2004	4	12.50
2005	5	15.62
2006	3	9.38
2007	4	12.50
2008	0	0.00
2009	2	6.25
2010	0	0.00
2011	3	9.38
2012	0	0.00
2013	3	9.38
Total	32	100.0

Source: Compiled by the Family and Community Development Committee.

Findings—initial contact

The files indicate that the victim made contact in a number of ways:

- directly to the Director of Professional Standards by telephone, letter, and e-mail by them or their legal representative
- phoning the Diocese’s professional standards free-phone number and leaving a message
- through clergy making complaints or passing on complaints received from the community.

Support provided to victim in initiating complaint

On receipt of a complaint the Director of Professional Standards, appoints a Professional Support Person.

In the files reviewed the Professional Support Persons were psychologists who were responsible for assisting the victim by providing counselling, explaining the process, explaining what outcomes were possible, and clarifying what the victim wished to achieve by making their complaint. They also provided the Director of Professional Standards with a professional assessment of victims’ ongoing needs.

Complaints were treated as confidential until the victim provided informed consent to proceed with a formal complaint.

Legal Support

The diocese did not arrange to provide victims with legal representation or advice. It is unclear from the files if there was any level of encouragement to do so.

Counselling

The Director of Professional Standards appointed a Professional Support Person in the vast majority of cases where it was appropriate. Generally the Director authorised between two and four sessions of preliminary counselling.

Whether or not a matter proceeded to a formal complaint did not affect whether a victim could access continued support from their Professional Support Person. Moreover, this did not affect whether the Director of Professional Standards offered professional support to family members.

The Diocese usually appointed Respondent Carers to provide support to respondents to complaints. Respondents also had access to counselling delivered by Professional Support Persons' if required.

Referral to police

The Protocol contained provisions relating to reporting to the Police, namely that when information is received suggesting that a serious indictable offence may have been committed it is incumbent on the Director of Professional Services to notify the Police.

The reality was that the Diocese's approach to the issue of reporting was flexible. The Director of Professional Services gave encouragement and assistance to those who wished to report, but there was no report to the police if the victim did not consent. The files suggested that the Director of Professional Standards respected victims' confidentiality by discussing cases with the police without providing information which would identify the victim.

Complaints were not reported when the respondent was dead or victims had previously reported to the police. There was evidence that occasionally the Diocese made an internal decision not to report a matter. There were a substantial number of cases where there was no evidence that the issue of reporting had been considered. Due to the often complex context of complaints, it was often unclear whether those that were not reported in fact should have been reported.

Overall, the evidence showed that the Diocese had approached the issue in an inconsistent manner.

Investigation

Of the complaints investigated, 84 per cent were substantiated and 16 per cent were unsubstantiated. The vast majority of investigations were fair and rigorous.

Settlement

The Director of Professional Standards handled settlement of complaints except in one instance when the matter was settled by legal representatives. The Director generally sought to negotiate a settlement directly with the victim or through their solicitors.

Negotiations took place at meetings between the parties, through correspondence, and through telephone conversations.

At meetings, in addition to the Director of Professional Standards and victim, parties such as the Registrar of the Diocese, a victim's legal representative, their support person and the investigator might be in attendance. There was no evidence that the church's legal representatives attended such meetings.

Compensation and non-financial assistance

The sums paid were not generous. The church did not actively raise the issue of compensation but only offered money when victims requested it. The sums offered were not commensurate to the abuse but appeared to be calculated on the basis of what a victim was thought likely to accept. This led to inconsistencies in the sums paid to different victims. However, the church appeared to adopt a non-adversarial approach to negotiations and generally agreed to pay when asked to do so by victims.

Settlement normally also included an offer to provide continued access to counselling. Settlement could also include alternative remedies suggested by the victim such as the publication of an article about the abuse or overseas travel.

Apology

An apology normally formed part of the settlement. This was delivered by senior personnel in the Diocese either in person or in writing.

Deed of Settlement and Release

Each of the nine victims who received a financial settlement had to execute a Deed of Release.

It is difficult to draw comprehensive conclusions about these documents because a copy of the deed was not always on file and the researchers often did not record the clauses in full.

Review and appeal

Neither victims nor respondents had a right of appeal prior to introduction of the Professional Standards Act in 2010.

The limited evidence available regarding this process suggested that while on the one hand it was fair and thorough, on the other hand it was also alarmingly onerous, legalistic and slow, and moreover was regarded as such by participants and the Diocese.

Confidentiality

Process

Complaints were treated as confidential between the victim and Director of Professional Standards until the victim provided his or her informed consent.

