FINAL REPORT

Religious institutions

Royal Commission
into Institutional Responses
to Child Sexual Abuse

VOLUME 16: BOOK 2

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FINAL REPORT

Volume 16
Religious institutions
Book 2

Content warning

This volume contains information about child sexual abuse that may be distressing. We also wish to advise Aboriginal and Torres Strait Islander readers that information in this volume may have been provided by or refer to Aboriginal and Torres Strait Islander people who have died.

Volume 16

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PART D INSTITUTIONAL RESPONSES TO CHILD SEXUAL ABUSE IN RELIGIOUS INSTITUTIONS (CONTINUED)

13 Catholic Church

In this chapter we discuss what we have learned about how the Catholic Church in Australia has responded to child sexual abuse by priests, religious, and lay employees. This discussion is based in large part on the case studies we have conducted examining the responses of Catholic Church authorities and institutions to allegations of child sexual abuse, both recent and dating back several decades.

The Royal Commission held 15 case studies that examined the responses of Catholic institutions to incidents and allegations of child sexual abuse occurring in schools, residential institutions and places of worship, and during religious and recreational activities. We also considered a Catholic school during *Case Study 45: Problematic and harmful sexual behaviours of children in schools*.

The case studies we held involving Catholic institutions were:

- *Case Study 4: The experiences of four survivors with the Towards Healing process*
- *Case Study 6: The response of a primary school and the Toowoomba Catholic Education Office to the conduct of Gerard Byrnes*
- *Case Study 8: Mr John Ellis's experience of the Towards Healing process and civil litigation*
- *Case Study 9: The responses of the Catholic Archdiocese of Adelaide, and the South Australian Police, to allegations of child sexual abuse at St Ann's Special School*
- *Case Study 11: Congregation of Christian Brothers in Western Australia response to child sexual abuse at Castledare Junior Orphanage, St Vincent's Orphanage Clontarf, St Mary's Agricultural School Tardun and Bindoon Farm School*
- *Case Study 13: The response of the Marist Brothers to allegations of child sexual abuse against Brothers Kostka Chute and Gregory Sutton*
- *Case Study 14: The response of the Catholic Diocese of Wollongong to allegations of child sexual abuse, and related criminal proceedings, against John Gerard Nestor, a priest of the Diocese*
- *Case Study 16: The Melbourne Response*
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- *Case Study 28: Catholic Church authorities in Ballarat (Catholic Church authorities in Ballarat)*
- *Case Study 31: The evidence of retired Bishop Geoffrey Robinson regarding the history and development of the Catholic Church's response to child sexual abuse prior to the introduction of Towards Healing*
- *Case Study 35: Catholic Archdiocese of Melbourne (Catholic Archdiocese of Melbourne)*
- *Case Study 41: Institutional responses to allegations of the sexual abuse of children with disability*

- *Case Study 43: The response of Catholic Church authorities in the Maitland-Newcastle region to allegations of child sexual abuse by clergy and religious (Catholic Church authorities in Maitland-Newcastle)*
- *Case Study 44: The response of the Catholic Dioceses of Armidale and Parramatta to allegations of child sexual abuse against a priest (Catholic Dioceses of Armidale and Parramatta).*

In February 2017, we held a further public hearing in relation to the Catholic Church in *Case Study 50: Institutional review of Catholic Church authorities (Institutional review of Catholic Church authorities)*. At this hearing, we presented the results of the survey we commissioned to gather data from Catholic Church authorities in Australia regarding claims of child sexual abuse they had received. The results of the survey are published in the report, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*.[1] In this chapter, we refer to data gathered by, and the results of, this survey. During the *Institutional review of Catholic Church authorities* hearing we heard evidence about structural, governance and cultural factors that may have contributed to the occurrence of child sexual abuse in Catholic institutions or to inadequate institutional responses to that abuse.

In relation to some of our case studies, criminal proceedings commenced before, during or after the completion of our evidence and before the finalisation of our case study report. Our Terms of Reference required that our inquiry not prejudice current or future criminal or civil proceedings.[2] Consequently, as discussed in Chapter 1, 'The Royal Commission's work on religious institutions', in our *Catholic Church authorities in Ballarat* and *Catholic Archdiocese of Melbourne* case studies we redacted material that might prejudice relevant criminal proceedings. The same redactions are applied in this chapter. In our *Catholic Church authorities in Maitland-Newcastle* and *Catholic Dioceses of Armidale and Parramatta* case studies, redactions would not have been sufficient to address potential prejudice to relevant criminal proceedings. In this chapter we refer to transcripts and exhibits from these two case studies where that material does not prejudice relevant criminal proceedings.

Where appropriate, we also include information about what survivors who attended private sessions told us about their experiences. As at 31 May 2017, of the 4,029 survivors who told us during private sessions about child sexual abuse in religious institutions, 2,489 survivors (61.8 per cent) told us about abuse in institutions managed by or affiliated with the Catholic Church.

We also take into account many written submissions provided by interested parties in response to our issues papers and refer to documents provided to us by Catholic Church Insurance Limited and tendered into evidence in our *Institutional review of Catholic Church authorities* hearing.

Despite the fact that many Catholic Church leaders in Australia were aware of allegations of child sexual abuse by Catholic Church personnel, prior to the early 1990s there was no unified, national system for responding to such allegations. Rather, individual diocesan bishops and superiors of religious institutes, or their delegates, handled complaints or allegations as they saw fit, usually under great secrecy. On many occasions, this resulted in responses that were ineffective in putting an end to the sexual abuse of children by individual perpetrators and to further significant harm to children. In addition, a lack of attention to the victims of child sexual abuse, and little or no appreciation of the effects of that abuse on them, led to further suffering.

From the late 1980s, leaders of the Catholic Church in Australia began to discuss the issue of child sexual abuse more formally and to make efforts to coordinate their responses, both with respect to alleged perpetrators and victims. There was a significant shift in understanding concerning the appropriateness of keeping alleged perpetrators in ministry where they would be in regular contact with children. The formulation of the Towards Healing and Melbourne Response protocols in 1996 also shifted the focus towards responding more appropriately to the needs of victims. We have conducted case studies in respect of these schemes.

Sections 13.1 and 13.2 set out the necessary framework to understand institutional responses to child sexual abuse in the Catholic Church in Australia. Section 13.1 discusses the structure and governance of the Catholic Church, both internationally and in Australia. Section 13.2 describes the provisions of canon law relevant to responding to child sexual abuse in the Church.

Before addressing what we have learned about institutional responses, Section 13.3 provides a brief analysis of some of the information we gathered during the course of private sessions with survivors who told us about child sexual abuse in a Catholic institution. It also draws on the data provided to us by Catholic Church authorities with respect to claims made concerning child sexual abuse. Section 13.4 then sets out what we learned in the course of our case studies, and from documents, about the extent to which Catholic Church authorities in Australia were aware of allegations, complaints, or rumours of child sexual abuse by clergy and religious from the beginning of the 20th century.

Throughout this chapter, we set out details concerning several alleged and convicted perpetrators of child sexual abuse who were the subject of our case studies. Different aspects of the institutional responses to those perpetrators and to the people who were abused by them are discussed in the appropriate sections. Until the mid to late 1990s, those responses focused primarily on dealing with the alleged perpetrators of abuse and generally overlooked the experience and needs of victims. Section 13.5 describes the institutional responses to alleged perpetrators, and Section 13.6 describes the institutional responses to victims and survivors in this period.

We then discuss in Section 13.7 the development of a more coordinated response to child sexual abuse across Catholic Church authorities, beginning in the late 1980s. Section 13.8 describes how the protocols that were formulated in that period, and other developments, affected responses to alleged perpetrators, particularly clergy and religious. Section 13.9 then examines the evidence and survivor accounts we have received about how the Church protocols were experienced by survivors. In Section 13.10 we discuss responses to child sexual abuse in the Catholic education system.

Finally, in Section 13.11 we discuss the factors that may have contributed to the occurrence of child sexual abuse in Catholic institutions and to inadequate institutional responses to that abuse. We consider individual psychosexual factors associated with the occurrence of child sexual abuse by Catholic clergy and religious, and leadership failures in responding to abuse. We also consider factors such as the culture of clericalism; organisational structure and governance; canon law; celibacy; selection, screening and formation; oversight, support and ongoing training of clergy and religious; and the role played by the sacrament of reconciliation.

In this chapter, where we refer to the policies and procedures of Catholic Church authorities, they are those available to us at the time of the *Institutional review of Catholic Church authorities* public hearing.

Endnotes

1 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017. Note that the initial version of this report was tendered in February 2017 and a revised version was tendered in June 2017.

2 Letters Patent (Cth), 11 January 2013, (k).

13.1 Structure and governance of the Catholic Church

13.1.1 The worldwide Catholic Church

The Catholic Church is the largest Christian church in the world. In 2015, there were 1.285 billion Catholics, comprising 17.7 per cent of the world's population.[1] In the previous nine years, the number of baptised Catholics worldwide grew by 14.1 per cent, exceeding world population growth (10.8 per cent) for the same period.[2]

The Catholic Church has flourished for almost 20 centuries, and during its long history has made an immense contribution to human civilisation in fields such as government and law, culture and the arts, the sciences, education, health care, and care for the poor and marginalised. However, the Catholic Church has also participated in religious wars and repression, including the Crusades and the Inquisition, the forced conversion of native peoples, and violations of the rights of women.[3]

Describing itself as the 'one, holy, catholic, and apostolic Church',[4] the Catholic Church exists, for Catholics, as both a visible and a spiritual reality.[5] For believers, the Catholic Church is a mystery, a living sacrament, and a sign of the coming of God's kingdom, with Jesus Christ as its founder and head: the 'Mystical Body of Christ' and the 'People of God'.[6] The Catholic Church is also one of the world's oldest and largest institutions, a vast global and transnational organisation with the pope – the Bishop of Rome – as its visible head.

The 'universal' church and the 'particular' churches

In terms of its structure, the Catholic Church is simultaneously a global entity under the leadership of the Bishop of Rome, sometimes referred to as the 'universal Church', and a grouping of many local or 'particular' churches, each under the leadership of its own bishop (or ordinary), which are all in communion with each other and with the Bishop of Rome.[7] Bishop Geoffrey Robinson, retired Auxiliary Bishop, Archdiocese of Sydney, explains that:

> On the one hand, the church is not a federation of pre-existing local churches, which are free to decide whether or not to federate. A local church is not a local church at all unless it makes present the universal church that Jesus founded. On the other hand, local churches are not mere administrative divisions of this universal church, for the universal church exists only in and out of the local churches. The church is one, not despite the local churches, but in the variety of the local churches.[8]

Alongside the particular churches, there are also many hundreds of mostly autonomous and self-governing religious institutes and associations, both large and small. These include orders or congregations of religious men and religious women, autonomous monasteries, apostolic societies and associations of lay people.

Historically, the Catholic Church has been divided into the 'Latin' and 'Eastern' churches. The Latin (or Roman or Western) Church grew out of the territories that once belonged to the western Roman Empire, and also includes all the particular churches in the Americas, Africa, Asia and the Pacific that were founded through European missionary expansion. The Eastern (or Oriental) Catholic churches have their origins in or beyond the frontiers of the eastern Roman Empire.[9] Each of these churches has its own rites and traditions.[10] In the Latin Church, the most common form of a particular church is called a diocese.[11]

The relationship between the 'universal' church and the local or 'particular' churches is highly complex. Theologians note that there has always been some tension between the centralising and top-down exercise of papal primacy on the one hand, and the autonomy and self-determination of the local or particular churches and the exercise of horizontal synodal and collegial structures on the other.[12]

In the early Christian Church, episcopal and synodal structures were of great importance and the pope functioned largely as a mediator.[13] Dr Gerry O'Hanlon SJ, Adjunct Associate Professor of Theology at the Loyola Institute, Trinity College Dublin, told us during *Case Study 50: Institutional review of Catholic Church authorities (Institutional review of Catholic Church authorities)* that 'For the first millennium or so the Christian Church was *synodal* or *collegial* in organisation. This meant that local bishops and regions had real authority, with Rome as a kind of "*primus inter pares*", a court of last appeal'.[14]

But over the centuries, as the power of the papacy and the meaning of papal primacy evolved, provincial and diocesan synodal structures gradually lost their strength and papal primacy increasingly prevailed. This process of centralisation markedly increased in the 19th century. In this period, the power of the Holy See's administrative bureaucracy, known as the Roman Curia, increased, the papacy increasingly claimed the right to select and appoint bishops, and the doctrines of papal primacy and papal infallibility were defined by the First Vatican Council (1869–1870).[15]

The Second Vatican Council (1962–1965) sought to re-emphasise the importance of episcopal, synodal, and collegial structures, declaring that the universal church comes into being in and from the particular churches and that 'the one, holy, catholic, and apostolic Church of Christ is truly present and operative' in each particular church.[16] However, Dr O'Hanlon told us that 'while the theology was good and the enthusiasm was there', the Second Vatican Council's vision had not been followed up with structural and institutional reform, and 'the Church was

left very much with a top-down model of authority'.[17] He told us that the Catholic Church today is 'a tightly controlled, vertically structured organization'[18] in which effective power resides in the Vatican and local bishops have become 'delegates of the Pope instead of "vicars of Christ" in their own right'.[19]

The American priest and theologian Donald R Cozzens has argued that the Catholic Church adopted imperial, monarchical and feudal aspects from the secular world which it still retains in its governance practices.[20] In particular, he has said, the flow of power and authority within the leadership of the Catholic Church is characterised by aspects of feudalism, including the granting of benefices, loyalty, obedience, and upward but not downward accountability.[21] The pope, as sovereign or king:

> grants benefices (i.e., dioceses) to his bishops. The bishops in turn promise obedience, homage, and loyalty to their sovereign, the Bishop of Rome … The bishops, in turn, grant benefices (i.e., parishes) to their priests, who promise obedience, homage, and loyalty to the chief shepherd of their diocese.[22]

Canon law

Canon law is the name for the law of the Catholic Church. It includes the Code of Canon Law and many other canonical documents issued by popes, Roman congregations, bishops' conferences and diocesan bishops. Canon law covers all areas of church life including selection and training of clergy, rights and obligations of members, selection of bishops and punishment for committing canonical crimes.[23]

Prior to 1917, canon law was found in collections of decrees of church councils and the popes stretching back to the fourth century. The first actual laws for the church were passed by a gathering of bishops at the Synod of Elvira in Spain in 309 AD.[24] These were distilled for the first time into a single authoritative code for the universal Catholic Church with the promulgation of the 1917 Code of Canon Law. The 1917 Code was revised and replaced by the 1983 Code of Canon Law.[25] In Section 13.2 we discuss the provisions of canon law relevant to child sexual abuse.

The power of governance in the Catholic Church

Only clergy are qualified to exercise the power of jurisdiction, or governance, in the Catholic Church.[26]

Pope Pius X (1903–1914) taught that, in accordance with the scriptures, the constitutional structure of the Catholic Church is 'essentially an unequal society, that is, a society comprising two categories of persons, the Pastors and the flock'. Only the pastors (the clergy) have the right and authority to lead, whereas the one duty of the laity 'is to allow themselves to be led, and,

like a docile flock, to follow the Pastors'.[27] The laity refers to all those who are not ordained, including religious brothers and sisters, who technically are not clerics.

The Second Vatican Council sought to emphasise a different understanding of the Catholic Church, as the 'People of God', a community whose members are fundamentally equal by virtue of their shared baptism.[28] However, the earlier understanding of the Catholic Church as an unequal society continues to be reflected in the 1983 Code of Canon Law. Canon 129 states that:

> §1. Those who have received sacred orders are qualified, according to the norm of the prescripts of the law, for the power of governance, which exists in the Church by divine institution and is also called the power of jurisdiction.
>
> §2. Lay members of the Christian faithful can cooperate in the exercise of this same power according to the norm of law.[29]

The clergy are those who have been ordained, meaning they have received the sacrament of holy orders. Only baptised males may be ordained.[30] There are three orders or grades within the sacrament of holy orders: the episcopate (bishops), the presbyterate (priests), and the diaconate (deacons).[31] The Catholic Church teaches that this hierarchical order was divinely constituted.[32]

A bishop (from the Greek *episcopos*, 'overseer') is a cleric who has been ordained to the third and highest rank of the sacrament of holy orders.[33] By episcopal ordination he receives the fullness of the sacrament of orders, which confers on him not only the office of sanctifying but also the offices of teaching and governing. Bishops have three main responsibilities: to teach, to govern, and to sanctify (promote and guide the liturgical life of the Catholic Church).[34]

A priest (from the Greek *presbyteros*, 'elder') is a cleric who has been ordained to the second level of the sacrament of holy orders (also known as the order of presbyters). In cooperation with their bishops, priests are responsible for preaching the gospel, celebrating the sacred liturgy and administering the sacraments, and providing leadership and pastoral care of the local parish community.[35] According to Bishop Robinson, the Second Vatican Council made the significant change of saying that a bishop's authority comes from ordination rather than from a delegation by the pope.[36]

A deacon (from the Greek *diakonos*, 'servant' or 'helper') is a cleric lower in rank than a priest who exercises a ministry of service. Deacons may baptise, officiate at funerals, assist at mass, preach, and exercise a ministry of charity to the poor, the sick and the elderly. Some fulfil administrative roles in a diocese or church agency. The diaconate may either be a transitional step before priestly ordination or a permanent state of life. The permanent diaconate is open to men, who may be married or single; however, deacons who are single must take a vow of celibacy.[37] It is apparent from the New Testament that there were women deacons in the early Christian church. In 2016, Pope Francis announced a commission to study the possibility of women once again being admitted to serve as deacons.[38]

Bishops are required to take an oath of loyalty to the pope.[39] Priests and deacons at their ordination are required to take an oath of obedience to their bishop.[40] Under canon law, every cleric must be incardinated in a diocese, or in an institute of consecrated life, or in a personal prelature.[41]

Canon law subdivides the power of governance in the Catholic Church into legislative, executive and judicial powers.[42] However, there is no separation of powers in the governance of the Catholic Church.[43] Ordinary executive power may be delegated unless canon law expressly provides otherwise.[44]

The pope

The Bishop of Rome, otherwise known as the Roman pontiff or pope (from the Latin *papa*, father) is the supreme authority in the Catholic Church. He is head of the College of Bishops and has primacy within the college on the basis that as Bishop of Rome he is successor to the apostle Peter, who according to Catholic tradition was entrusted by Jesus with leadership of the Christian church.[45]

The 1983 Code of Canon Law states that the pope is:

> the head of the college of bishops, the Vicar of Christ, and the pastor of the universal Church on earth. By virtue of his office he possesses supreme, full, immediate, and universal ordinary power in the Church, which he is always able to exercise freely.[46]

Only the pope can change canon law for the universal Catholic Church. In all cases that fall under Catholic Church law, recourse may be had to his judgment.[47] There is no appeal against his judgment.[48]

The pope not only has power over the universal Church but also has the right to intervene in the affairs of the local or particular churches at his own discretion.[49] He is the immediate superior of all Catholic bishops around the world,[50] and is assisted in controlling the particular churches through the Roman Curia and through his envoys or papal nuncios to the local churches.[51] Since the 19th century, the papacy has claimed the almost exclusive right to appoint and remove bishops.[52]

The pope is elected by an electoral college called the College of Cardinals. Cardinals are appointed for life by the pope. Usually they are archbishops or bishops from around the world or senior members of the Roman Curia. Only cardinals under the age of 80 are able to vote in a papal election or conclave. From time to time, the pope may convene a meeting of the College of Cardinals to advise him on important issues.[53]

The College of Bishops

In Catholic tradition, the bishops are regarded as successors to Jesus's 12 apostles and together form a single body, known as the College of Bishops, with the pope as its head.[54] The Second Vatican Council declared the College of Bishops to be the supreme governing body of the worldwide Catholic Church, 'provided we understand this body together with its head the Roman Pontiff and never without this head'.[55]

Although it is notionally the supreme governing body of the Catholic Church, the College of Bishops has met rarely. Meetings of the full College of Bishops are known as ecumenical councils or general councils. There have only been three such councils in the past 500 years: the Council of Trent (1545–1563), the First Vatican Council (1869–1870) and the Second Vatican Council (1962–1965).[56] Only the pope has the authority to call an ecumenical council, and its decrees have no binding force unless they are approved and promulgated by the pope.[57]

The Synod of Bishops

The Synod of Bishops was established by Pope Paul VI in 1965. It is an advisory body whose membership consists of bishops elected by the episcopal conferences around the world, together with other bishops appointed directly by the pope. It has its own secretariat. Its agenda is defined by the pope and the Roman Curia.[58] Since its establishment, synods have usually been called every few years.[59]

The Roman Curia

The Holy See, or Apostolic See, is the formal title of the see, or seat, of the Bishop of Rome, and is the central governing body of the Catholic Church. The Holy See is both a state recognised in international law and the governing body for the Catholic Church of 1.3 billion.[60] It is distinct from the Vatican City State, which is the independent city state within the city of Rome.[61] Canon law states that the authority of the Holy See is divinely instituted.[62]

The Roman Curia has been described as the oldest functioning bureaucracy in the world.[63] It consists of 'the network of secretariats, congregations, tribunals, councils, offices, commissions, committees, and individuals who assist the pope in the governance and administration' of the worldwide Catholic Church.[64]

The Roman Curia consists of a number of dicasteries, which are like government departments. These include the Secretariat of State and Secretariat for the Economy, nine congregations, two recently created dicasteries, 12 pontifical councils, three tribunals, and numerous commissions, agencies and administrative offices.[65] The structure and operation of these dicasteries is regulated by the apostolic constitution *Pastor Bonus* for the Roman Curia, which was issued by Pope John Paul II in 1988.[66] Pope Francis, assisted by a group of nine cardinals, is engaged in a process of reforming the Roman Curia.

The Secretariat of State

The Secretariat of State is the most senior of the dicasteries that make up the Roman Curia. It is responsible for directing and coordinating the other dicasteries. The Secretariat of State is headed by a cardinal who is the Secretary of State. It is divided into two sections. The First Section, or Section of General Affairs, is responsible for internal Catholic Church affairs and is headed by an archbishop known as the *sostituto* (substitute). The Second Section, or Section for Relations with States, is responsible for the Holy See's relations with national governments and other international bodies. It is headed by an archbishop called the Secretary for Relations with States, commonly referred to as the Vatican foreign minister.[67]

The Roman congregations

There are nine congregations of the Roman Curia,[68] each headed by a prefect who is a cardinal and a secretary who is an archbishop. The congregations have the 'power of governance', meaning they have the authority to issue binding decrees, judgments and dispensations in relation to their area of jurisdiction.[69] Each congregation is composed of a committee of bishops from around the world who meet at regular intervals, and a permanent secretariat. Congregations that are referred to in this report include:

- The Congregation for the Doctrine of the Faith – responsible for promotion and safeguarding of official Catholic Church teaching in relation to faith and morals. Formerly known as the Holy Office, it was once the office of the Roman Inquisition. It has jurisdiction over cases of child sexual abuse by clergy.[70]
- The Congregation for Bishops – responsible for the appointment and supervision of bishops.[71]
- The Congregation for Clergy – responsible for overseeing the formation, discipline and support of diocesan clergy, as well as for seminaries (other than those regulated by the Congregation for the Evangelisation of Peoples and the Congregation for Eastern Churches). It is also responsible for handling requests from diocesan clergy for dispensation from the priesthood.[72]

In 2016, as part of his reform of the Roman Curia, Pope Francis established two new dicasteries: the Dicastery for the Laity, Family and Life, and the Dicastery for Promoting Human Development.

The tribunals

The judicial branch of the Roman Curia comprises three tribunals.[73]

The Roman Rota is the main judicial organ of the Holy See. It is an appeals court in relation to matters decided by local tribunals around the world. Much of its work relates to marriage annulments.[74]

The Supreme Tribunal of the Apostolic Signatura is the highest court of appeal in the Roman Curia judicial system and the highest judicial authority in the Catholic Church apart from the pope. It hears appeals against decisions of the Roman Rota, settles jurisdictional conflicts between lower tribunals, hears appeals against decisions by dicasteries and settles jurisdictional conflicts between dicasteries. It is also responsible for oversight of the work of Catholic Church courts, lawyers and judges.[75]

The Apostolic Penitentiary deals with matters relating to the sacrament of confession, indulgences, absolution and dispensation of sins, and censures reserved to the Holy See, including excommunications, and matters relating to the 'internal forum' (matters which are adjudicated in secret).[76]

Pontifical Commission for the Protection of Minors

On 22 March 2014, Pope Francis established the Pontifical Commission for the Protection of Minors.[77] It is an advisory body to the pope. Article 1 §1 of the commission's statute describes it as 'an autonomous institution attached to the Holy See, with public juridic personality'.[78] The commission is composed of a maximum of 18 members appointed by the pope for a period of three years, which may be reconfirmed. Article 1 §2 of the statute states that:

> The protection of minors is of paramount importance. The purpose of the Commission is to propose initiatives to the Roman Pontiff, according to the procedures and determinations specified in these *Statutes*, for the purposes of promoting local responsibility in the particular Churches for the protection of all minors and vulnerable adults.[79]

We discuss the Pontifical Commission for the Protection of Minors further in Chapter 20, 'Making religious institutions child safe'.

The diocese and the role of the bishop

A diocese is a defined faith community whose pastoral leadership is entrusted to a bishop.[80] It is usually determined on the basis of geographical territory and comprises all the Catholics who live within that territory.[81]

A bishop who heads a diocese is also known as the local ordinary.[82] He is 'the senior ecclesiastical legislator, judge, teacher, pastor and administrator' within his diocese.[83] A bishop, like the pope, is effectively a monarch in his own diocese, except that he is subject to the pope as his immediate superior and to canon law.[84] He exercises legislative power himself, and can make 'particular law' for his own diocese.[85] He exercises executive power either personally or through vicars general or episcopal vicars according to the norm of law. He exercises judicial power either personally or through the judicial vicar and judges according to the norm of law.[86] The bishop's executive power may also be delegated.[87]

Among the limitations imposed on a bishop by canon law are that he must seek the advice of his diocesan College of Consultors or the Council of Priests on certain matters.[88]

Canon 383 sums up the bishop's pastoral role by stating that he is to show concern for all those committed to his care.[89]

According to the Second Vatican Council, bishops govern their own dioceses not as 'vicars of the Roman Pontiffs, for they exercise an authority that is proper to them'.[90] However, the local bishop is personally accountable to the pope. Every five years, he is required to make a report to the pope on the state of his diocese, called a quinquennial report.[91]

Diocesan bishops are appointed by the pope for an indeterminate period. They are required to submit their resignation to the pope when they reach the age of 75, but it is up to the pope to decide how long they continue in office.[92] In 2014 there were 5,237 bishops worldwide.[93]

The diocesan bishop is responsible for the priests incardinated in his diocese and also for priests working in the diocese who are incardinated elsewhere. It is the role of the diocesan bishop, after consultation with his diocesan consultors, to appoint parish priests and assistant priests.[94]

Ecclesiastical provinces and the role of the metropolitan

Neighbouring dioceses have been grouped into ecclesiastical provinces and have held provincial councils on matters of joint concern since the early centuries of the Christian Church.[95] The Second Vatican Council stated in its *Decree on the pastoral office of bishops* that the Catholic Church 'earnestly desires that the venerable institution of synods and councils flourish with fresh vigor'.[96] The major diocese of a province is called a metropolitan archdiocese, and the other dioceses are called suffragan dioceses. A metropolitan archdiocese is led by an archbishop who is also known as the metropolitan, meaning that he is the senior bishop of the province. As a general rule, every diocese belongs to a province.[97]

The metropolitan has only very limited functions and powers in relation to the suffragan dioceses in his province. He has the duty to inform the pope about any abuses of the faith or of church discipline, including if a suffragan bishop neglects his duty, and in such circumstances the Holy See may give its approval for him to conduct a canonical visitation or inspection. The metropolitan has no authority to intervene on his own initiative in the governance of a suffragan diocese.[98]

Episcopal conferences

While episcopal conferences have been in operation since long before the Second Vatican Council (1962–1965), the Second Vatican Council established them as a formal structure with its call for the creation of national or regional episcopal conferences for the purpose of joint deliberation and action.[99] A bishops' conference is the assembly of the bishops of a country. It is a permanent institution. It has no power of governance over individual dioceses, and the individual bishops who are members of an episcopal conference are not bound by its decisions.[100] Episcopal conferences can only be established, altered or suppressed by the pope.[101]

Episcopal conferences have the authority to make decisions that are binding, but only in relation to matters prescribed in canon law or by special mandate of the Holy See. In order for a general decree enacted by an episcopal conference to be recognised as binding 'particular law' for a national church, it must be passed by at least a two-thirds majority of the members of the conference, and it must also receive the approval, or '*recognitio*', of the Holy See.[102]

The Australian Catholic Bishops Conference is the national episcopal conference for the Catholic Church in Australia.

The diocesan curia

The diocesan curia is the central administrative apparatus that assists the bishop to govern the diocese. It comprises various individuals and bodies including the vicar(s) general, episcopal vicars, the moderator of the curia, the chancellor, notaries, the diocesan finance council, the diocesan financial administrator, the judicial vicar, judges and other officials who make up the diocesan tribunal, and the diocesan archives. However, there is considerable variation between dioceses in the way the diocesan curia is structured.[103] Diocesan curias in Australia include a number of agencies and organisations that are not mentioned explicitly in the Code of Canon Law, such as the community services agency Centacare, and Catholic Development Funds.[104]

Vicars general and episcopal vicars

Canon law requires that the bishop is to appoint one or more vicars general to assist him in administering the diocese. As a general rule, one vicar general is to be appointed unless the size of the diocese or other pastoral reasons suggest otherwise.[105] The vicar general is effectively second in charge of the diocese, with executive power over the whole of the diocese. He can perform all administrative acts, with the exception of those which the bishop has reserved to himself, or which require a special mandate of the bishop under canon law. He has the authority to govern the diocese when the bishop is absent.[106]

The bishop may also appoint one or more episcopal vicars.[107] The episcopal vicar has the same power as the vicar general but only in relation to a specific aspect of diocesan affairs (for example, there might be episcopal vicars for clergy, for religious, for education, for ecumenical and interfaith relations, or for health and aged care), a specific part of the diocese, or a specific rite or group for which he was appointed.[108]

Coadjutor and auxiliary bishops

In larger dioceses, a coadjutor bishop or an auxiliary bishop may be appointed to assist the diocesan bishop. A coadjutor bishop has immediate right of succession on the death, resignation or transfer of the incumbent bishop.[109] An auxiliary bishop has no right of succession. The coadjutor bishop and the auxiliary bishop assist the diocesan bishop in the governance of the diocese and take his place when he is absent.[110] Canon law requires that a coadjutor bishop is to be appointed as a vicar general of the diocese. Auxiliary bishops are to be appointed as vicars general (or at least as episcopal vicars). Canon law also states that the diocesan bishop should entrust matters that require a special mandate to his coadjutor bishop or his auxiliary bishops in preference to all others.[111]

Council of Priests and College of Consultors

Canon law emphasises that the diocesan bishop and his priests have a shared ministry, and mandates that there are to be two consultative bodies in any diocese: the Council of Priests and the College of Consultors.