Settlement

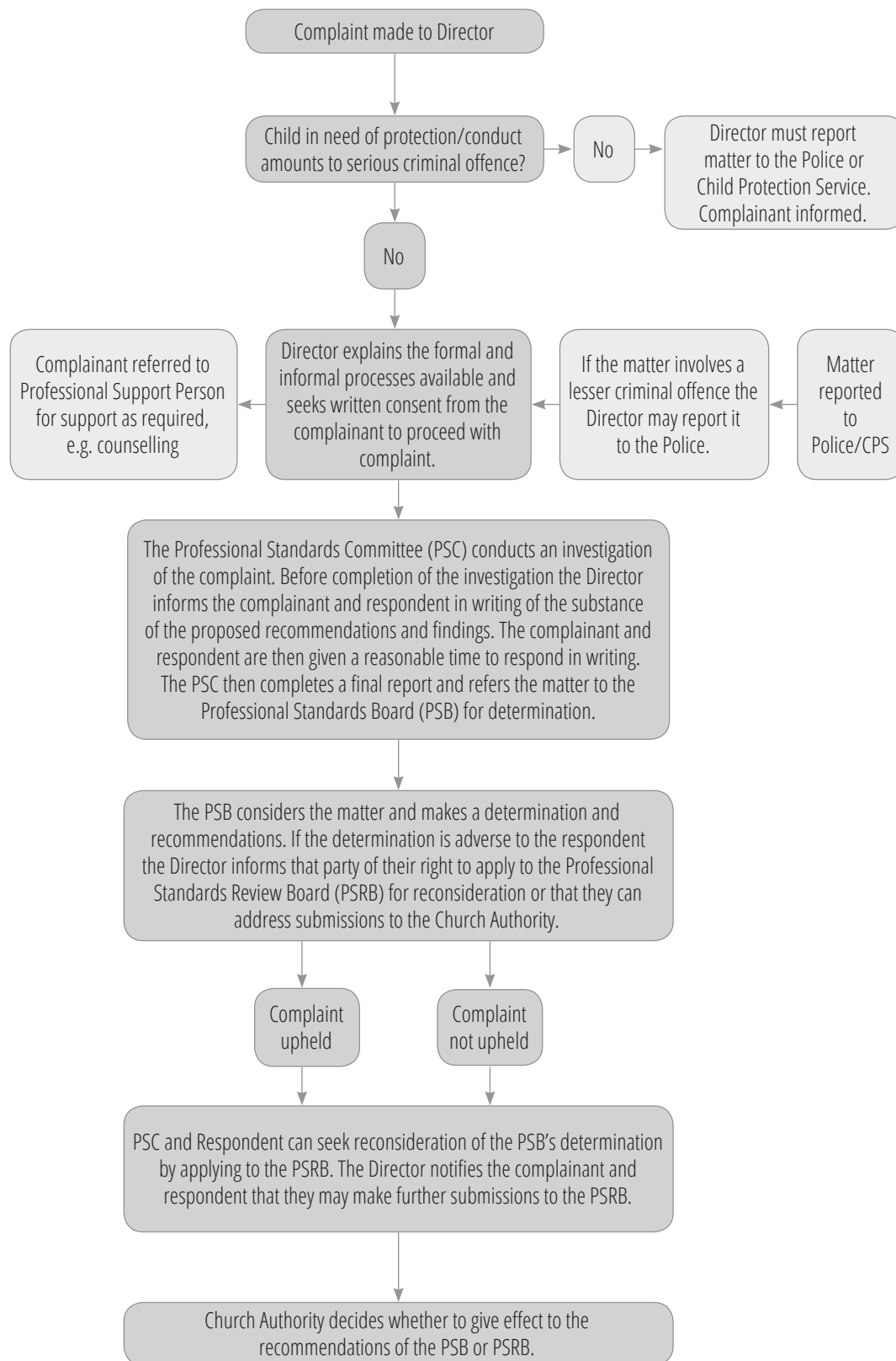
When financial settlements were agreed the victim had to execute a Deed of Release which sometimes contained a confidentiality clause.

The limited evidence available indicated that these could be stringent and bar the victim from discussing the claim, sum agreed, terms of settlement, or any information concerning the settlement negotiations.

Victims' satisfaction with the process

Although the Committee was not able to determine exact victim satisfaction levels, the file review indicated that generally victims were satisfied with the response of the Melbourne Anglican Church.

Figure 9A.4: Anglican Diocese of Melbourne complaint process



Compiled by the Family and Community Development Committee

Appendix 10—Files from Catholic organisations

Introduction

In addition to the files referred to Appendix 9, in drafting this Report the Committee was provided with copies of or access to internal complaint files of the following organisations:

- Melbourne Archdiocese
- Ballarat Diocese
- Christian Brothers
- Hospitaller Order of St John of God
- Salesians of don Bosco.

Melbourne Archdiocese

The Committee was provided with copies of internal complaint “red” files in respect of the following:

- 1) Father Ronald Pickering
- 2) Father Desmond Gannon
- 3) Father Michael Glennon
- 4) Father Victor Rubeo
- 5) Father Kevin O’Donnell
- 6) Father Peter Chalk
- 7) Father Peter Searson
- 8) Father Paul Pavlou
- 9) Father William Baker.

In addition copies of 2 files were provided:

- 1) Archdiocese of Melbourne Special Issues Committee Correspondence 1988–1989
- 2) Victorian Professional Standards Resource Group Minutes 1993–1996 & Correspondence 1991–1994

Ballarat Diocese

The Committee was provided with copies of 115 files.

These files were categorised as follows:

- Father Gerald Ridsdale Pre 1997—30 complaints
- Father Gerald Ridsdale Post 1997—29 complaints
- other clergy in the Ballarat Diocese—39 complaints.

Internal complaint files regarding:

- 1) Father Robert Claffey
- 2) Father John Day
- 3) Father Paul David Ryan (x2)
- 4) Father Leonard Monk
- 5) Father Sydney Morey
- 6) Father Daniel O'Brien
- 7) Father Bryan Coffey
- 8) Father Gerald Ridsdale (x3)
- 9) Father Denis Ryan
- 10) Father John Slater
- 11) Father Leslie Sheehan
- 12) Father James Tung.

Christian Brothers

Three (3) members of the legal research team of the Secretariat viewed archive material of the Christian Brothers at the Treacy Centre, Parkville on 29 January 2013, 5 February 2013 and 7 February 2013.

In addition to archive material relating to Visitation Reports and other internal documents, complaint files in respect of the following Christian Brothers were also examined and where requested, copies provided:

- 1) Brother Robert Best
- 2) Brother Ted Dowlan
- 3) Brother William Houston
- 4) Brother Gerald Fitzgerald
- 5) Brother Peter Toomey
- 6) Brother Stephen Farrell
- 7) Brother Rex Elmer
- 8) Brother John Coswello.

Salesians of Don Bosco

The Committee was provided with copies of 69 files categorised as follows:

- Post 1996—45 complaint files
- Between 1980–1996—4 complaint files.

Internal complaint files regarding:

- 1) Father John Ayers
- 2) Father Robert Bossini
- 3) Father Caesar Cesarini
- 4) Father Gregory Chambers
- 5) Brother Gregory Coffey (Coffin)
- 6) Father Frank De Dood
- 7) Brother Evaristus Fantin
- 8) Father Julian Fox
- 9) Brother Reg Hamilton
- 10) Father Kelly Kam
- 11) Father Frank Klep
- 12) Father Anthony Moester
- 13) Brother Stephen Poore
- 14) Brother Stanley Rossato
- 15) Brother Hans Snel
- 16) Brother Peter Swain
- 17) Brother Laurence Sweeney
- 18) Brother Paul Van Ruth
- 19) Father Michael Auselbrook
- 20) Father David Rapson.