The Council of Priests, or presbyteral council, acts as a kind of 'senate' to the bishop and represents all the priests who are either incardinated or ministering in the diocese.[112] Its membership is partly elected by the priests of the diocese and partly appointed by the bishop. It is a consultative body and is primarily concerned with the general governance of the diocese. The bishop is required to consult his Council of Priests on important matters associated with the diocese and matters prescribed by canon law, including the convocation and membership of diocesan synods, the creation, restructuring or suppression of parishes, the remuneration of clergy, establishing parish councils, building new churches and disposing of churches no longer in use, and levying taxes.[113] The Council of Priests is not able to act without the diocesan bishop.[114]

The College of Consultors is a permanent body consisting of not fewer than six and not more than 12 priests of the diocese chosen by the bishop from among the membership of the Council of Priests. It advises the bishop about the pastoral care of the diocese in matters required by canon law, including the appointment and movement of the priests of the diocese and financial matters.[115] However, the College of Consultors is not involved in any formal legal sense in the appointment or transfer of priests to various offices, with such appointments remaining within the competence of the diocesan bishop.[116] A consultor is a priest who is a member of the College of Consultors. Consultors are usually appointed for a term of five years.[117]

Diocesan pastoral councils

The Second Vatican Council urged every diocesan bishop to establish a diocesan pastoral council, over which he would preside. Diocesan pastoral councils are consultative bodies whose purpose is to assist the bishop with pastoral planning for the diocese.[118] Such councils are not mandatory.[119] They are constituted for a fixed term. Their membership is to include clergy, religious and lay people who are to be selected in such a way that the pastoral council truly reflects the make-up of the diocese.[120]

The parish and the role of the priest

Every diocese is divided into distinct communities, or parishes. Canon law defines a parish as 'a certain community of the Christian faithful stably constituted in a particular church, whose pastoral care is entrusted to a pastor … under the authority of the diocesan bishop'.[121] The primary function or mission of parishes is to provide for worship, teaching and pastoral care at the local community level, and their structures and personnel serve both the needs of the parishioners themselves and the needs of the wider local community.[122]

The parish priest represents the parish in all juridical matters, and he also has responsibility for the administration of the property and other assets of the parish.[123] An assistant priest, or curate, is a priest who is appointed to assist the parish priest in the pastoral care of a parish.[124] Because of a shortage of priests, or for other reasons, the care of more than one neighbouring parish may be entrusted to a single parish priest.[125]

Only the diocesan bishop has the authority to establish, suppress (close down) or alter a parish, and he is required to consult with his Council of Priests about doing so.[126] He is not obliged to consult with the members of the parish or the parish priest.[127] It is also up to the bishop whether to establish a pastoral council in each parish.[128]

Religious institutes

Autonomous religious institutes (or religious orders or congregations) have been a particular feature of the Catholic Church throughout its history, beginning with the monastic communities of the 3rd century, when groups of men and women began to withdraw into the deserts of Egypt, Palestine and Syria to live a more ascetic form of Christian life.[129] Throughout the Church's history there have been many waves of new religious orders and congregations, including congregations which are monastic, enclosed, or active in the world.[130] The 19th and 20th centuries saw a proliferation of new religious orders whose charism, or purpose, was school education, health care, the welfare needs of the poor in the growing industrial cities, or missionary activity in Africa, Asia, the Americas and the Pacific.[131]

Some religious institutes are composed of religious women (sisters or nuns), some are composed only of ordained men (priests), some are composed of both priests and non-ordained men (brothers), and some are composed only of brothers.

A religious institute is said to be 'of pontifical right' if the Holy See has erected or approved it through a formal decree. Institutes of pontifical right are subject exclusively to the Holy See. A religious institute is said to be 'of diocesan right' if it has been erected by a diocesan bishop but has not obtained a decree of approval from the Holy See.[132] Only the pope has the right to suppress (close down) a religious institute.[133]

Each religious institute is self-governing and has its own 'rule', or constitution, and its own leadership to whom the members are answerable and responsible. Compared with the wider Church, religious orders are significantly more democratic and participatory in the way they govern themselves. Each religious congregation is led by a superior general at the international level, and by provincial superiors at the national or regional level, who are elected by the members of the order or their representatives for a set period, usually four to six years. Those who govern a worldwide religious congregation, or a province, or an autonomous religious house are referred to as major superiors.[134]

Initial formation, or training, for religious life takes place in a novitiate. At the end of an extended period of probation and formation, candidates profess vows of poverty, chastity and obedience, which may be temporary or permanent.[135]

A call by the Second Vatican Council for the renewal of religious institutes led to a wave of changes beginning in the 1970s, including changes in dress and titles and new approaches to religious ministry. During this period many religious institutes rewrote their constitutions to reflect more egalitarian and participatory forms of governance and community life.[136]

Personal prelatures

A personal prelature is a relatively new canonical structure in the Catholic Church. It has a personal rather than territorial character. It is governed by a prelate, who is a bishop or a priest appointed by the pope. It has its own statutes, its own clergy who are incardinated into the prelature, and its own lay members, who also remain members of their own local diocese.[137]

To date, only one personal prelature has been established: the Prelature of the Holy Cross and Opus Dei, which was approved by Pope John Paul II in 1982.[138]

The laity

The Second Vatican Council encouraged the participation of the laity in the governance of the Catholic Church, along with priests and religious, through participation in councils of various kinds on the parish, diocesan, and national levels.[139]

According to canon law, the Catholic faithful are 'bound to follow with Christian obedience those things which the sacred pastors, inasmuch as they represent Christ, declare as teachers of the faith or establish as rulers of the Church'.[140] However, members of the laity also have the right to make their pastoral needs and desires known:

> According to the knowledge, competence, and prestige which they possess, they have the right and even at times the duty to manifest to the sacred pastors their opinion on matters which pertain to the good of the Church and to make their opinion known to the rest of the Christian faithful, without prejudice to the integrity of faith and morals, with reverence toward their pastors, and attentive to common advantage and the dignity of persons.[141]

Particular councils and diocesan synods

A church synod or council is an official church assembly which meets to legislate and organise pastoral action. Under canon law, there are particular councils (plenary or national, and provincial) and diocesan synods. A plenary council may be convened by a national bishops' conference, but only with the approval of the Holy See, 'whenever it seems necessary or useful'.[142] The Conference of Bishops determines the agenda to be discussed.[143]

A provincial council is a synod of all the dioceses of a particular province. Under the 1983 Code of Canon Law, provincial councils may be called 'whenever it seems opportune in the judgment of the majority of the diocesan bishops of the province'.[144]

A diocesan synod is an assembly of priests, religious and lay people under the presidency of the diocesan bishop. Members are selected by the bishop to allow a broad spectrum of Catholics living in the diocese to express their voice on matters proposed by the bishop and important to the local church.[145] The 1983 Code of Canon Law does not specify when diocesan synods must occur. The bishop, in consultation with his Council of Priests, may convene a synod 'when circumstances suggest it'.[146] Prior to 1983, lay people were excluded from all synods. Since then, bishops have been obliged to invite Catholic lay people to participate in diocesan synods, and lay people may be invited to participate in plenary councils.[147]

13.1.2 Structure and governance of the Catholic Church in Australia

The Catholic Church is the largest faith group in Australia, and the largest Christian denomination. In 2016, the national Census showed that there were approximately 5,291,800 Catholics in Australia, representing 22.6 per cent of the Australian population. This represents a decline in the proportion of Australians affiliated with the Catholic Church since 2011, and a decline in actual numbers. The 2011 Census reported that there were approximately 5,439,300 Catholics in Australia, or 25.3 per cent of the Australian population.[148]

Dioceses

The Catholic Church in Australia is territorially divided into seven archdioceses (Sydney, Melbourne, Perth, Brisbane, Adelaide, Hobart, and Canberra and Goulburn) and 21 dioceses.

In addition, there are five non-territorial Eastern Catholic Church dioceses, or eparchies, which cover the whole of Australia, each with its own bishop (or eparch). These are the Maronite, Melkite, Ukrainian, Chaldean, and Syro-Malabar dioceses. The vast majority of Catholics in Australia belong to the Latin-rite Catholic Church but, due to immigration, an increasing number belong to the Eastern Catholic churches.

There are also two other non-territorial administrative divisions that cover the whole of Australia: the Military Ordinariate, which provides military chaplains to the Australian Defence Force, and the Personal Ordinariate of Our Lady of the Southern Cross (Anglican Ordinariate), for former Anglicans.

Finally, there is the personal Prelature of the Holy Cross and Opus Dei. Opus Dei is an association of clergy and lay people which was formed in Spain in 1945 and first arrived in Australia in 1963. In 1982, Pope John Paul II established Opus Dei as a personal prelature, which functions as a kind of global diocese with its own prelate (bishop) based in Rome. In Australia, Opus Dei has its own priests and deacons who are incardinated into the prelature.[149]

Provinces

Australia's Catholic dioceses are grouped into five provinces, each named after its metropolitan see: Sydney, Melbourne, Brisbane, Adelaide and Perth.

- The Province of Sydney comprises the Archdiocese of Sydney with the dioceses of Maitland–Newcastle, Armidale, Bathurst, Lismore, Wilcannia–Forbes, Wagga Wagga, Wollongong, Broken Bay, and Parramatta as suffragan dioceses.
- The Province of Melbourne comprises the Archdiocese of Melbourne with the dioceses of Ballarat, Sandhurst, and Sale as suffragan dioceses.
- The Province of Brisbane comprises the Archdiocese of Brisbane with the dioceses of Toowoomba, Rockhampton, Townsville, and Cairns as suffragan dioceses.
- The Province of Adelaide covers both South Australia and the Northern Territory and comprises the Archdiocese of Adelaide with the dioceses of Port Pirie and Darwin as suffragan dioceses.
- The Province of Perth comprises the Archdiocese of Perth with the dioceses of Geraldton, Bunbury, and Broome as suffragan dioceses.

The Archdioceses of Hobart and Canberra and Goulburn do not have suffragan dioceses. Instead, Hobart cooperates at the provincial level with the Province of Melbourne, and Canberra and Goulburn with the Province of Sydney.

The statutes of the Australian Catholic Bishops Conference (ACBC) provide that the Maronite, Melkite and Chaldean eparchies and the Military Ordinariate are considered part of the Province of Sydney for the purpose of elections to the Permanent Committee of the ACBC, and the Ukrainian and Syro-Malabar eparchies are considered part of the Province of Melbourne.[150]

The Australian Catholic Bishops Conference

The ACBC is the national assembly of Australian bishops. Its membership consists of all the active Australian diocesan bishops and auxiliary bishops, including the five Eastern-rite bishops, the Bishop of the Australian Defence Force, and the Ordinary of the Anglican Ordinariate. It was established in 1966, following the Second Vatican Council, in order to facilitate understanding and cooperation between the Australian bishops.[151]

The ACBC usually meets twice a year. It is headed by a president and a vice-president, each elected for two years, and is served by a permanent committee, 13 bishops' commissions (whose members are elected for three years), a general secretariat, 27 other secretariats and offices, and 15 national councils.[152] The permanent committee comprises eight members, including the ACBC's president and vice-president.[153]

Parishes

In 2016, there were 1,385 Catholic parishes in Australia.[154] The number of parishes in Australia has been declining gradually since the mid-1980s due to the increasing shortage of priests. As a result, many parish priests are administering more than one parish, and in rural areas it is common for a parish to have no priest. A report on the state of Catholic parishes in Australia found that almost one in three parishes in Australia was without a full-time resident priest not shared with another parish.[155]

According to *The official directory of the Catholic Church in Australia 2017–2018*, as at 31 December 2016 there were 2,967 active and retired priests in Australia (1,904 diocesan and 1,063 religious order priests), including priests from overseas who were working in Australia. There were also 166 permanent deacons.[156]

The recruitment of priests from overseas is a growing phenomenon in western countries. Close to 40 per cent of priests in Australia were born overseas, with many of these ministering in Australia on short-term contracts.[157] Priests from Vietnam make up the largest number among this group, followed by Indians, Filipinos and Africans.[158]

Tribunals

While canon law envisages that each diocese should have its own tribunal, in Australia the ecclesiastical court system is organised on an interdiocesan basis with each of the five provinces (Sydney, Brisbane, Melbourne, Adelaide and Perth) having its own regional tribunal. Mostly these tribunals are concerned with marriage annulment cases, but they also hear cases in relation to remedy for injury or denial of rights and offer advice on other canon law issues. Each tribunal has a judicial vicar and other court officials appointed by the bishops of the province. Above the network of interdiocesan tribunals sits an Appeal Tribunal for Australia and New Zealand.[159]

Seminaries

As of December 2016, there are eight interdiocesan and diocesan seminaries in Australia. These are located in Brisbane, Melbourne, Parramatta, Perth, Sydney and Wagga Wagga, and also include two seminaries (one in Perth, and one in Sydney) operated by the Neocatechumenal Way, a new religious movement in the Catholic Church that was founded in Spain in 1964.[160] Due to the decline in the number of local vocations for the diocesan priesthood, an increasing number of seminarians are being recruited from overseas.[161]

The official directory of the Catholic Church in Australia 2017–2018 also lists 13 seminaries operated by religious orders of priests, many of them located in and around Melbourne.[162] Also, the ultra-traditionalist Society of St Pius X, in schism with the Holy See because it is unable to accept the changes introduced by the Second Vatican Council, has a seminary near Goulburn, New South Wales.

Particular councils and diocesan synods in Australia

The Second Vatican Council called for synods and councils to 'flourish with fresh vigor' but, since the end of the council in 1965, only six diocesan synods have been held in Australia. For many dioceses, the most recent diocesan synod was held long ago. The Archdiocese of Sydney last held a synod in 1951. The Archdiocese of Adelaide has not had a diocesan synod since 1945, the Archdiocese of Perth since 1940, the archdioceses of Melbourne and Hobart since 1916, and the Diocese of Wilcannia–Forbes since 1890. The dioceses of Broome, Darwin, Geraldton and Parramatta have never held a diocesan synod. The last national synod in Australia was held in 1937. Planning has begun for a national plenary council to be held in 2020.[163]

Religious institutes in Australia

There are Catholic religious institutes of priests, brothers and religious sisters operating in Australia.