Hospitaller Order of St John of God

The Committee was provided with copies of 29 complainant files, some of whom made a complaint against more than one Brother. These files related to complaints against the following:

- 1) Brother Berchmans—9 complainants
- 2) Brother Beade—4 complainants


- 3) Brother Eugene—6 complainants
- 4) Brother Gabriel—4 complainants
- 5) Brother Edward
- 6) Brother Denis—6 Complainants
- 7) Brother Kieran
- 8) Brother Aloysius
- 9) Brother Finbar
- 10) Brother Matthew—3 complainants
- 11) Brother Norbert
- 12) Brother Leo—6 complainants
- 13) Brother Theophane
- 14) Brother Thaddeus
- 15) Brother Daniel—2 complainants
- 16) Brother Damien
- 17) Brother Ephram
- 18) Brother Camillus
- 19) Brother Basil
- 20) Brother Robert
- 21) Brother Justin
- 22) Brother Ignatius
- 23) Brother Ambrose
- 24) Brother Raphael.

** 3 complainants were unable to identify the Brother who was the subject of complaint

In reviewing the files provided by the different organisations the Secretariat researchers provided relevant material to the Committee to assist in the preparation of the Report.

Appendix 11—Examples of correspondence: Non-government organisations

Apology letter—the Salvation Army



The Salvation Army
Australia Southern Territorial Headquarters

2005

Dear

The Salvation Army – Box Hill Boys Home

I am writing on behalf of The Salvation Army to express deep regret for what you say happened to you during your stay in the Box Hill Boys Home whilst in the care of The Salvation Army.

I have been provided with a copy of your complaint and the statement that you have provided.

I wish to express The Salvation Army's apology for the sexual and physical abuse which you say occurred.

Like many institutions and churches, The Salvation Army has in more recent years been dealing with victims of abuse that has occurred in institutions. We have been attempting to deal with such complaints in a caring and compassionate way.

I apologise to you. You were placed in the care of The Salvation Army which was in a position of trust. Unfortunately, The Salvation Army appears to have betrayed that trust. The Salvation Army is committed to helping you and other victims.


Clearly, what you say happened should not have happened. There is no justification for mistreatment or abuse. The Salvation Army has never condoned it in the past, nor do they condone it now.

I am heartened that after so many years you have been able to tell your story and hopefully, in the telling, you have gained some comfort.

I am very much aware that The Salvation Army's apology may do little to overcome the results of the tragic circumstances and events from which you say you suffered, but I do hope that in some way you gain some satisfaction from it.

Can I also say that in light of what we have learned, The Salvation Army has put in place policies and protocols to hopefully ensure that experiences that you say you suffered will not be repeated.

Yours sincerely,



Ian E Hamilton [Lt-Colonel]
SECRETARY FOR PERSONNEL
ih/hs

THE SALVATION ARMY – AUSTRALIA SOUTHERN TERRITORY
Postal Address: Locked Bag 1, Mont Albert, Vic. 3127 Australia
3-7 Hamilton Street, Mont Albert, Vic. 3127 Australia
Telephone: (03) 9896 6000 Fax: (03) 9899 2342 DX 34505 Surrey Hills

William Booth Founder **John Larsson** General **Ivan B Lang** Territorial Commander

Apology letter—the Melbourne Response



St. Patrick's Cathedral
Melbourne Vic 3002

You will be aware that in October 1996 I announced a range of initiatives to respond to allegations of sexual abuse concerning the Archdiocese of Melbourne. At that time, I apologised sincerely and unreservedly, on behalf of the Catholic Church, to both the victims and more generally to the people of the Melbourne Archdiocese, for the betrayal of trust perpetrated upon them. I also expressed my regret that it had taken the Church a long time to come to grips successfully with these issues.

I understand that, based on findings made by the Independent Commissioner, your claims have been considered by the Compensation Panel. The Panel has provided me with a recommendation, which I accept, and this letter is accompanied by a formal offer made on my behalf.

The Archdiocese seeks to address the issues of sexual abuse of minors and adults in a professional, caring and appropriate manner. In addition, the Church has implemented procedures aimed at preventing any recurrence of sexual abuse, and is confident that these initiatives will go a long way towards addressing this issue, which has shocked all in our community.

Unfortunately we cannot change what has happened in the past. You may never be rid of the memories or the hurt. Services such as those provided through Carelink can assist you in your recovery. The payment of compensation raises difficult and complex issues. It is my hope that my offer, based on the Panel's recommendation, will be accepted by you as a preferable alternative to legal proceedings and that it too will assist you with your future.

On behalf of the Catholic Church and personally, I apologise to you and to those around you for the wrongs and hurt you have suffered at the hands of Father [REDACTED]. Whether or not you choose to accept the enclosed offer, I offer you my prayers.

Yours sincerely in Christ,

+ George Bell

ARCHBISHOP OF MELBOURNE

Compensation letter—the Melbourne Response

1999

Partner
Richard Leder

OFFER OF COMPENSATION

As you may know, we act for Archbishop Pell and for the Catholic Archdiocese of Melbourne.

We are instructed that you have made an application to the Compensation Panel established by Archbishop Pell for ex gratia compensation in relation to sexual abuse.

The Archbishop established the Compensation Panel to provide an alternative to the pursuit of legal proceedings. We are aware that the Panel's operation has been criticised on the basis that the amounts it can recommend are less than applicants such as yourself believe you might obtain if you pursued legal proceedings to success. However, you should consider the offer as a genuine attempt by the Archbishop to provide an alternative to litigation.

The compensation offer, together with the services that remain available through Carelink, are offered to you by the Archbishop in the hope that they will assist your recovery and provide a realistic alternative to litigation that will otherwise be strenuously defended. Importantly, it is also hoped that you will in time be able to put the abuse you have suffered behind you and focus on the future. **Enclosed** is a personal letter to you from the Archbishop.

The Compensation Panel has recommended to the Archbishop that you be offered compensation in the sum of \$27,500. **Enclosed** for your information is a copy of a letter from the Chairman of the Panel to the Vicar General containing the recommendation.

In accordance with the procedure established by the Archbishop, we are instructed to offer this amount to you. If you wish to accept it, you will need to sign the **enclosed** document which releases the Archbishop from all further claims arising out of the sexual abuse, save that you will remain able to receive treatment and

OFFER OF COMPENSATION

counselling through Carelink. We have enclosed two copies of the Release. Assuming that you are happy to sign the Release, you should sign one copy for return to us and retain the second copy for your records.

If you reject the offer, you remain bound by the terms of the application for compensation form and in particular, you may not disclose or rely upon this offer which is, of course, put on a without prejudice basis.

Would you please advise us in due course whether you will accept the offer. Upon return of the signed Release we will forward to you a cheque for the agreed amount.

If you have any queries, please contact the writer.

Yours faithfully

CORRS CHAMBERS WESTGARTH



Richard Leder
Partner

encl

Appendix 12—List of submissions

Submission No.	Name of submitter
1	Commission of Inquiry Now (COIN)
1A – 1O	Supplementary submissions
2	Ms Michelle Pedersen
3	Ms Brenda Coughlan
3A -3B	Supplementary submissions
4	Mr Robert Haebich
5	Ms Valda Lang
6	Mr Max Wallace, Executive Member, Humanist Society of Queensland
7	Ms Maryke Kendall
8	Mr Bruce Rogers
9	Confidential
10	Confidential
11	Australian Lawyers Alliance
12	Mr Peter Guild
13	Name withheld
13A – 13B	Name withheld supplementary submissions
14	Ms Alana Vrolijk
15	Professor Patrick Parkinson AM, Faculty of Law, University of Sydney
16	Confidential
17	Ms Betty Coleman
17A	Supplementary submission
18	Ms Alma Gardner
19	Ms Maria Ann Kolovrat
20	Ms Lynn Meyers
21	Ms Elyse Burns
22	Confidential
23	Mr Ian O’Meara
24	Mr Paul McHenry
25	Forgotten Australians Justice Committee
26	Mr Wayne Miller (aka Laird)
27	Ms Lorraine McDonagh
28	Mr Michael Crowe
29	Mr Stephen Gough
30	Confidential

Submission No.	Name of submitter
31	Mr Robert Stove
32	Confidential
33	Dr Barry Coldrey
33A – 33B	Supplementary submissions
34	Confidential
35	Mr Garry Harrison
36	Mrs Margaret Quilligan
37	Mr & Mrs Anthony & Chrissie Foster
37B	Supplementary submission
38	Confidential
39	Ms Alison Ryan
40	Mr Greg Jones
41	Ms Annie Keil-Taggart
41A – 41C	Supplementary submissions
42	Mr Alistair Parr
43	Mr Thao Huynh
43A	Supplementary submission
44	Confidential
45	Confidential
46	Mr Danny Buckley
47	Confidential
48	Mr Douglas Fenwick
49	Confidential
50	Name withheld
51	Ms Amelia Smith
51A	Supplementary submission
52	Mr Ray Shingles
53	Confidential
54	Mr Alfred Stirling
55	Mr Richard Oakes
56	Ms Janice Dwyer
57	Mr Ian Lawther
57A - B	Supplementary submissions
58	Ms Carmel Rafferty
58A	Supplementary submission
59	Confidential
60	Mr Simon Czarnecki-Sindl

Submission No.	Name of submitter
61	Dr Steven Middleton
62	Mr Bruce Cooke
63	Ms Marita van Gemert
64	Name withheld
65	Mr Kevin Houlihan
66	Ms Katie Foster
67	Mr Andrew Collins
68	Reverend Donald McLean
69	Ms Fiona Ferguson
70	Ms Angela Byron
71	Ms Dianne Hadden
72	Presbyterian Church of Eastern Australia, Law & Advisory Committee
73	Mr Philip Nagle
74	Mrs Jennifer Howe
74A – 74C	Supplementary submissions
75	Confidential
76	Ms Mairead Ashcroft
77	Confidential
78	Mr Russell Clark
79	Ms Jennifer Jacomb
80	Mrs Carolyn Taylor
81	Name withheld
82	Confidential
83	Ms Eileen Piper
84	Girl Guides Victoria
85	Confidential
86	Jewish Taskforce Against Family Violence and Sexual Assault Inc.
87	Ms Yvette Parr
88	Mr Stanley Bourke
89	Confidential
90	Mrs Varlie Fifis
91	Ms Margaret Finn
92	Ms Joan Finn
93	Ms Val Flynn
94	Mr Hugh McGowan
94A	Supplementary submission
95	Advisory Committee to South Western Centre Against Sexual Assault (SWCASA)

Submission No.	Name of submitter
96	Name withheld
97	Ms Meachel Smeets
98	Confidential
99	Mrs Margaret Harrod
100	WINGS
100A	Supplementary submission
101	Father Paul Walliker
102	Mr Robert Dumsday
103	Dr Tom Keating
104	Mr Phil O'Donnell
105	Mr Frank Golding
106	Mr Michael Keane
106A	Supplementary submission
107	Mr Noel Gregory
108	Ms Cheryl Turner
109	Confidential
110	Professor Desmond Cahill, OAM, Intercultural Studies, School of Urban and Social Studies, RMIT University
111	Confidential
112	Ms Gabrielle Short
113	Mr Joseph Edison
114	Mr Terry O'Brien
115	Ms Wendy Dyckhoff (Eldridge)
116	Name withheld
116A	Name withheld supplementary submission
117	Mr Rob Brown
118	Mr Keith Broadbent
119	Confidential
120	Confidential
121	Children's Protection Society
122	Ms Lauren Van Dyke
123	Confidential
124	Ms Brenda Hodge
125	Ms Rebecca Skinner
126	Mr Ian Whitehead
127	Ms Mary Brownlee
128	Confidential

Submission No.	Name of submitter
129	Mrs Monique Boutet
130	Confidential
131	Confidential
132	Confidential
133	Confidential
134	Confidential
135	Ms Lori Hodgson
136	Mr Thomas Ellis
137	Mrs Suzanne James
138	Rabbinical Council of Victoria
139	Name withheld
140	Confidential
141	Mr Tony Paul
142	Mr Jason & Ms Jan Van Dyke
143	Mr Lloyd Anderson
144	Confidential
145	Confidential
146	Anglicare Victoria
147	Mr Philip Mobbs
148	Mr Manny Waks
148A	Supplementary submission
149	Mr Tony Hamilton
150	Mr John Skewes
151	Confidential
152	Confidential
153	Ms Glenda Blenkiron
154	Mr Gregory Malcher
155	Buddhist Council of Victoria Inc
156	Mr Brian Cherrie
157	Confidential
158	Ms Helen Watson
159	Ms Jacquie Browne
160	MacKillop Family Services
161	Ms Patmalar Ambikapathy
162	Mr Steven Unthank
162A – 162B	Supplementary submissions
163	Mr Terry Dean