As at 31 December 2016, there were 5,918 Catholic religious living in Australia: 1,063 religious order priests, 689 religious brothers and 4,166 religious sisters.[164] The most recent survey by the ACBC Pastoral Projects Office, conducted in 2009, found that the median age of all religious in Australia was 73 years, with only 8.2 per cent aged under 50, and 26.6 per cent aged 80 or more. Religious women constituted 70.4 per cent of all Australian religious, with a median age of 74 years. The median age for religious brothers was 71 years, and the median age for clerical religious was 67 years. Forty-seven per cent of all congregations in Australia had fewer than 26 members, and a further 21 per cent had between 26 and 50 members.[165] The survey reported that Catholic religious in Australia were working mainly in social services and pastoral care, while a small number (10 per cent) were working in parishes. During the previous three decades, there has been a 'dramatic move' away from education, with around 12 per cent of religious working in education, down from 47.5 per cent in 1976.[166] Twenty-six per cent were fully retired.[167]

The early growth of the religious orders in Australia coincided with the emergence of the Catholic school system and the decisions from 1872 by state governments to cease giving financial assistance to religious schools.[168] Fearing that Catholic children would have to attend public schools, the Australian bishops appealed to the religious orders in Ireland and other European countries to respond to the situation.[169]

There was a 'dramatic increase' in the number of Catholic religious in Australia in the period after the Second World War, peaking in the mid-1960s, when there were 19,413 religious order members, of whom about 13,900 were religious women.[170] From the early 1970s, there was a rapid decline in the number of religious brothers and sisters, although this sudden decline in numbers did not immediately apply to religious priests.[171]

The Australian Conference of Leaders of Religious Institutes (ACLRI), publicly known as Catholic Religious Australia (CRA) since 2006, is the peak body for the leaders of more than 130 religious institutes and societies of apostolic life in Australia. It promotes, supports and represents religious life within the Catholic Church and the wider Australian society and coordinates cooperation between religious institutes and the ACBC and individual bishops.[172]

Religious orders of priests and brothers

Some clerical religious institutes in Australia have only priest members, while others are composed of both priests and brothers. The largest clerical religious orders in Australia are the Jesuits, the Salesians of Don Bosco, the Vincentians, the Missionaries of the Sacred Heart, and the Marist Fathers. All of these orders are represented in the data provided to us by Catholic Church authorities with respect to claims made concerning child sexual abuse.[173] The results of the data survey we commissioned, the *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia* (Catholic Church claims data) showed that the Benedictine Community of New Norcia was the religious institute with the highest overall proportion of priest members who were alleged perpetrators of child sexual abuse.[174] We consider the Catholic claims data in detail in Section 13.3, 'Private sessions and data about child sexual abuse in the Catholic Church'.

The Jesuits

The Society of Jesus, whose members are known as Jesuits, was founded by St Ignatius Loyola and six companions in Paris in 1534.[175] In 2016, the society had approximately 16,400 members, of whom approximately 11,800 were priests, making it the largest order of priests and brothers worldwide.[176] Jesuits have long been associated with school education, academia, the sciences, missionary activity – particularly in Asia and North and South America – and, more recently, with work in the area of human rights and social justice.

The first Jesuits arrived in Australia in 1848 from Austria, establishing a mission in South Australia.[177] In 1865, the Irish Jesuits became the first religious order of priests to establish themselves in Victoria. They went on to found a number of prominent schools in Melbourne and Sydney.[178] Today, they continue their work in almost every field, from academia and pastoral apostolates to health care, home and foreign missions, chaplaincies and retreats.[179]

The international headquarters of the Society of Jesus is in Rome. Internationally, the Jesuits are governed by the superior general, who is elected by the general congregation for life or until he resigns.[180] Jesuit communities are organised into provinces. The Australian province,

which covers Australia and New Zealand, is part of the Jesuit Conference of Asia Pacific.[181] This is one of six Jesuit conferences that coordinate and facilitate the mission of the Jesuits around the world. Each conference is headed by a president, who works with an assembly of major superiors.[182] The highest authority over the Jesuits is the pope. The Jesuits are the only religious congregation that have a specific vow of obedience to him.[183]

Salesians of Don Bosco

The Society of St Francis de Sales, more commonly known as the Salesians of Don Bosco (Salesians) is an international organisation of priests and brothers. It was established in 1859 by Italian priest St John Bosco, who worked with the poor and homeless youth of Turin, and was approved as a religious congregation by the Holy See in 1869.[184] The main purpose of the Salesians is the evangelisation and education of the young, with particular emphasis on the disadvantaged and marginalised.[185] Traditionally, this mission was aimed at boys and young men.[186] In 2016, the Salesians had a worldwide membership of approximately 15,000, of whom 10,280 were priests.[187]

The Salesians first arrived in Australia in 1922 to take over the Aboriginal missions in the Kimberley region.[188] The Salesians have established schools, hostels, youth clubs, and farm and trade schools, often with a residential facility attached to provide accommodation for boys in need of a home.[189] The focus of the Salesians' approach was the 'preventive system', formulated by Don Bosco, which emphasised the use of reason, religion, and loving kindness in the education of the young. Punishment was highly discouraged.[190]

The Salesians are governed by the rector major and a general council based in Rome.[191] The Salesians of Don Bosco Australia-Pacific Province encompasses Australia, Samoa, Fiji and New Zealand.[192]

The Congregation of the Mission (Vincentians)

The Congregation of the Mission, more commonly known as the Vincentians, is a society of apostolic life founded by St Vincent de Paul in Paris in 1625, for the evangelisation of the poor and the formation of the clergy.[193] In 2015, the congregation had a worldwide membership of 2,995 priests and 3,365 brothers.

The first Vincentians arrived in Australia from Ireland in 1885. They arrived in the Diocese of Bathurst in 1889, where they took over the running of a boarding school, St Stanislaus College. In recent years, the Vincentians have ceased running schools. At the time of this report they were working in parish ministry, formation for church leadership, and aged care, as well as providing chaplaincy services in hospitals, prisons and a number of schools, and ministering to people with HIV.[194]

The international leadership of the Vincentians has its headquarters in Rome.[195] The Vincentians' Australian Province was established in 1926. Recently it became the Oceania Province. It is headed by a provincial.[196]

Missionaries of the Sacred Heart

The Missionaries of the Sacred Heart is an order of priests and brothers that was founded in France in 1854 by Jules Chevalier, a parish priest, together with a small group of other priests.[197] From very early on, the order became involved in missionary activity in Oceania.[198] The 'Chevalier Family' includes two congregations of religious women, the Daughters of Our Lady of the Sacred Heart, and the Missionary Sisters of the Sacred Heart, and lay members and associates who belong to the Lay Missionaries of the Sacred Heart.[199]

As of 2013, the Missionaries of the Sacred Heart had a membership of 1,900 religious brothers and priests working in over 55 countries, on six continents. In 2013, the Australian Province consisted of about 140 members, with ministries including work in parishes and retreat centres, education work within Indigenous communities, work in the media, providing chaplains to prisons, universities and hospitals ministering to people living with HIV/AIDS and work in trades.[200]

The international leadership team of the Missionaries of the Sacred Heart is based in Rome and consists of the superior general, assistant generals, and members of the general council.[201]

Marist Fathers (Society of Mary)

The Society of Mary, or Marist Fathers, is a religious congregation of priests that was established in France in 1824. Its founder, Father Jean-Claude Colin, was elected as its first superior general in 1836.[202] The Marist Brothers, Marist Sisters and Marist Missionary Sisters are separate congregations within the 'Marist Family', together with an associated Marist laity.[203] From 1846 the order became involved as missionaries in Oceania.[204] The Marist Fathers first settled in Australia in 1845, when they chose Sydney as the site for a 'Central House' for the Oceania missions.[205]

Marists work in parishes and as administrators, teachers, counsellors and chaplains in schools in a number of countries, as well as being involved in adult education in universities, colleges and seminaries. They have also become involved in working with young people with special needs, including asylum seekers, homeless children, and children with disability.[206]

The international leadership of the Marist Fathers is based in Rome and consists of the superior general and a leadership team drawn from the order's provinces and districts around the world. In Australia, the society is led by a provincial and a provincial council.[207]

Benedictine Community of New Norcia

The Benedictine Community of New Norcia, located 132 kilometres north of Perth in Western Australia, was founded in 1847 by Spanish Benedictine monks. New Norcia is Australia's only monastery town.[208] It is named after the town of Norcia in Italy, which was the birthplace of St Benedict (c 480–547), the founder of the Benedictine order, which became one of the most influential religious orders in the Catholic Church.[209] According to the 'Rule of St Benedict', which Benedictines follow, the monks are vowed to 'obedience, stability and conversion of life'.[210]

In 1846, two Spanish Benedictine monks, Dom Rosendo Salvado (1814–1900) and Dom José Benito Serra founded the monastery as a mission to the local Aboriginal people, who they sought to convert to Catholicism and teach to become farmers.[211]

The Benedictine monks and Benedictine Missionary Sisters at New Norcia ran St Mary's Orphanage for Aboriginal boys (from 1848) and St Joseph's Orphanage for Aboriginal girls (from 1861) until they closed in 1974.[212] Data provided to the Royal Commission by the Benedictine Community of New Norcia indicates that a considerable number of claims of child sexual abuse have been made in relation to this institution.[213]

For part of New Norcia's history, the abbey administered a territory of 30,000 square miles in Western Australia and had a status similar to that of a diocese. This territory was reduced to a single parish following the Second Vatican Council (1962–1965).[214]

Religious orders of brothers

There are five institutes of religious brothers in Australia: the Christian Brothers, De La Salle Brothers, Marist Brothers, Patrician Brothers and St John of God Brothers.[215]

Christian Brothers

The Christian Brothers were founded by Edmund Rice in 1802 in Waterford, Ireland.[216] The primary aim of the congregation was the education of boys from poor families and, in particular, equipping the boys with the skills to make a living through subjects such as bookkeeping.[217]

The first Christian Brothers arrived in New South Wales in 1843 but left after only three years due to issues with the local church authorities.[218] In 1868 a more permanent foundation was established in Victoria.[219] Over time, the Christian Brothers established or helped to staff over 120 schools across Australia.[220] They also built and staffed orphanages for boys, including four farming schools in Western Australia, which we considered in *Case Study 11: Congregation of Christian Brothers in Western Australia response to child sexual abuse at Castledare Junior Orphanage, St Vincent's Orphanage Clontarf, St Mary's Agricultural School Tardun and Bindoon Farm School*.[221]

The international leadership of the Christian Brothers has its headquarters in Rome. The head of the Christian Brothers worldwide is the congregation leader.[222] The congregation is divided into provinces. A province is headed by a provincial, who is appointed by the congregational leader in Rome.

Initially the Christian Brothers operated as a single province in Australia, with its administrative centre at Strathfield in Sydney. However, following a visitation from the international leadership of the order, this was split into four provinces in 1953. These were the St Mary's Province (New South Wales and Papua New Guinea); St Patrick's Province (Victoria and Tasmania); St Francis Xavier's Province (Queensland and the Northern Territory); and the Holy Spirit Province (South Australia and Western Australia).[223]

Today, Australia is part of the Christian Brothers Oceania Province, which includes New Zealand, Timor, Papua New Guinea and the Philippines.[224] In 2007, the newly established Oceania Province of the Christian Brothers established Edmund Rice Education Australia (EREA), a public juridic person which has full responsibility for the administration of over 50 schools.[225]

Marist Brothers

The Marist Brothers, an order within the Society of Mary, originated in France in 1817 and can trace its foundations to St Marcellin Champagnat.[226] The order was established to respond to the spiritual, educational and physical needs of the young and the poor.[227]

The Marist Brothers first arrived in Australia in 1872. They focused primarily on providing primary and secondary education.[228]

The order is governed by the brother superior general, who is assisted by a brother vicar general and general council, all of whom are based in Rome. The order is divided geographically into provinces and districts. Australia is a single province with the provincial as its head. The provincial is both the canonical and the civil leader of the congregation in Australia, and has direct authority over all Australian Marist Brothers.[229]

De La Salle Brothers

The Institute of the Brothers of the Christian Schools, more commonly known in Australia as the De La Salle Brothers, was founded by Jean-Baptiste De La Salle in France in 1679.[230] It was established particularly for the education of the children of the poor and marginalised, and to prepare these children for employment.[231]

In Australia, the De La Salle Brothers first established themselves in 1906 in Armidale, New South Wales, where they opened De La Salle College.[232] From the 1920s to the 1940s there was a rapid expansion of the De La Salle Brothers, with increased recruitment in Australia and an influx of brothers from Ireland. This was the period when most of the De La Salle schools in Australia, including boarding schools, were established.[233] There are 15 schools associated with De LaSalle Brothers in Australia.[234] Between 1961 and 2001, the De La Salle Brothers ran a residential institution called BoysTown at Beaudesert in Queensland, which accommodated boys aged between 12 and 16, many of whom were wards of the state, in seven residential cottages.[235] The order also operated a number of other children's homes in Queensland.[236] In 2002, BoysTown was registered as a company (BoysTown Ltd), but it continues to be owned and operated by trustees of the De La Salle Brothers.[237]

The international leadership of the De La Salle Brothers has its headquarters in Rome and consists of the superior general, the vicar general and seven general councillors.[238] The De La Salle Brothers in Australia are part of the District of Australia, New Zealand, Pakistan and Papua New Guinea. The district is led by a brother visitor (provincial) who is appointed by the superior general and his general council.[239]

St John of God Brothers

The Hospitaller Order of St John of God, more commonly known as the St John of God Brothers, was founded in the 16th century in Granada, Spain.[240] The order is devoted to the care of the sick and undertakes a wide range of health and social services activities.[241] The congregation has a worldwide membership of approximately 1,120.[242]

The St John of God Brothers first arrived in Australia in 1947 from Ireland, where they had been established since 1879. In 1948, they opened a residential special school for boys with learning difficulties located in Morriset, New South Wales, known as the Kendall Grange Special School. In 1980 it became a residential school for boys with behavioural problems. The order opened other facilities for children with mild to severe disabilities in Victoria and Christchurch, New Zealand, and also later focused on psychiatric care and child and family services.[243]

At the international level, the order is governed by a superior general with the assistance of general councillors, based in Rome.[244] There are 20 provinces. Australia is part of the Oceania Province, which also covers New Zealand and Papua New Guinea.[245]

In 2007, the St John of God Brothers in Australia merged with the Sisters of St John of God to form St John of God Australia Ltd, a public juridic person, which controls St John of God Health Care.[246]

Religious orders of sisters

In 2016, there were over 90 institutes of religious sisters in Australia,[247] two of which we describe below. *Case Study 26: The response of the Sisters of Mercy, the Catholic Diocese of Rockhampton and the Queensland Government to allegations of child sexual abuse at St Joseph's Orphanage, Neerkol* examined the responses of the Sisters of Mercy (Rockhampton) to allegations of sexual abuse at St Joseph's Orphanage, Rockhampton.