Submission No.	Name of submitter
164	Uniting Church of Australia Synod of Victoria and Tasmania
165	Wesley Mission Victoria
166	Who am I? Project, University of Melbourne
167	Ms Dawn Watt
168	Confidential
169	Ms Stena Keys
170	Ms Terre Slattery
171	Name withheld
172	Mr Peter Murphy
173	Ms Donna Brown
174	Mr Allan Lawrie
175	Ms Susan Lawrie
176	Ms Margaret Turnbull
177	Confidential
178	Confidential
179	Name withheld
180	Ms Barbara Dickson
181	Ms Rebecca Honor
182	Confidential
183	Confidential
184	Confidential
185	Catholic Church in Victoria
185A – 185C	Supplementary submissions
186	Mr Raymond D'Brass
187	Dr Peter Lazzari
188	Ms Robin Henderson
188A	Supplementary submission
189	Mr Mark Fabbro
190	Father Joe McMahon
191	Mr James Boyle
191A	Supplementary submission
192	Name withheld
192A	Name withheld supplementary submission
193	Lewis Holdway Lawyers
194	Ms Cara Beed
195	Ryan Carlisle Thomas Lawyers
195A – 195B	Confidential

Submission No.	Name of submitter
196	Mr Lewis McCabe
197	Ballarat Open Place Social and Support Group
198	Mr Daryl Suckling
198A – 198B	Supplementary submissions
199	Mrs Bernadette Veyt
200	Scouts Australia, Victorian Branch
200A	Supplementary submission
201	Victoria Police
202	Office of Child Safety Commissioner
203	Waller Legal
203A	Supplementary submission
204	Confidential
205	Catholics for Renewal Inc
205A	Supplementary submission
206	Jesuit Social Services
207	Ms Ann Ryan
208	South Eastern Centre Against Sexual Assault (CASA)
209	Records & Information Management Professionals Association of Australasia (RIMPA)
209A - B	Supplementary submissions
210	Baptist Union of Victoria
210A	Supplementary submission
211	Name withheld
212	Ms Maree Jefcott
213	Confidential
214	Mrs Jillianne Mather
215	Miss Debra Lowe
216	Ms Phyllis Cremona
217	Ms Helen Myers
218	Broken Rites (Australia) Collective Inc
218A	Supplementary submission
219	Mr Christopher Richey
220	Confidential
221	Mr John Brown
222	Confidential
223	Mr Kevin Adlard
224	Australian Childhood Foundation

Submission No.	Name of submitter
225	Anglican Diocese of Wangaratta
226	Law Institute of Victoria (LIV)
226A	Supplementary submission
227	Ms Carol Graydon
228	Mr & Mrs Brian and Ruth Lane
228A	Supplementary submission
229	Withdrawn
230	Mr Tim Lane
231	Confidential
232	Confidential
233	Jewish Community Council of Victoria (JCCV)
233A	Supplementary submission
234	Mr Glenn Davies
235	Name withheld
236	Miss Catherine Soutter
237	Mr Gary Doyle
238	Name withheld
239	Mr Christopher Hallett
240	Mr Paul Adlard
241	The Salvation Army, Australia Southern Territory
241A	Supplementary submission
242	Mrs Juliana Michaelides
243	Liberty Victoria, Victorian Council for Civil Liberties Inc
244	Anglican Diocese of Melbourne
245	Mr Dean Miller
246	Mr John McBride
247	Ms Toni Courtney
248	Ms Helen Dawson
249	For The Innocents
249A	Supplementary submission
250	Confidential
251	Mr Michael Day
252	Save the Children Australia
253	Care Leavers of Australia Network (CLAN)
254	Mr Arthur O'Bryan
255	National Children's and Youth Law Centre (NCYLC)
256	Confidential

Submission No.	Name of submitter
257	Mr Rob Mitchell MP, Federal Member for McEwen
258	Victorian Conference of the Seventh-day Adventist Church
259	Mrs Rochelle Hicks
260	Confidential
261	Confidential
262	Berry Street
263	Mrs Carol Crowe
264	Mr & Mrs Claire & Anthony Stevens
265	Confidential
266	Confidential
267	Ms Mary Rutledge
268	Name withheld
268A	Confidential
268B	Name withheld
269	Mr Gregory Dinneen
270	Salt Shakers Inc
271	Confidential
272	Confidential
273	Mr Aldo Bayona
274	Survivors Network of those Abused by Priests (SNAP)
274A	Supplementary submission
275	Mr Mark Beaumont
276	Rationalist Society of Australia
277	Confidential
278	Mr George Gorman
279	Bravehearts Inc
280	Mr Peter Blenkiron
281	Confidential
282	Confidential
283	Confidential
284	Mrs Gwenda Collier
285	Professor Michael Parer
286	Mr Robert Mackay
287	Mr Sean Holohan
288	Ms Josephine Mertens
289	Mr Mike Scull
290	Name withheld

Submission No.	Name of submitter
291	Mr Chris Pianto
292	Mr Will Hersbach
293	Mr Tony Hersbach
293A	Supplementary submission
294	Confidential
295	Name withheld
296	Ms Noreen Wood
297	Name withheld
298	Name withheld
299	Name withheld
300	Name withheld
301A	Name withheld supplementary submission
302	Name withheld
303	Confidential
304	Confidential
305	Name withheld
306	Ms Heather Bell
307	Name withheld
308	Ms Angela Read
308A	Supplementary submission
309	Name withheld
310	Ms Carmel Moloney
311	Dr Heather O'Connor, OAM
312	Ms Margot Serch
313	Ms Maree Phelan
314	Ms Lyn Snibson
315	Ms Claire Linane
316	Mr John Frederiksen
317	Ballarat & District Group
318	Confidential
319	Ms Pam Krstic, Ms Angela Read & Mr Ian Lawther
320	Mr Paul Tobias
321	Mrs Margaret Burke
322	Confidential
323	Confidential
324	Ms Sandra Higgs
325	Father Kevin Dillon

Submission No.	Name of submitter
326	Name withheld
327	Centre for Excellence in Child and Family Welfare Inc
328	Ms Joan Wright
329	Confidential
330	Confidential
331	Confidential
332	Ms Margaret Newman
333	Western Region Centre Against Sexual Assault Inc (West CASA)
334	Ms Nicky Davis
335	Mrs Jessie Turner-Booth
336	Mr Michael Keegan
337	Mr Alan Walker
338	Mr Bernd Bartl
338A	Supplementary submission
339	Confidential
340	Name withheld
341	Confidential
342	Confidential
343	Confidential
344	Confidential
345	Ms Teresa Clapperton
346	Confidential
347	Mrs Carolyn Castell
348	Confidential
349	Mr Michael Cox
350	In Good Faith and Associates & The Melbourne Victims Collective
351	Confidential
352	Mr Peter Komiazyk
353A	Name withheld supplementary submission
354	Ms Maureen O'Brien
355	Mr Neil Graham
356	Withdrawn
357	Name withheld
358	Confidential
359	Confidential
360	J Young
361	Mr Dale Edwards

Submission No.	Name of submitter
362	Executive Council of Australian Jewry
363	Name withheld
364	Confidential
365	Ms Heather Lyon
366	Ms Debi Crocker
367	Ms Christine Osborne
368	Connecting Home
369	Mr James Fitzpatrick
370	Name withheld
371	Name withheld
372	Ms Leonie Sheedy on behalf of Mr Anthony Sheedy
373	Uncle Jack Charles
374	Uncle Howard Edwards
375	Confidential
376	Confidential
377	Mr John Groves
378	Mr Leslie Burr
379	Mr Ray Prosser
380	Confidential
381	Withdrawn
382	Confidential
382A	Ms Pam Krstic
383	Mr David Horin
384	Mr Gordon Hill
385	Mr Wayne Davis
386	Confidential
387	Yeshivah Centre
388	Child Wise
389	vicsport
390	Womens' Domestic Violence Crisis Service (WDVCS)
391	Ms Chris Wilding
392	Mr Paul Brockhoff
393	Mr Paul Krause
394	Mr Terry Grey
395	Mr Brian Uttinger
396	Watchtower Bible and Tract Society of Australia (Jehovah's Witnesses)
397	Name withheld

Submission No.	Name of submitter
398	Islamic Council of Victoria
399	Independent Schools Victoria
400	Mr Benedict Monagle
401	Mr Raymond Monagle
402	Mr Raymond & Mrs Bridget Monagle
403	Confidential
404	Catholic Church Insurance
405	Professor Caroline Taylor, AM, Head, Social Justice Research Centre, School of Psychology and Social Science, Edith Cowan University
406	Victorian Institute of Teaching (VIT)
407	Confidential
408	Cardinal George Pell, Archbishop of Sydney
409	Confidential
410	Name withheld
411	Mr David Carr
412	Mr John Hunter
413	Confidential
414	Mr Philip Williams
415	Ms Cathryn Boyle
416	Name withheld
417	Confidential
418	Confidential
419	Mr Terry Kelly
420	Confidential
421	Mr Mark Prouse
422	Confidential
423	Australian Charities and Not-for-profits Commission
424	Ms Vivien Resofsky
425	Confidential
426	Name withheld
427	Mr James Shanahan
428	Confidential
429	Confidential
430	Confidential
431	Confidential
432	Mr Lincoln McMahon
433	Confidential

Submission No.	Name of submitter
434	Mrs Janette Norris
435	Name withheld
436	Name withheld
437	Name withheld
438	Confidential
439	Ms Emma Biggar
440	Ms Phylis Read & Ms Rosemary Baker
441	Mr Oliver Clark
442	Confidential
443	Ms Jayne Calvert
444	Mr Paul Murnane
445	Mr Hank Lunenburg
446	Confidential
447	Confidential
448	Name withheld
449	Ms Jennifer Herrick
450	Confidential

Appendix 13—Name withheld submissions requested by the Committee

451	Name withheld	469	Name withheld
452	Name withheld	470	Name withheld
453	Name withheld	471	Name withheld
454	Name withheld	472	Name withheld
455	Name withheld	473	Name withheld
456	Name withheld	474	Name withheld
457	Name withheld	475	Name withheld
458	Name withheld	476	Name withheld
459	Name withheld	477	Name withheld
460	Name withheld	478	Name withheld
461	Name withheld	479	Name withheld
462	Name withheld	480	Name withheld
463	Name withheld	481	Name withheld
464	Name withheld	482	Name withheld
465	Name withheld	483	Name withheld
466	Name withheld	484	Name withheld
467	Name withheld	485	Name withheld
468	Name withheld	486	Name withheld

Appendix 14—Public hearings

The Committee held the following Public Hearings around the State:

Date	Venue
19 October 2012	Melbourne
22 October 2012	Melbourne
9 November 2012	Melbourne
12 November 2012	Melbourne
23 November 2012	Melbourne
26 November 2012	Melbourne
7 December 2012	Ballarat
10 December 2012	Melbourne
17 December 2012	Melbourne
23 January 2013	Melbourne
4 February 2013	Melbourne
15 February 2013	Geelong
18 February 2013	Melbourne
28 February 2013	Ballarat
1 March 2013	Melbourne
4 March 2013	Melbourne
14 March 2013	Bendigo
15 March 2013	Melbourne
18 March 2013	Melbourne
25 March 2013	Melbourne
26 March 2013	Melbourne
4 April 2013	Melbourne
5 April 2013	Melbourne
11 April 2013	Melbourne
12 April 2013	Melbourne
15 April 2013	Melbourne
22 April 2013	Melbourne
29 April 2013	Melbourne
30 April 2013	Melbourne
3 May 2013	Melbourne
20 May 2013	Melbourne
27 May 2013	Melbourne
3 June 2013	Melbourne

19 October 2012, Melbourne**Department of Justice**

Dr Claire Noone	Acting Secretary
Ms Marisa De Cicco	Executive Director, Strategic Policy and Legislation
Ms Fiona Chamberlain	Acting Director, Community Operations and Victims Support Agency

Victoria Police

Mr Graham Ashton	Deputy Commissioner
Mr Findlay McRae	Director, Legal Services
Detective Superintendent Rod Jouning	Sexual and Family Violence Directorate

Child Abuse Prevention Research Australia, Monash University

Professor Chris Goddard	Director
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University of Sydney

Professor Patrick Parkinson	Faculty of Law
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Australian Institute of Family Studies

Dr Daryl Higgins	Deputy Director, Research
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22 October 2012, Melbourne**RMIT University**

Professor Des Cahill	Professor of Intercultural Studies
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Department of Human Services

Ms Gill Callister	Secretary
Mr Alan Hall	Executive Director, Service Delivery and Performance Division
Mr Argiri Alisandratos	Assistant Director, Placement and Support

9 November 2012, Melbourne**Victoria Police**

Mr Patrick Tidmarsh	Forensic Interview Adviser, Sexual Offences and Child Abuse Investigation Team (SOCIT)
Detective Superintendent Rod Jouning	Sexual and Family Violence Directorate