Sisters of Mercy

The Religious Sisters of Mercy, or Sisters of Mercy, were founded by Catherine McAuley in Dublin in 1831 and arrived in Australia in 1846 at the invitation of the Bishop of Perth.[248] In Australia, the order's main purpose has been the religious education of young people, particularly vulnerable populations.[249] The Sisters of Mercy focus on operating institutions, especially schools and welfare services, and health services.[250]

In organisational terms, the Sisters of Mercy are not a centralised congregation. Right from the beginning in Ireland, and also in Australia, they have operated as a large number of autonomous communities united by their adherence to the same discipline and rule.[251] In the early 20th century, the Sisters of Mercy in Australia were made up of 52 separate congregations. As of mid-2017, there were four: Brisbane, North Sydney, Parramatta, and the Institute of Mercy of Australia and Papua New Guinea.[252] Each congregation is autonomous in governance and comprises a number of communities.[253] Each Sisters of Mercy congregation is headed by a congregational superior, who is advised by a congregational council of four councillors.[254]

Sisters of St Joseph of the Sacred Heart

The Sisters of St Joseph of the Sacred Heart, also known as the Josephites or the Brown Josephites, were founded in Penola, South Australia, in 1866 by Mother Mary Mackillop, who was canonised as Australia's first Catholic saint in 2010, and Father Julian Tenison Woods.[255] The new congregation's rule, or constitution, was approved by the Holy See in 1874.[256]

From the time of the congregation's establishment, the Sisters of St Joseph have played an extensive role in Catholic school education. Dedicated to the education of the Catholic poor, including in rural and remote regions, they opened their first school in a disused stable in Penola in 1866,[257] subsequently expanding across Australia, establishing schools, convents and charitable institutions.[258]

The congregation is divided into local communities, each led by a local leader. These communities are grouped into regions, each headed by a regional leader. At the national level, the congregation is led by the congregational leader and at least three councillors.[259]

Public juridic persons

Canon law recognises legal or juridic entities called 'juridic' or 'juridical' persons (canons 96 to 123), meaning entities with the same legal rights and obligations under canon law as a physical person.[260] Religious institutes are public juridic persons, as are their provinces, and some monasteries.[261]

In response to ageing memberships and a declining number of new vocations, a number of Catholic religious orders in Australia have taken the step of creating public juridic persons to take over governance responsibility for the education, healthcare and welfare ministries which the orders began.[262]

National Committee for Professional Standards

As discussed further in Section 13.7, 'Development of national procedures in the Catholic Church', the National Committee for Professional Standards (NCPS) is a joint committee of the ACBC and the ACLRI/CRA. It was established in 1996 to oversee the development of principles, policies and procedures for the prevention and response to Catholic Church related sexual abuse claims, and other violations of professional standards. The NCPS has 10 members.[263]

Each state has its own state professional standards office with its own state director to advise and assist in matters concerning Catholic Church related abuse. The state bodies receive complaints and conduct investigations, interacting with the victim, the Catholic Church authority and the accused.[264]

Catholic Professional Standards Limited

In November 2016 a new professional body, Catholic Professional Standards Limited, was set up by the Catholic Church in Australia to set standards within the Catholic Church for child safety. During our *Institutional review of Catholic Church authorities* hearing, Mr Francis Sullivan, Chief Executive Officer of the Truth, Justice and Healing Council (the Council), said the 'independent body':

> will audit and report on compliance by bishops and religious leaders with the standards. It is a not-for-profit public company with its own governance structure and with a board made up of lay professionals.
>
> Professional standards will apply across all aspects of Catholic Church activities and will cover not only children but anyone who comes into contact with the Church. The company will audit the performance of bishops and religious leaders on how their services comply with the standards.
>
> The audit reports will be made public. In this way, the leaders will be held accountable. This is a dramatic change to the accountability of bishops and congregational leaders. The significance of this change will have ramifications for many years to come. [265]

The Hon. Neville Owen, chair of the Council, added that the body is not structurally independent of the Catholic Church, as it is still funded by the Catholic Church. It should therefore be considered as 'functionally structured so as to be independent'.[266]

Truth, Justice and Healing Council

The Truth, Justice and Healing Council was established by the ACBC and the CRA, after the announcement of the Royal Commission. It coordinates the Catholic Church's engagement with us and is likely to cease operation after the end of the Royal Commission.[267] The Council has 11 members, all with professional backgrounds in child sexual abuse and other related areas. The Council reports to a supervisory group consisting of the current presidents of the ACBC and CRA, six other archbishops and bishops, and the provincial of a male religious order.[268]

Catholic education

In 2016, one in five school students in Australia attended a Catholic school.[269] In the same year there were 764,000 students attending 1,731 Catholic schools with more than 91,000 staff.[270]

Catholic schools operate in all major cities in Australia, in addition to regional and remote areas.[271] In 2013, 90 per cent of all Catholic schools were co-educational. There were 54 Catholic boarding schools operating in Australia, offering full-time or part-time boarding facilities for students.[272]

In their history of Catholic schools in the Archdiocese of Sydney, Luttrell and Lourey describe the period between 1950 and 1975 as a time of increasing pressure on the Catholic education system. The Catholic school population more than doubled, while numbers within religious orders began to decline.[273] Catholic schools were in need of funding, teachers and more resources, to cope with large classes and increasing enrolments.[274] From the 1960s, governments were also requiring reforms and the extension of the school curriculum.[275]

From the late 1960s, Catholic schools began once again to receive government funding.[276] The number of members of religious institutes began to decline, and more lay teachers were employed.[277] For example, in 1969 the proportion of lay teachers in Catholic schools was 30 per cent in Western Australia, 44 per cent in New South Wales and 46 per cent in Victoria. By the early 1980s, lay teachers made up 90 per cent of teachers in Catholic schools, and this increased further in the 1990s.[278] By 2005, the number of religious institute teachers in New South Wales Catholic schools had reduced to 0.9 per cent.[279]

Also from the late 1960s, efforts were made to centralise the administration and management of Catholic schools. Catholic education offices (CEOs) formed to provide leadership and eventually to take responsibility for finances and building planning. Schools that joined under the direction of the CEO became 'systemic' schools, and those who did not were 'non-systemic'. Similar systems of management under the CEOs were formed in all 28 dioceses in Australia, although the level of control and influence of the CEOs over non-systemic schools may vary between dioceses.[280]

We discuss the Catholic education system and particular issues with respect to institutional responses to child sexual abuse in Catholic schools in Section 13.10, 'Catholic Church responses to child sexual abuse in schools'.

National Catholic Education Commission

The National Catholic Education Commission (NCEC) was established in 1974 by the ACBC through the Bishops' Commission for Catholic Education. The NCEC was created to liaise with the Commonwealth government and other federal education bodies to contribute to national schooling funding, policy and debate. The NCEC works closely with the state and territory Catholic education commissions to achieve consensus on contemporary Catholic education policy. Members of the NCEC include chief executives of the state education commissions, two bishops and a parent.[281]

State and territory Catholic education commissions

There are eight state and territory Catholic education commissions in Australia: one each for New South Wales, Victoria, Queensland, South Australia, Western Australia, Tasmania, the Northern Territory and the Australian Capital Territory.

In general, the purpose of the state and territory Catholic education commissions is to represent and advocate for Catholic schools at the state and territory level. The commissions provide statewide strategic planning and policy direction, manage state funding to Catholic schools and provide them with support for complying with legislative requirements. The operation and governance of schools remain with the local (diocesan) Catholic Church authorities.[282]

Catholic healthcare and welfare services

Catholic social service agencies have emerged over the past 150 years in Australia to respond to the needs of the Catholic community and the wider Australian community.

According to *The official directory of the Catholic Church in Australia 2017–2018*, as at 31 December 2016 there were 68 Catholic hospitals, 414 nursing and convalescent homes and 217 children's welfare facilities in Australia.[283]

Catholic Social Services Australia is the Catholic Church's peak national body for social services in Australia, representing a network of 52 member organisations. It is a commission of the ACBC, to which it reports through a nine-member board.[284]

Each diocese has a central social services agency called CatholicCare or Centacare.

Lay organisations

A number of 'associations of the faithful' have been formed by lay members of the Catholic Church 'to pursue specific charitable or spiritual purposes to meet particular needs of the Church in their time and also to cooperate in her essential and permanent mission'.[285] These organisations work in areas such as the family, the professions, education, culture, politics, the media, charitable work and human development, and many have branches worldwide.

In 2017, the Pontifical Council for the Laity listed 122 associations worldwide that have received the 'official recognition and explicit approval' of the Holy See.[286] Within Australia, branches of these associations include organisations such as the St Vincent de Paul society, the Catenian Association, and Community for a Better World. Associations that have been approved by the ACBC[287] can acquire public juridic person status. Although they are autonomous as to their governance, such lay associations remain subject to the 'vigilance' of the ACBC.[288]

Catholic Church Insurance Limited

Catholic Church Insurance Limited (CCI) is a registered insurance company that is the principal insurer of a range of Catholic Church organisations in Australia, including dioceses, religious institutes, schools, and hospitals.[289] It provides insurance cover for all the Australian dioceses, 70 per cent of Catholic religious orders, and approximately 80 per cent of all insurance services used by Catholic Church bodies overall. CCI was established in 1911 to provide insurance cover for Catholic Church property against fire and allied risks but has since expanded to provide a full range of insurance policies to Catholic Church bodies, including insurance cover for sexual abuse claims.[290]

CCI is an unlisted public company limited by shares, which are held by or on behalf of a range of Australian Catholic Church bodies. CCI operates on a not-for-profit basis, like a mutual society for the benefit of its policyholders. The policyholders pay premiums each year, commensurate with market terms, and surpluses are redistributed back to the policyholders by way of dividends, distributions and grants. CCI is registered as a charitable organisation for the advancement of religion and, in particular, the Catholic Church in Australia.[291]

CCI is represented on the National Committee for Professional Standards by its general manager or chief executive officer.[292]

Relationship between the Holy See and the Catholic Church in Australia

The apostolic nuncio to Australia, or papal nuncio, has a dual role. Based at the apostolic nunciature in Canberra, he is the pope's representative to the Catholic Church in Australia. He is also the diplomatic representative of the Holy See to the Commonwealth of Australia, with the rank of ambassador. Australia first established diplomatic relations with the Holy See in 1973.

The apostolic nuncio is not a member of the ACBC but is invited to address the ACBC at each of its plenary meetings.[293]

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293 B Lucas, P Slack & W d'Apice, *Church administration handbook*, St Pauls Publications, Sydney, 2008, p 359.

13.2 Canon law provisions relevant to responding to child sexual abuse

As noted above, the Catholic Church throughout the world is regulated by its own internal system of laws, called canon law. Canon law includes the Code of Canon Law and many other canonical documents issued by popes, Vatican congregations, bishops' conferences and diocesan bishops. Canon law covers all areas of Church life, including the selection and training of clergy, rights and obligations of members, selection of bishops, and punishment for committing canonical crimes.[1]

Within canon law there are canonical crimes, or 'delicts'. Some of these delicts relate to matters that are specific to the Catholic Church (for example, ordaining women as priests). Others relate to matters that are also crimes under civil law, such as murder, kidnapping, fraud, and the sexual abuse of children.

As outlined in Chapter 3, 'Child sexual abuse in the global Catholic Church: early history and previous enquiries', child sexual abuse is not a recent problem in the Catholic Church. Canon law documents are a primary source of information about child sexual abuse by Catholic clergy and members of religious institutes in earlier centuries as the Church has repeatedly tried to grapple with the problem.[2]

In this section, we set out the provisions in canon law relevant to responding to child sexual abuse as they changed during the period under consideration by the Royal Commission (that is, from the time of the promulgation of the 1917 Code of Canon Law to the present).

In sections 13.5 and 13.8, we discuss the effect of these provisions on the Catholic Church's response to child sexual abuse in Australia. In Section 13.11, we also consider whether and to what extent canon law has presented obstacles to responding adequately to child sexual abuse, including any obstacles to reporting to the appropriate civil authorities.

In Chapter 21, 'Improving responding and reporting by religious institutions', we discuss canon law in light of complaint handling and disciplinary procedures in the Catholic Church in Australia. We also make recommendations aimed at improving complaint handling by all religious institutions in Australia, including Catholic Church institutions.

13.2.1 The 1917 Code of Canon Law

The 1917 Code of Canon Law came into effect on 19 May 1918 and remained in force until 27 November 1983, when the 1983 Code of Canon Law was promulgated. The 1917 Code was published in Latin. There was no official translation into languages other than Latin.[3] In our consideration of the 1917 Code, we have relied on the 2001 English translation edited by Edward Peters.[4]

Delict of sexual abuse of a minor

In the 1917 Code, the sexual abuse of a minor under the age of 16 years is specifically mentioned under the title of 'delicts against life, liberty, property, good reputation, and good morals', as a delict that can be committed by clerics in major orders (bishops, priests and deacons).[5] Canon 2359 §2 provided that clerics who engaged in a delict against the sixth precept of the Decalogue (meaning offences against the sixth commandment, 'Thou shalt not commit adultery'), including with a minor under the age of 16, 'are suspended, declared infamous, and are deprived of any office, benefice, dignity, responsibility, if they have such, whatsoever, and in more serious cases, they are to be deposed'.[6]

Canon 2357 provided that lay people who were 'legitimately convicted' of a delict against the sixth commandment with a minor under the age of 16 were 'by that fact infamous, besides other penalties that the Ordinary decides should be inflicted'.[7] That is, a lay person convicted in a civil court on child sexual abuse-related charges was infamous and barred from 'ecclesiastical acts'.[8]

The 1917 Code of Canon Law did not state explicitly that the sexual abuse of a minor by a non-ordained member of a religious institute was a canonical delict.[9] However, since non-ordained members of religious institutes are lay people, canon 2357 was applicable to them.

Procedure for responding to sexual abuse of a minor by a cleric

The 1917 Code set out the process to be followed when information about an alleged canonical crime came to the bishop's attention. An ordinary (bishop) could impose a range of lesser penalties outlined in canon 2359 §2 without having to resort to a formal judicial process.[10] However, in order to impose a penalty of deposition (effectively, permanent removal from ministry[11]) upon a cleric in major orders for committing the canonical offence of sexual abuse of a minor, the 1917 Code required that a judicial trial be held in the diocesan tribunal.[12]

The penalty of degradation (dismissal from the clerical state) was not included as an applicable penalty in canon 2359 § 2.[13] Ordinarily this penalty could be imposed only if expressly stated as applicable for certain delicts. However, if a deposed cleric continued to commit the crime of sexual abuse after one year and continued to cause grave scandal, the penalty of degradation could be imposed after a judicial process (canon 2305).[14]

To impose such a penalty, the ordinary was to follow the procedure set out in canons 1939 to 1959. First, an investigation was to take place to enable him to determine whether or not there was sufficient evidence to proceed (canon 1939). The investigation was to be conducted by the ordinary or 'one of the synodal judges' (canon 1940) and to be conducted in secret, 'lest rumour of the delict get out or anyone's good name be called into question' (canon 1943). At the conclusion of the investigation, the ordinary or his delegate was to decide whether there was sufficient evidence to proceed (canon 1946 §2).[15]

If the ordinary or his delegate decided there was not sufficient evidence to proceed, he was to make a declaration that 'the denunciation lacks sufficient foundation' and the papers were to be placed in the secret archive of the diocesan curia.[16] If the ordinary or his delegate decided there were indications of a crime but not sufficient evidence to proceed, the papers were:

> to be preserved in the same archives and in the meantime the behaviour of the suspected one shall be observed and who, in the prudent judgement of the Ordinary, shall be opportunely heard about the matter and, if there is cause, warned according to the norm of Canon 2307.[17]

If the ordinary or his delegate decided there was 'at least probable and sufficient' evidence available, the accused person was to appear and the matter was to progress according to canons 1947 to 1959.[18] If the accused confessed the delict, the ordinary could use 'judicial correction' in place of a criminal trial (canon 1947). Judicial correction could only be used twice with the same 'defendant'. If the same defendant committed a delict after a second correction, they were to be subjected to a canonical penal trial (canon 1949). Judicial correction consisted of a 'salutary admonition' which 'suffices for the public repair of injured justice or scandal' (canon 1952), usually joined with 'certain opportune remedies', prescribed penances, or pious works. With more serious delicts, the ordinary could prohibit the defendant from participating in ministry if it was thought that it would cause offence to the faithful (canon 1956). If the judge in the penal trial felt that the accused would impose fear on witnesses or suborn them, or by some other manner impede the course of justice, he could order the defendant to temporarily leave a town or parish, or to go to a location where he could be kept under 'special vigilance' (canon 1957).[19]

Canon 2214 of the 1917 Code applied to the imposition of penalties in general. It stated that:

> §1. The Church has the native and proper right, independent of any human authority, of coercing delinquents subject to her by penalties, both spiritual and also temporal.[20]

The 1917 Code also provided the bishop with alternative means to remove a priest. Canon 2147 stated that an 'irremovable pastor' (that is, a parish priest who had tenure of office and could not be removed except for a canonical reason[21]) could be removed from his parish if his ministry had been 'rendered noxious or at least ineffective' for a variety of reasons, including the 'loss of good estimation among prudent and grave men' due to his lifestyle, or 'old crimes that have recently been detected', or 'probable occult crime imputed to the pastor that the Ordinary prudently foresees might arise later to the great offence of the faithful'.[22] In such cases, canon 2162 envisaged that a priest removed from his parish 'for the good of souls' might be transferred to another parish.[23]

Procedure for responding to child sexual abuse committed by non-ordained religious

Procedures for dismissal of religious for unspecified delicts were outlined in canons 647 to 672:

- Canon 647 provided that religious who had professed temporary vows could be dismissed for grave causes: 'A lack of religious spirit that is giving scandal to others is sufficient cause for dismissal if a repeated warning, together with a salutary penance, was imposed without effect'. A formal trial was not necessary, but a religious had the right of appeal to the Holy See against a decree of dismissal.[24]
- If the religious had professed perpetual vows, canon 649 stated that 'there must first precede three delicts with the double warning and the failure of emendation according to the norm of Canons 656–62'.[25] Canon 661 provided that in addition to canonical warnings, the religious superior was to add 'opportune exhortations and correction and prescribe penances, and, moreover, other penal remedies that he considers suitable for the emendation of the offender and the repair of scandal', and also envisaged the transfer of the offender to another religious community, 'where vigilance is easier and the occasion of delinquency more remote'.[26]
- If canonical warnings and emendations failed, canon 650 provided that the supreme moderator (superior general[27]) of the religious institute, with his council, was to vote on whether dismissal was in order. In religious institutes of pontifical right it was necessary for a vote for dismissal to be confirmed by the Holy See, and in religious institutes of diocesan right the matter was to be referred to the local ordinary (the diocesan bishop).[28]
- Canon 653 provided that in cases of 'grave exterior scandal and of imminent harm of the worst sort to the community', a member of a religious institute who had professed permanent vows could be 'returned to the world immediately' by the major superior with the consent of his council. If there was danger in delay, a local superior could make the same decision with the consent of his council and the local ordinary.[29] Canon 668 contained similar provisions for the dismissal of members of 'clerical exempt religious institutes' who had professed perpetual vows.[30]

13.2.2 Instruments of the 1917 Code of Canon Law

Subsequent to the promulgation of the 1917 Code of Canon Law, other canonical instruments, including decrees and instructions relevant to child sexual abuse, were issued.

The instruction *Crimen sollicitationis*, 1922

In 1922, during the pontificate of Pope Pius XI, the Holy Office (now the Congregation for the Doctrine of the Faith, or CDF) issued an instruction that came to be known as *Crimen sollicitationis* ('the crime of solicitation'). This instruction established a set of special procedures to be followed by local ordinaries and their judicial tribunals in the investigation and prosecution of certain specified delicts (crimes) committed by diocesan clergy. *Crimen sollicitationis* dealt mostly with the delict of solicitation in confession; however, it also covered 'any obscene act, gravely sinful, perpetrated or attempted by a cleric in any way whatsoever with a person of his own sex', and 'any obscene act, gravely sinful, perpetrated or attempted by a cleric in any way with pre-adolescent children (*impuberes*) of either sex or with brute animals (*bestialitas*)'.[31] Under *Crimen sollicitationis*, such cases ultimately fell within the jurisdiction of the Holy Office.[32] In 1962, during the pontificate of Pope John XXIII, the Holy Office reissued a slightly amended version of *Crimen sollicitationis,* which expanded its coverage to include priests who were members of religious orders as well as diocesan clergy.[33]

In both 1922 and 1962, *Crimen sollicitationis* was not promulgated in the usual way in the official acts of the Holy See, the *Acta apostolicae sedis*. According to the CDF:

> The 1922 Instruction was given as needed to bishops who had to deal with particular cases concerning solicitation, clerical homosexuality, sexual abuse of children and bestiality … Copies of the 1962 reprint were meant to be given to the bishops gathering for the Second Vatican Council (1962–1965). A few copies of this reprint were handed out to bishops who, in the meantime, needed to process cases reserved to the Holy Office but, most of the copies were never distributed.[34]

There was a note on the document itself, stating that it was 'to be kept carefully in the secret archive of the curia for internal use. Not to be published or augmented with commentaries'.[35] The Holy See first publicly acknowledged the existence of *Crimen sollicitationis* in 2001, and the document was first published on the Vatican website in 2003, by which time it was no longer in force.[36]

Article 42 of *Crimen sollicitationis* directed that if evidence of a crime was considered 'grave enough', but 'not yet sufficient to make a formal complaint', the bishop was to 'admonish' priests accused of grave delicts, including child sexual abuse, 'paternally' and 'gravely' with a confidential first or second warning, and to threaten him with a trial if a new accusation were

brought. Evidence was considered insufficient to make a formal complaint if there were only one or two denunciations or insufficient testimony from witnesses concerning the life, conduct and public reputation of the accused and the accuser.[37]

Article 63 prevented the bishop from imposing the penalty of dismissal from the clerical state for the delicts of solicitation in confession, homosexuality, bestiality or child sexual abuse, unless the offender showed 'no hope, humanly speaking, or almost no hope, of his amendment':

> Resort is to be had to the extreme penalty of reduction to the lay state – which for accused religious can be commuted to reduction to the status of a lay brother – only when, all things considered, it appears evident that the Defendant, in the depths of his malice, has, in his abuse of the sacred ministry, with grave scandal to the faithful and harm to souls, attained such a degree of temerity and habitude, that there seems to be no hope, humanly speaking, or almost no hope, of his amendment.[38]

As an alternative to seeking the dismissal of the priest, Article 64 of *Crimen sollicitationis* provided for a range of penances including prayers, spiritual exercises, fasting, or going on pilgrimage. It also contemplated that 'those in danger of relapsing, and even more, recidivists' were to be the subject of 'special supervision'.[39]

Crimen sollicitationis placed the investigation and trial of cases of solicitation, homosexual acts, bestiality, and sexual abuse of pre-adolescent children under the 'secret of the Holy Office'.[40] The secret of the Holy Office bound not only the bishop but those involved in the investigation and trial, who were sworn to observe secrecy, or be automatically excommunicated from the Church, a penalty that could only be lifted by the pope. The accuser or complainants and witnesses were also sworn to secrecy, although 'these persons … are subject to no censure, unless they were expressly warned of this in the proceedings of accusation, deposition or questioning'.[41] Mr Kieran Tapsell, a civil lawyer who has published in the area of canon law, told us that 'the secret of the Holy Office was a permanent silence that bound not only the bishop and those involved in the canonical inquiries and trial, but victims and witnesses who were sworn to observe that secrecy'. He also said that the secret of the Holy Office only applied from the time that the preliminary inquiry started.[42]

In his report on canon law submitted to us by the Truth, Justice and Healing Council (the Council) in relation to *Case Study 50: Institutional review of Catholic Church authorities (Institutional review of Catholic Church authorities)*, canon lawyer Dr Rodger Austin told us that, 'At any time before, during or after the allegation was brought before the bishop and a canonical process was conducted, a victim had the right to take the matter to the secular courts'.[43]

Crimen sollicitationis was not widely known

Crimen sollicitationis was addressed to 'All patriarchs, archbishops, bishops and other local ordinaries', including those of the Eastern-rite churches.[44] However, the secretive manner in which *Crimen sollicitationis* was promulgated in both 1922 and 1962 has led some to conclude that it was not widely known, even by those for whose use it was intended.[45]

During *Case Study 31: The evidence of retired Bishop Geoffrey Robinson regarding the history and development of the Catholic Church's response to child sexual abuse prior to the introduction of Towards Healing*, Bishop Geoffrey Robinson, retired Auxiliary Bishop of the Archdiocese of Sydney, told us he did not know about a papal instruction that was issued twice – in 1922 and 1962. As to why that was the case, Bishop Robinson said:

> the only answer I could give you is secrecy. The Vatican can sometimes be so secret that, quite literally, quoting the gospels, the left hand does not know what the right hand is doing, and that they can be so secret that even things like this remain secret, and you don't know about them.[46]

American Dominican priest, canon lawyer and survivor advocate, Dr Thomas P Doyle OP, told us that:

> I have reviewed hundreds of cases from the US, Canada, Ireland, the UK and several other countries in Europe and Latin America. I recall seeing documentary evidence that either version of *Crimen* was used in approximately 10 cases.[47]

In his report on canon law submitted to us by the Truth, Justice and Healing Council (the Council) in relation to the *Institutional review of Catholic Church authorities* public hearing, canon lawyer Dr Rodger Austin told us that if a bishop in Australia were unaware of *Crimen sollicitationis,* then 'the norms of canon law could be followed and the complaint investigated with a view to determining the truth of what was being alleged to have occurred and then taking what he considered to be the appropriate action'.[48]

Debate about how long *Crimen sollicitationis* remained in force

During the *Institutional review of Catholic Church authorities* hearing, we received conflicting evidence about whether *Crimen sollicitationis* remained in force until 1983 or 2001.[49]

While we cannot resolve that conflict, it is clear that there was confusion about whether it applied between 1983 and 2001. In *Case Study 14: The response of the Catholic Diocese of Wollongong to allegations of child sexual abuse, and related criminal proceedings, against John Gerard Nestor, a priest of the Diocese*, the Archbishop of Adelaide and former Bishop of Wollongong, Archbishop Philip Wilson, told us that there was 'great confusion' in the Church in the 1980s and 1990s about what were the proper procedures to follow.[50]

Administrative dismissal, 1971–80

In 1971, the CDF issued an instruction allowing diocesan bishops to petition the CDF for an administrative decree of laicisation of a priest on the basis of his living a 'depraved life'.[51] Laicisation is the removal of a priest from the clerical state, so-called because the cleric is reduced to the lay state (or dismissed from the clerical state).[52]

In 1980, Pope John Paul II issued new rules abolishing the right of diocesan bishops to apply for 'administrative laicisation' of priests. From then, a priest could only be laicised voluntarily, that is, if he petitioned to be laicised. If the bishop wanted to permanently remove a priest in relation to child sexual abuse, he had to resort to the judicial procedures laid down in the 1917 Code and *Crimen sollicitationis*.[53]

Secreta continere, 1974

In 1974, with the approval of Pope Paul VI, the Vatican Secretariat of State issued a document known as *Secreta continere*.[54] *Secreta continere* was a legislative document with the force of law.[55] Unlike *Crimen sollicitationis*, it was published in the official acts of the Holy See, the *Acta apostolicae sedis,* and it remains in force in 2017.[56] *Secreta continere* changed the name of the 'secret of the Holy Office' to the 'pontifical secret'. Mr Tapsell told us that it expanded the range of delicts covered by the pontifical secret to include 'delicts against the faith and against morals, and regarding delicts perpetrated against the sacrament of penance'.[57] Dr Austin gave evidence during the *Institutional review of Catholic Church authorities* hearing that *Secreta continere* only applies to canonical crimes that are subject to the jurisdiction of the CDF, one of which is child sexual abuse.[58]

Mr Tapsell also told us that, as with the secret of the Holy Office, the pontifical secret is a permanent silence.[59] Whereas *Crimen sollicitationis* provided for automatic excommunication for breach of the secret of the Holy Office, *Secreta continere* provides for penalties that fit the crime, but excommunication is not excluded.[60]

The introductory section of *Secreta continere* states that:

> some things are entrusted to those who are assigned to the service of the People of God, which must be surrounded with secrecy, those things, namely, which, if revealed at the wrong time or in the wrong way, are prejudicial to the building up of the Church or destroy the public good, or, finally, offend the inviolable rights of individuals and communities.[61]

The introductory section also states that when or why the pontifical secret should be observed is not a matter for the personal consciences of those who are bound by it:

> Since we are dealing with public matters which affect the good of the total community, it is evident that when, or for what reason, or for what gravity secrecy of this kind must be imposed, is to be determined, not by any private individual according to the dictates of his own conscience, but for him who according to the law has the care of the community.[62]

As outlined in *Secreta continere*, those bound by the pontifical secret include cardinals, bishops, major superiors of religious orders ('prelate superiors'), consultors, experts and ministers of lower rank, legates of the Holy See and their ministers, all those on whom the observance of papal secrecy is imposed, and all those who have culpably or inculpably received information of documents or matters that are subject to pontifical secrecy.[63]

The pontifical secret covers all allegations of child sexual abuse by clerics and all information obtained by the Church, from the moment that what is referred to as the 'extrajudicial denunciation' is received (that is, from the time when a complaint is received by the accused's hierarchical superior).[64] It permanently prohibits the publication or communication of any such allegations and information even after the trial has ended, including the judgment of the canonical court. The only exception given is that the accused is allowed to know the details of the denunciation and the name of his accuser.[65]

13.2.3 The 1983 Code of Canon Law

Work on revising the 1917 Code was formally inaugurated by Pope Paul VI on 20 November 1965 and the 1983 Code of Canon Law was promulgated by Pope John Paul II on 25 January 1983 and came into force on 27 November 1983.[66] The 1983 Code repealed the 1917 Code. However, *Secreta continere* remained in force.[67]

As with the 1917 Code, the official language of the 1983 Code was Latin. However, translations into other languages, including English, were permitted. We note that the translation of the 1983 Code approved for use in Australia by the Australian Catholic Bishops Conference (ACBC) is the *Code of Canon Law new revised English translation*.[68] This translation differs from the English translation of the 1983 Code published on the Vatican website. For ease of reference, we refer to the version published on the Vatican website.