Centres Against Sexual Assault

Ms Karen Hogan	Manager, Gatehouse Centre, Royal Children's Hospital
Ms Carolyn Worth	Manager, South Eastern Centre Against Sexual Assault
Ms Jane Vanderstoel	Executive Officer, Western Regional Centre Against Sexual Assault

Griffith University

Professor Stephen Smallbone	School of Criminology and Criminal Justice
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Broken Rites

Ms Chris MacIsaac	President
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Dr Wayne Chamley	Honorary Researcher
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Dr Bernard Barrett	Honorary Researcher
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Australian Childhood Foundation

Dr Joe Tucci	Chief Executive Officer
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12 November 2012, Melbourne

University of Technology, Sydney

Dr Jane Wangmann	Lecturer, Faculty of Law
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In Good Faith and Associates

Ms Helen Last	Director
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Ms Pam Krstic	Educational and Child Protection Advisor
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Ms Clare Leaney	Research Assistant
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23 November 2012, Melbourne

Mr Anthony Foster

Mrs Chrissie Foster

Ms Katie Foster

Ms Aimee Foster

Mr Jim Commadeur

Ms Mairead Ashcroft

Mr Ian Lawther

26 November 2013, Melbourne

Survivors Network of those Abused by Priests (SNAP)

Ms Barbara Blaine	Founder and President
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Ms Nicky Davis	Sydney Area Chapter
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Mr Mark Fabbro	Sydney and Melbourne Area Chapters
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7 December 2012, Ballarat

Mr Philip Nagle

Ms Carmel Moloney

Mrs Helen Watson

Mr Tim Watson

10 December 2012, Melbourne

Mr Manny Waks

Mr Zephaniah Waks

Dr Tom Keating

17 December 2012, Melbourne**Care Leavers Australia Network (CLAN)**

Ms Leonie Sheedy Executive Officer

Ms Phyllis Cremona

Mr Frank Golding

Law Institute of Victoria

Mr Michael Holcroft President

Ms Alice Palmer Lawyer, Administrative Law and Human Rights Section

Ryan Carlisle Thomas Lawyers

Ms Anglea Sidrinis Partner

23 January 2013, Melbourne**Catholics for Renewal**

Mr Peter Johnstone OAM President

Mr Frank Burke Secretary

Ms Maria McGarvie Member

Mr Phil O'Donnell

Mr Graeme Sleeman

Ms Carmel Rafferty

4 February 2013, Melbourne

Mr Brian Cherrie

Mr Hugh McGowan

15 February 2013, Geelong

Father Kevin Dillon Parish Priest, St Mary of the Angels Parish, Geelong

Mr Chris Pianto

Ms Sandra Higgs

Mr Max Johnson

Mr Joseph Saric

18 February 2013, Melbourne

Mr Alan Charlie Walker

28 February 2013, Ballarat

Ms Judy Courtin

Mr Peter Blenkiron

Mr Keith Whelan

Mr Stephen Woods

Mrs Anne Murray

Mr Andrew Collins

Mr Tim Lane

Mr Robert Walsh

Mr Paul Tatchell

Mr Michael Crowe

Mrs Carol Crowe

Ms Dianne Hadden

Ms Ann Ryan

1 March 2013, Melbourne

Dr Barry Coldrey

Mr Peter Komiazyk

Dr Joseph Poznanski

Mr Robert Mackay

Ms Valda Lang

Ms Mary Rutledge

4 March 2013, Melbourne

Mr Raymond D'Brass

Mr John Frederiksen

Mr Tony Paul

14 March 2013, Bendigo

Father Paul Walliker

Mr Dean Miller

15 March 2013, Melbourne

Ms Margaret Newman

Mr Gary Doyle

Mrs Mary Doyle

Professor Paul Mullen

Mr James Boyle

Ms Jill Mather

Mr Kevin Houlihan

Ms Brenda Coughlan

18 March 2013, Melbourne

Connecting Home

Mr Alister McKeich Senior Education and Research Fellow

Uncle Jack Charles

Uncle Howard Edwards

Uncle Murray Harrison

25 March 2013, Melbourne

Professor Michael Parer

Ms Marlene Parer

Ms Carol Barraclough Therapist, Windermere Child and Family Services

Mrs Noreen Wood

Mr Wayne Davis

Mr Chris Whelan

Ms Sandra Clark

Dr Peter Lazzari

26 March 2013, Melbourne

Ms Chris Wilding

Ms Gabrielle Short

Mr Gordon Hill

Mr Bernd Bartl

Mr David Horin

4 April 2013, Melbourne**Edith Cowan University**

Professor Caroline Taylor AM	Chair of Social Justice
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NSW Ombudsman

Mr Steve Kinmond	Deputy Ombudsman, and Community and Disability Services Commissioner
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University of South Australia

Emeritus Professor Freda Briggs AO	
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Ansvar Insurance Ltd

Mr Andrew Moon	Chief Executive Officer
Ms Lesley-Ann Butler	National Liability Claims Manager

5 April 2013, Melbourne**Child Wise**

Mr Scott Jacobs	Child Protection Policy and Certification
Mr Adrian Campion	Trainer and Counsellor

Commission for Children and Young People

Mr Bernie Geary	Principal Commissioner
Ms Christine Withers	Manager, Promotion and Policy
Ms Megan Scannell	Senior Project Manager
Ms Virginia Dods	Policy Adviser

Sculpture Union Victoria

Mr David Tolputt	Director, and Board member ChildSafe Ltd
Ms Emma Payne	Administrations Coordinator

Records and Information Management Professionals Australasia

Ms Debbie Prout	Company Director
Ms Ruth Edge	Victorian Branch Councillor

11 April 2013, Melbourne**Salvation Army**

Captain Malcolm Roberts	Territorial Legal Secretary
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Australian Camps Association

Mr David Petherick	Chief Executive Officer
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Scouts Victoria

Mr Bob Taylor	Chief Commissioner
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Mr John de Wijn	Branch Executive Committee
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Mr Martin Thomas	Executive Manager and General Secretary
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Watchtower Bible and Tract Society of Australia (Jehovah's Witnesses)

Mr Terrence O'Brien	Director of Society and Acting Branch Coordinator
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Ms Rachel van Witsen	Legal Counsel
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12 April 2013, Melbourne