Delict of sexual abuse of a minor

In the 1983 Code, sexual abuse of a minor appears under the title of 'Offences against special obligations', suggesting that the offence is conceptualised as an offence against the cleric's vow of celibacy and against the sixth commandment ('Thou shalt not commit adultery'). Canon 1395 provides that:

> §1. A cleric who lives in concubinage, other than in the case mentioned in can. 1394, and a cleric who persists with scandal in another external sin against the sixth commandment of the Decalogue is to be punished by a suspension. If he persists in the delict after a warning, other penalties can gradually be added, including dismissal from the clerical state.

> §2. A cleric who in another way has committed an offense against the sixth commandment of the Decalogue, if the delict was committed by force or threats or publicly or with a minor below the age of sixteen years, is to be punished with just penalties, not excluding dismissal from the clerical state if the case so warrants.[69]

In relation to sexual abuse of a minor by members of religious institutes, canon 695 §1 of the 1983 Code states that:

> A member must be dismissed for the delicts mentioned in cann 1397, 1398 and 1395, unless in the delicts mentioned in can. 1395, §2, the superior decides that dismissal is not completely necessary, and that correction of the member, restitution of justice, and reparation of scandal can be resolved sufficiently in another way.[70]

That is, in relation to the delicts mentioned in canon 1395 §2, including sexual abuse of a minor, a religious superior has the discretion not to dismiss but to attempt to restore justice and repair scandal in some other way.

Procedure for responding to delicts committed by clerics

The 1983 Code incorporates the pastoral and therapeutic approaches to delicts by clergy which had been introduced in the 1917 Code and *Crimen sollicitationis*. Canon 1341 states that:

> An ordinary is to take care to initiate a judicial or administrative process to impose or declare penalties only after he has ascertained that fraternal correction or rebuke or other means of pastoral solicitude cannot sufficiently repair the scandal, restore justice, reform the offender.[71]

Whereas under *Crimen sollicitationis* there had been no time limitation (known in canon law as 'prescription') on commencing a judicial or administrative process in relation to child sexual abuse, canon 1362 §2 of the 1983 Code imposes a five-year limitation period from the time of the alleged incident for offences mentioned in canon 1395, including offences against the sixth commandment with a minor under the age of 16 years.[72]

Canon 1321 also imposes an 'imputability' test, similar to a 'diminished responsibility' test, which states that: 'No one can be punished unless the external violation of a law or precept, committed by the person, is gravely imputable by reason of malice or negligence'.[73]

Under canon 1717 of the 1983 Code, whenever an ordinary has 'knowledge, which at least seems true, of a delict', he is required to start a 'preliminary investigation'.[74] Before 2001, when new procedures issued by the CDF for responding to allegations of child sexual abuse by clergy came into force, the bishop was to determine whether the cleric was to be subjected to a penal trial or dealt with in some other way.[75]

Canons 1717 to 1719 set out the process for the preliminary investigation:[76]

- Canon 1717 provides that 'whenever an ordinary has knowledge of a delict, which at least seems to true, he is carefully to inquire personally or through another suitable person about the facts, circumstances, and imputability, unless such an inquiry seems entirely superfluous.'[77] This part of the process is referred to as the preliminary investigation.[78]
- Canon 1718 provides that when sufficient evidence has been collected, the ordinary is to decide whether a penal process is to be initiated.[79] The penalty of dismissal from the clergy can only be imposed by way of a judicial trial, but other penalties can be imposed by an extra-judicial decree, that is, without going to a formal trial.[80]
- Canon 1719 provides that the acts of the investigation, including the decrees of the ordinary at the conclusion of the investigation, and everything that preceded the investigation, are to be kept in the secret archive of the curia if they are not needed for the penal process.[81]

Dr Doyle has written that the provisions laid out in canon 1717 are mandatory – in other words, the bishop is obliged to investigate any report of child sexual abuse by a cleric.[82]

Following the investigation, if the bishop is satisfied that the abuse occurred, he then has a choice with how to proceed – whether by pastoral admonition, an administrative disciplinary process, or a full canonical judicial trial.[83]

After the preliminary investigation is complete, canons 1720 to 1728 set out the procedure for continuing the process[84]:

- If the ordinary decides on a penal process, he is to issue a decree stating the reasons in law and in fact (canon 1720).[85]
- At any stage of the trial process, the ordinary has the authority to impose what is commonly referred to as 'administrative leave' on a cleric accused of a canonical delict, by suspending the cleric's faculties or forbidding residence in a certain place or territory, in order to to 'prevent scandals, to protect the freedom of witnesses, and to guard the course of justice' (canon 1722).[86]
- In arguing the case, the accused person or their advocate always has the right to speak last (canon 1725).[87]
- If it becomes evident at any stage of the penal trial that the accused has not committed the offence, the judge must acquit the accused and declare this in a judgment (canon 1726).[88]

- The accused can appeal, and the promoter of justice (who presents the case against the accused) can appeal if he feels the reparation of scandal or the restitution of justice has not been sufficiently provided for (canon 1727).[89]
- Unless the nature of the case requires otherwise, in a penal trial the judge is to observe the canons concerning judicial procedures in general, and the special norms about cases concerning the public good. The accused is not bound to admit the offence, nor may an oath be demanded of the accused (canon 1728).[90]

Canons 1454 and 1455 of the 1983 Code provide that all those who constitute a tribunal or assist it 'must take an oath to carry out their function correctly and faithfully'[91], and that:

> Judges and tribunal personnel are always bound to observe secrecy of office in a penal trial, as well as in a contentious trial if the revelation of some procedural act could bring disadvantage to the parties ...
>
> Whenever the nature of the case or the proofs is such that disclosure will endanger the reputation of others, provide opportunity for discord, or give rise to scandal or some other disadvantage, the judge can bind the witnesses, the experts, the parties, and their advocates or procurators by an oath to observe secrecy.[92]

Penalties

The 1983 Code provides mechanisms for voluntary application for laicisation or involuntary dismissal from priesthood of priests and religious who have been accused of child sexual abuse.

As indicated above, canon 1395 provides that a cleric who continues in some other external sin against the sixth commandment that causes scandal is to be punished with suspension. Other penalties can be progressively added to this if, after a warning, he persists in the offence, until eventually he can be dismissed from the clerical state. A cleric who commits a delict against the sixth commandment with a minor under the age of 16 years is to be punished with just penalties, not excluding dismissal from the clerical state if warranted.[93]

A bishop can withdraw the faculties required for priestly ministry. A 'faculty' is the ecclesiastical power or authorisation necessary for lawfully performing an act of ministry or administration in the name of the Catholic Church. To exercise public ministry, a priest must have the authorisation of 'faculties'. Faculties are required for a priest to say mass, preach, hear confessions and celebrate marriages, as well as for other acts of ministry.[94] Some faculties are granted at the point of ordination, whereas other faculties may be given by an appropriate Catholic Church official, such as the local bishop to a priest in his diocese.[95] A bishop can revoke the faculties that he, or one of his predecessors, has granted to a cleric or ordained religious.[96] The withdrawal of faculties is considered to be an administrative act.[97]

In his evidence during *Case Study 16: The Melbourne Response (Melbourne Response)*, Archbishop Denis Hart, Archbishop of Melbourne and President of the ACBC, said that if a priest's faculties are withdrawn, the only thing the priest can do is to absolve and anoint someone in danger of death. Archbishop Hart agreed with Senior Counsel Assisting's explanation that withdrawing faculties equated to cancelling a licence or practising certificate, or imposing a prohibition.[98] We were told that 'A priest who has had some or all of his faculties revoked nevertheless remains a member of the "clerical state"'.[99] It is unclear whether a bishop has the authority to permanently withdraw a priest's faculties without recourse to the Holy See. This issue is considered further in Section 13.11.6, 'Canon law'.

Canons 290 to 293 of the 1983 Code provide that, once validly ordained, a cleric's ordination never becomes invalid (canon 290).[100] However, a cleric can be dismissed, or permanently removed from the 'clerical state', meaning that he is permanently prohibited from exercising all forms of ministry and loses all rights and faculties associated with the clerical state. He may not use the title of a priest, wear the attire of a priest or perform any ministry reserved to a priest.[101] The only exception to this is the ability to hear the confession of a person who is in danger of death (canon 976).[102]

Dismissal can be imposed after the conviction of a canonical crime by an ecclesiastical tribunal. It can be imposed by the Holy See without a trial. Canon 290 states that a cleric loses the clerical state:

> '1/ by a judicial sentence or administrative decree, which declares the invalidity of sacred ordination
>
> 2/ by the penalty of dismissal lawfully imposed
>
> 3/ by rescript of the Apostolic See, which grants it to deacons only for grave causes and to presbyters [priests] only for most grave causes'.[103]

The Council told us in its 2013 submission to our *Issues paper 2: Towards Healing* that the sexual abuse of a minor by a priest is an offence sufficiently serious to warrant dismissal from the clerical state.[104] In an address to the United States cardinals on 23 April 2002, Pope John Paul II stated: 'People need to know that there is no place in the priesthood and religious life for those who would harm the young'.[105]

A priest may also be laicised, or removed from the clerical state, voluntarily, by way of application by the priest to the pope for dispensation from the obligations connected to the priesthood.[106] During the *Melbourne Response* public hearing, Archbishop Hart agreed with Senior Counsel Assisting's formulation that 'laicisation equates to the stripping of the person's qualifications as though they never had it'.[107] Generally, dismissal and laicisation of clergy is

handled by the Congregation for the Clergy in Rome. From the time when the 1983 Code was promulgated until 2001, the Congregation for the Clergy exercised jurisdiction over dismissal and laicisation in child sexual abuse cases. In 2001, when new procedures for handling cases of child sexual abuse by clergy were promulgated, jurisdiction passed to the CDF.[108]

Despite the existence of these canon law provisions, the evidence we received suggests that Catholic Church authorities in Australia made limited use of them before the introduction of the national Towards Healing protocol for responding to child sexual abuse in 1997. The extent to which this approach on the part of Catholic Church authorities in Australia changed during the 1990s and 2000s is discussed further in Section 13.8.

Procedure for the removal from office or transfer of parish priests

Under canon law, in certain circumstances bishops can act to remove a priest from office, although they retain their status as a priest. Removal from office is different from removing faculties. It is an administrative process, not a penal process, and can be done without the preliminary investigation provided for in canons 1717 to 1719.

Canons 1740-1747 of the 1983 Code provide that when 'the ministry of any pastor becomes harmful or at least ineffective for any cause', the diocesan bishop can 'remove him from the parish'.[109] For priests serving in offices other than pastor of a parish, general canonical provisions for transfer or removal from ecclesiastical office apply (canons 190 to 195). These powers can be invoked without a finding of fault or culpability on the part of the priest.[110] Canon 523 states that the office of pastor is freely conferred by a diocesan bishop.[111]

Canon 1741 provides that causes for which a pastor can legitimately be removed from his parish include 'a manner of acting which brings grave detriment or disturbance to ecclesiastical communion', 'ineptitude or a permanent infirmity of mind or body which renders him unable to fulfil his functions usefully', 'loss of good reputation', 'grave neglect or violation of parish duties', and 'poor administration of temporal affairs with grave damage to the Church'.[112] Although removal from office can be done without a preliminary investigation, canon 1742 provides that the bishop is required to 'discuss the matter with two pastors'. If the bishop then judges that removal must take place, he 'paternally is to persuade the pastor to resign within fifteen days, after having explained, for validity, the cause and arguments for the removal'.[113] Canon 1746 states that, after the pastor has been removed, 'the bishop is to make provision either for an assignment to some other office, if he is suitable for this, or for a pension as the case warrants and circumstances permit'.[114]

Procedure for responding to child sexual abuse committed by non-ordained religious

Canon law contains provisions for the voluntary application of religious for release from their vows or their involuntary dismissal from their religious institute.

The 1983 Code contains a series of canons (canons 694 to 704) relating to dismissal of members of institutes of consecrated life and societies of apostolic life (religious institutes).[115]

The procedure for the dismissal of a member of a religious institute for the sexual abuse of a minor is outlined in canon 695 §2, which states that:

> In these cases, after the proofs regarding the facts and imputability have been collected, the major superior is to make known the accusation and proofs to the member to be dismissed, giving the member the opportunity for self-defense. All the acts, signed by the major superior and a notary, together with the responses of the member, are to be transmitted to the supreme moderator.[116]

In proceeding against an accused religious, canon 699 §1 provides that the supreme moderator of the religious institute and his council are to weigh the proofs and the arguments for the defence in a collegial fashion. Canon 700 provides that any decree of dismissal must be confirmed by the Holy See or, in the case of an institute of diocesan right, by the local bishop.[117]

Canon 703 provides that:

> In the case of grave external scandal or of most grave imminent harm to the institute, a member can be expelled immediately from a religious house by the major superior or, if there is danger in delay, by the local superior with the consent of the council. If it is necessary, the major superior is to take care to begin a process of dismissal according to the norm of law or is to refer the matter to the Apostolic See.[118]

Canon 1362 §1 2°of the 1983 Code provides that for non-ordained members of religious congregations the offence of sexual abuse of a minor is extinguished after five years.[119]

A member of a religious institute may also voluntarily apply for a dispensation from vows, which has a similar effect to laicisation for a cleric or ordained religious. During the public hearing for *Case Study 11: Congregation of Christian Brothers in Western Australia response to child sexual abuse at Castledare Junior Orphanage, St Vincent's Orphanage Clontarf, St Mary's Agricultural School Tardun and Bindoon Farm School*, Brother Anthony Shanahan, the former province leader of the Christian Brothers Province of Western Australia, described the process for dispensation from vows in the Christian Brothers:

> when someone was applying for dispensation, they would write a letter addressed to the superior general, requesting dispensation and setting out some reasons for it and … outlining how they had reflected adequately on this move and had taken counsel, and so on. The letter would then be considered by the provincial council of that particular brother's province who would then be asked to express their own opinion about his application. So what was then forwarded to the superior general and his council in Ireland … would be the man's letter of application as well as the vote and opinion of the provincial council. So the provincial council took a formal vote as to whether or not they supported his application for dispensation.[120]

The Christian Brothers told us about the order's use of canonical measures in relation to child sexual abuse. They said that the congregation leader has authority, acting on the consultative vote of his leadership team, to dismiss a member of the congregation for clearly failing to live faithfully as a Christian Brother.[121] In these cases, all documentation must be forwarded to the congregation leader, who would consider the matter with his council and, if the case is judged to be true, issue a decree of dismissal. The decree of dismissal has no effect unless it is confirmed by the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life in the Vatican.[122]

13.2.4 Instruments of the 1983 Code of Canon Law

Subsequent to the promulgation of the 1983 Code, other canonical instruments, including decrees and instructions relevant to child sexual abuse, were issued.

Indult to the United States bishops, 1994

In 1994, in an indult (a licence granting an exception) granted by the Holy See to the bishops of the United States, the upper age limit for the canonical crime of sexual abuse of a minor was raised to 18.[123] At the same time, the limitation period for starting a canonical process was extended to 10 years from the 18th birthday of the victim. However this was only for the United States.[124] This measure was extended to the Catholic Church in Ireland in 1996, and was not made available to the Church in the rest of the world until 2001.[125]

Motu proprio *Sacramentorum sanctitatis tutela*, 2001

On 30 April 2001, Pope John Paul II issued the motu proprio, *Sacramentorum sanctitatis tutela* ('Safeguarding the sanctity of the sacraments').[126] 'Motu proprio' is the term for a personal legislative decree issued by the pope. *Sacramentorum sanctitatis tutela* outlined new norms or procedures for dealing with more serious canonical offences ('*graviora delicta*'), including child sexual abuse by clerics.[127] Although these procedures have since been amended, they are basically the same procedures that are currently in force.