Federation of Indian Associations of Victoria

Mr Vasan Srinivasan	President
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vicsport

Mr Mark McAllion	Chief Executive Officer
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Child Care Victoria

Mr Frank Cusamono	Chief Executive Officer
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Mr Paul Mondo	President
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Greek Orthodox Archdiocesan District of Victoria

Bishop Iakovos of Miletoupolis	
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University of Sydney

Associate Professor Judith Cashmore AO	Sydney Law School
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15 April 2013, Melbourne

Community Child Care Association

Ms Leanne Giardina	Chief Executive Officer
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Ms Catherine Kimber	Professional Support Consultant
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Islamic Council of Victoria

Mr Nail Aykan	General Manager
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Ms Monique Toohey	Executive Member
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Mr Ghaith Krayem	Secretary
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Victorian Institute of Teaching (VIT)

Ms Melanie Saba	Chief Executive Officer
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Ms Barbara Carter	Group Manager, Registration and Accreditation
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Mr Chris Enright	Group Manager, Inquiries and Litigation
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22 April 2013, Melbourne**Anglican Diocese of Melbourne**

Most Reverend Dr Philip Freier	Archbishop
Mr Ken Spackman	Registrar and General Manager, Business Services
Ms Claire Sargent	Independent Director of Professional Standards

Australian Muslim Women's Centre for Human Rights

Ms Tasneem Chopra	Chairperson
Ms Joumanah El Matrah	Director

Uniting Church in Australia (Synod of Victoria and Tasmania)

Reverend Dr Mark Lawrence	General Secretary, UnitingCare, Victoria and Tasmania
Reverend Dr Peter Blackwood	Associate General Secretary, UnitingCare, Victoria and Tasmania
Mr Phil Conrick	Acting Director, UnitingCare, Victoria and Tasmania
Mr Philip Battye	Legal Advisor, Uniting Church

Jewish Community Council of Victoria

Ms Nina Bassat	President
Mr David Marlow	Executive Director

29 April 2013, Melbourne**Hospitaller Order of St John of God Oceania Province**

Brother Timothy Graham	Provincial
Ms Rosanna Harris	Chair, Professional Standards Committee

Salesians of Don Bosco

Father John Papworth	Provincial
Father Greg Chambers	Former Vice-Provincial

Catholic Diocese of Ballarat

Bishop Paul Bird
Bishop Peter Connors

30 April 2013, Melbourne**Melbourne Response**

Mr Peter O'Callaghan QC	Independent Commissioner
Mr Jeff Gleeson SC	Independent Commissioner

Catholic Church Insurance

Mr Peter Rush	Chief Executive Officer
Ms Marita Wright	National Claims Manager

3 May 2013, Melbourne

Christian Brothers

Brother Julian McDonald	Deputy Province Leader
Brother Brian Brandon	Executive Officer, Professional Standards
Mr Shane Wall	Co-Executive Officer, Professional Standards Office

Towards Healing

Sister Angela Ryan	Former Executive Officer
Ms Narelle McMahon	National Protection and Prevention Officer
Mr Paul Murnane, APM	Assessor

Catholic Education Office Melbourne

Catholic Education Commission of Victoria, Ltd

Mr Stephen Elder	Executive Director, Catholic Education Commission of Victoria, Ltd
	Executive Director, Catholic Education in the Archdiocese of Melbourne
Mr Dennis Torpy	Manager, Wellbeing and Community Partnerships, Catholic Education Office Melbourne

Compensation Panel, Melbourne Response

Mr David Curtain QC	Chairman
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20 May 2013, Melbourne

Catholic Archdiocese of Melbourne

Archbishop Denis Hart	
Mr Francis Moore	Executive Director, Administration

27 May 2013, Melbourne

Catholic Archdiocese of Sydney

Cardinal George Pell	Archbishop of Sydney
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3 June 2013, Melbourne

Department of Human Services

Ms Robyn Miller	Acting Director, Office of Professional Practice
Mr Arthur Rogers	Deputy Secretary, Service Design and Implementation Group

Appendix 15—Right of reply submissions

Role or individual	Organisation	Number of submissions
Paul Bird, Bishop of Ballarat	Ballarat Diocese, Catholic Church	1
Ms Susan Sharkey, Coordinator	Carelink Counselling Services	3
Denis Hart, Archbishop of Melbourne	Catholic Archdiocese of Melbourne	3
Mr Franics Moore, Executive Director Administration	Catholic Archdiocese of Melbourne	1
Cardinal George Pell	Catholic Archdiocese of Sydney	1
Ms Audrey Brown, Director of Catholic Education	Catholic Diocese of Ballarat Education	1
Dr Danny Lamm, President and Mr Peter Wertheim AM, Executive Director	Executive Council of Australian Jewry Inc.	1
Mr Peter O'Callaghan QC, Independent Commissioner	Melbourne Response, Catholic Church in Victoria	15
Ms Carolyn Worth	CEASE	1
Professor Patrick Parkinson AM	Faculty of Law, University of Sydney	1
Mr Philip Brewin	Nevett ford on behalf of the Salvation Army (Southern Territory)	1
Mr Tony Hersbach		1
Mr John Ellis		1

Appendix 16—Secretariat of the Family and Community Development Committee

Dr Janine Bush	Executive Officer
Ms Vicky Finn	Research Officer
Ms Natalie Tyler	Administrative Officer

Additional resources:

The Committee was provided with following additional resources for the duration of the Inquiry:

The Hon. Frank Vincent AO QC	Senior Advisor, Legal
Mr Mal Hyde AO APM	Senior Advisor, Police
Mrs Claire Quin	Senior Counsel
Mr Ian Dosser	Investigator—police issues
Ms Caroline Williams	Senior Research Officer
Mr Conor Flanagan	Research Officer
Ms Amanda Kennedy	Media and Communications
Ms Ingrid Johnson	Community Engagement Officer
Ms Florence Kaur	Community Engagement Officer
Ms Sally Graham	Senior Solicitor
Mr Jon Bayley	Senior Solicitor

Legal team

Ms Natasha Bairstow
Mr Francis Hicks
Ms Kate Gray
Ms Allana Binnie
Ms Gemma Kelly
Ms Niamh O’Riordan
Mr Aylmer Low

Professional counselling and de-briefing support during Inquiry:

The Secretariat, Committee and Parliament of Victoria staff had access to professional counselling and de-briefing support from Carfi for the duration of the Inquiry.

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