Sacramentorum sanctitatis tutela gave jurisdiction over cases involving sexual abuse committed by a cleric with a minor under the age of 18 years to the CDF and set out how it was to judge the case.[128] The 2001 norms provided that whenever a local ordinary receives a report of child sexual abuse which has at least a semblance of truth, they are required to conduct a preliminary investigation in accordance with canon 1717 of the 1983 Code of Canon Law.[129] Once the preliminary investigation has been completed, the ordinary is to forward the matter to the CDF in the Vatican.[130] Article 13 states that unless it 'calls the case to itself due to particular circumstances', the CDF 'will direct the Ordinary or Hierarch [how] to proceed further'.[131]

Article 17 of *Sacramentorum sanctitatis tutela* required the more grave delicts reserved to the CDF, including sexual abuse of a minor under the age of 18 years, to be tried in a judicial process.[132]

Article 4 §2 of the norms provided that a cleric who committed such a canonical offence was 'to be punished according to the gravity of his crime, not excluding dismissal or deposition'.[133] As noted above, the limitation period for starting a canonical procedure relating to child sexual abuse was extended to 10 years from the 18th birthday of the complainant.

Article 25 confirmed that the 'pontifical secret' continued to apply to all such cases in accordance with *Secreta continere*.[134]

Sacramentorum sanctitatis tutela only applied to ordained clergy and did not apply to religious brothers and sisters. Non-ordained religious continued to be covered by the procedures set out for members of religious institutes in the 1983 Code.

Special dispensation for the Catholic Church in the United States, 2002

In 2002, following the publication of a series of articles in *The Boston Globe* newspaper about clerical sexual abuse of children in the Archdiocese of Boston that made headlines around the world, the United States Bishops Conference met in Dallas. Subsequently, the United States Bishops petitioned the Holy See for a change to canon law that would allow reporting to the civil authorities of all allegations of child sexual abuse by clergy and religious. This request was refused by the Holy See. Instead, the Holy See approved a limited dispensation from the pontifical secret to allow reporting to the civil authorities, but only in the United States, and then only in those states which had mandatory reporting laws.[135]

Derogation from 10-year prescription period, 2002

Also in 2002, the pope granted the CDF the authority to waive the prescription period of 10 years from the victim's 18th birthday, at the request of the local bishop, 'on a case by case basis after having considered the request of the Bishop and the reasons for such a request'.[136]

Restoration of administrative action to remove a priest, 2003

In 2003, the pope granted the CDF the faculty to permit dismissal of clergy by the simpler method of an administrative decree, rather than through a judicial trial.[137] Under these procedures, the bishop could ask the CDF to dismiss a priest on the basis of the material he had gathered in the preliminary investigation and sent to the CDF in accordance with the norms of *Sacramentorum sanctitatis tutela*.

The procedure and praxis of the Congregation for the Doctrine of the Faith regarding *graviora delicta*

In 2006, the Promoter of Justice for the CDF, Monsignor Charles Scicluna, delivered a paper titled 'The procedure and praxis of the Congregation for the Doctrine of the Faith regarding *graviora delicta*' to the Fortieth Annual Conference of the Canon Law Society of Australia and New Zealand. The document has also been published on the resources page of the Vatican website.[138] This document provides clarification about what the CDF considers in deciding how to proceed when a local ordinary refers a *graviora delicta* case to the CDF in accordance with the norms of *Sacramentorum sanctitatis tutela*. According to Monsignor Scicluna, assuming that the priest has not requested to be laicised, the CDF will choose between four possible approaches:[139]

1. The CDF may decide that the facts of the case do not warrant any further penal action and may propose or confirm a non-penal administrative action. It is not possible to appeal to the Apostolic Signatura against such provisions, but only to the cardinal and bishop members of the CDF when they meet in ordinary session (a meeting known as the *Feria quarta*).
2. The CDF may decide to present the case directly to the pope for an ex-officio dismissal of the accused cleric from the priesthood. This approach is 'reserved for particularly grave cases in which the guilt of the cleric is beyond doubt and well documented'. In such cases, the CDF requests the ordinary to first ask the accused cleric 'if he would prefer to seek himself a dispensation from his priestly obligations'.
3. The CDF may decide to authorise a penal administrative procedure according to canon 1720. If the local ordinary believes that the case merits dismissal from the clerical state, he must refer his opinion to the CDF, which will, in turn, decide whether to impose the penalty.
4. The CDF may decide to authorise the ordinary to conduct a penal judicial process in the diocese. The 'acts of the case' must be transmitted to the CDF at the end of the trial. The accused may appeal the decision to the CDF, which has the authority to overturn any decision of the local tribunal.

A separate set of options is outlined for cases involving religious order clerics.[140]

A guide to understanding basic CDF procedures concerning child sexual abuse allegations, 2010

In April 2010, the CDF released a document entitled *A guide to understanding basic CDF procedures concerning child sexual abuse allegations,* which it described as 'an introductory guide which may be helpful to lay persons and non-canonists'. The document stated that 'Civil law concerning reporting of crimes to the appropriate authorities should always be followed'.[141]

Mr Tapsell told us that this was the first time the Holy See had issued a statement instructing bishops worldwide that they should report clergy and religious subject to child sexual abuse allegations to the civil authorities although, as with the United States in 2002, this dispensation is limited to those jurisdictions which have reporting laws.[142] The document does not purport to have any legislative force. Rather, it appears to be an interpretive guideline document. However, these guidelines represented a dispensation from observing the pontifical secret in such cases.

In July 2010, the Vatican media spokesman, Father Federico Lombardi SJ, offered a clarification about complying with civil law reporting obligations, which was posted on the 'resources' page of the Vatican website:

> This means that in the practice suggested by the Congregation for the Doctrine of the Faith it is necessary to comply with the requirements of law in the various countries, and to do so in good time, not during or subsequent to the canonical trial.[143]

Revision of the substantive norms of *Sacramentorum sanctitatis tutela*, 21 May 2010

On 21 May 2010, Pope Benedict XVI revised the norms attached to *Sacramentorum sanctitatis tutela* (2001), and extended coverage to include cases involving the sexual abuse of adults who 'habitually lacked the use of reason', and the acquisition, possession, or distribution by a cleric of pornographic images of minors under the age of 14.[144] Article 30 extended the coverage of the pontifical secret to cover cases of this nature.[145] The limitation period for starting canonical actions in cases of child sexual abuse was extended to 20 years after the victim's 18th birthday.[146] Article 7 states that the CDF has the right to 'derogate from prescription in individual cases' (that is, to waive the time limitation altogether on a case by case basis).[147] The words in *A guide to understanding basic CDF procedures concerning child sexual abuse allegations* about reporting to the civil authorities were not included in the revision.

Pope Francis's motu proprio on disciplining of bishops, 2016

On 4 June 2016, Pope Francis issued the motu proprio, *As a loving mother*, in which he noted that canon law already provided for the removal of bishops from office 'for grave reasons'.[148] Canon 193 of the 1983 Code provides that a person can be removed from an office conferred for an indefinite period 'for grave causes and according to the manner of proceeding defined by the law'.[149] The pope stated that the intention of his letter was to underline that 'among the aforesaid "grave reasons"' was negligence of a bishop in relation to cases of sexual abuse of minors and vulnerable adults.[150]

Professor Sheila the Baroness Hollins, a member of the Pontifical Commission for the Protection of Minors, gave evidence during the *Institutional review of Catholic Church authorities* hearing that *As a loving mother* announced the establishment of a panel or college of canon law experts to assist relevant congregations in the process of removing bishops whom they judge to be incompetent, and to advise the pope so that appropriate action can be taken, including dismissing a bishop or religious superior. Baroness Hollins told us that the Congregation for Bishops and the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life were developing norms or standards to assist this process, and that it was the understanding of the Pontifical Commission for the Protection of Minors that the panel would also consider cases retrospectively.[151] As of October 2017, there had been no public announcement of the establishment of the panel of experts mentioned by Baroness Hollins. Similarly, there had been no announcement of the creation of any norms or standards to assist in this process.

Endnotes

1 B Daly, *Canon Law in Action*, St. Pauls Publications Australia, 2015, pp 203-205.
2 Exhibit 50-0003, 'Précis – Father Thomas (Tom) Doyle OP', Case Study 50, IND.0656.001.0001_R at 0003, 0005_R; TP Doyle, AWR Sipe & PJ Wall, *Sex, priests, and secret codes: The Catholic Church's 2000-year paper trail of sexual abuse*, Volt Press, Los Angeles, 2006, pp 3–4; TP Doyle, 'Roman Catholic clericalism, religious duress, and clergy sexual abuse', *Pastoral Psychology*, Vol 51, No 3, January 2003, pp 194-7; TP Doyle, 'Canon law and the clergy sex abuse crisis: The failure from above' in TG Plante (ed), *Sin against the Innocents: Sexual abuse by priests and the role of the Catholic Church*, Praeger, London, 2004, pp 26–29.
3 Exhibit 50-0003, 'Précis – Father Thomas (Tom) Doyle OP', Case Study 50, IND.0656.001.0001 at 0004; Exhibit 50-0004, 'Dr Rodger Austin, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, 2016', Case Study 50, CTJH.304.90001.0020 at 0024; *The 1917 or Pio-Benedictine Code of Canon Law: In English translation*, EN Peters (translator), Ignatius Press, San Francisco, 2001, p xxiv.
4 *The 1917 or Pio-Benedictine code of canon law: In English translation*, EN Peters (translator), Ignatius Press, San Francisco, 2001.
5 *The 1917 or Pio-Benedictine code of canon law: In English translation*, EN Peters (translator), Ignatius Press, San Francisco, 2001, p 746, canon 2359.
6 *The 1917 or Pio-Benedictine code of canon law: In English translation*, EN Peters (translator), Ignatius Press, San Francisco, 2001, canon 2359 §2.
7 *The 1917 or Pio-Benedictine code of canon law: In English translation*, EN Peters (translator), Ignatius Press, San Francisco, 2001, canon 2357.
8 Further, canon 2354 referred to several serious crimes that are also considered to be ecclesiastical delicts which can be committed by clerics or lay people. One of these is the 'rape of a youth of the opposite sex'. A lay person who is legitimately convicted of this crime in a civil court 'is by the law itself considered as excluded from legitimate ecclesiastical acts and from any responsibility, if he had any in the Church, with the obligation of repairing the damage that remains'. A cleric who commits this delict 'shall be punished by an ecclesiastical tribunal, according to the varying gravity of the fault, with penances, censures, privation of office and dignity, and, if seems necessary also with deposition'. *The 1917 or Pio-Benedictine code of canon law: In English translation*, EN Peters (translator), Ignatius Press, San Francisco, 2001, canon 2354.
9 Exhibit 50-0004, 'Dr Rodger Austin, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, 2016', Case Study 50, CTJH.304.90001.0020 at 0048.
10 *The 1917 or Pio-Benedictine code of canon law: In English translation*, EN Peters (translator), Ignatius Press, San Francisco, 2001, canons 2359, 2177-2181.
11 Canon 2303 states that 'Deposition, with due regard for the obligations taken up in ordination and clerical privileges, includes both suspension from office and incapacity for any office, dignity, benefice, pension, or duties in the Church, and even the privation of those things which the defendant has, although they were the title of the one ordained'; *The 1917 or Pio-Benedictine code of canon law: In English translation*, EN Peters (translator), Ignatius Press, San Francisco, 2001, canon 2303 §1.
12 Exhibit 50-0004, 'Dr Rodger Austin, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse', 2016', Case Study 50, CTJH.304.90001.0020 at 0055.
13 *The 1917 or Pio-Benedictine code of canon law: In English translation*, EN Peters (translator), Ignatius Press, San Francisco, 2001, canon 2359 § 2.
14 *The 1917 or Pio-Benedictine code of canon law: In English translation*, EN Peters (translator), Ignatius Press, San Francisco, 2001, canon 2305.
15 *The 1917 or Pio-Benedictine code of canon law: In English translation*, EN Peters (translator), Ignatius Press, San Francisco, 2001, canons 1939–1946.
16 *The 1917 or Pio-Benedictine code of canon law: In English translation*, EN Peters (translator), Ignatius Press, San Francisco, 2001, canon 1946 §2 1°.
17 *The 1917 or Pio-Benedictine code of canon law: In English translation*, EN Peters (translator), Ignatius Press, San Francisco, 2001, canon 1946 §2 2°.
18 *The 1917 or Pio-Benedictine code of canon law: In English translation*, EN Peters (translator), Ignatius Press, San Francisco, 2001, canon 1946 §2 3°.
19 *The 1917 or Pio-Benedictine code of canon law: In English translation*, EN Peters (translator), Ignatius Press, San Francisco, 2001, canons 1947–1957.
20 *The 1917 or Pio-Benedictine code of canon law: In English translation*, EN Peters (translator), Ignatius Press, San Francisco, 2001, canon 2214 §1.
21 *The 1917 or Pio-Benedictine code of canon law: In English translation*, EN Peters (translator), Ignatius Press, San Francisco, 2001, canon 454.
22 *The 1917 or Pio-Benedictine code of canon law: In English translation*, EN Peters (translator), Ignatius Press, San Francisco, 2001, canon 2147.
23 *The 1917 or Pio-Benedictine code of canon law: In English translation*, EN Peters (translator), Ignatius Press, San Francisco, 2001, canons 2147, 2162.
24 *The 1917 or Pio-Benedictine code of canon law: In English translation*, EN Peters (translator), Ignatius Press, San Francisco, 2001, canon 647.
25 *The 1917 or Pio-Benedictine code of canon law: In English translation*, EN Peters (translator), Ignatius Press, San Francisco, 2001, canon 649.

26 *The 1917 or Pio-Benedictine code of canon law: In English translation*, EN Peters (translator), Ignatius Press, San Francisco, 2001, canon 661.
27 *The 1917 or Pio-Benedictine code of canon law: In English translation*, EN Peters (translator), Ignatius Press, San Francisco, 2001, canon 502.
28 *The 1917 or Pio-Benedictine code of canon law: In English translation*, EN Peters (translator), Ignatius Press, San Francisco, 2001, canon 650.
29 *The 1917 or Pio-Benedictine code of canon law: In English translation*, EN Peters (translator), Ignatius Press, San Francisco, 2001, canon 653.
30 *The 1917 or Pio-Benedictine code of canon law: In English translation*, EN Peters (translator), Ignatius Press, San Francisco, 2001, canon 668.
31 Exhibit 14-0003, 'Instruction on the Manner of Proceeding in Causes involving the Crime of Solicitation (Crimen Sollicitationis)', Articles 71, 74, Case Study 14, VATC.0001.001.0006 at 0017; Exhibit 50-0003, 'Précis – Father Thomas (Tom) Doyle OP', Case Study 50, IND.0656.001.0001_R at 0005_R–0006_R; N Cafardi, 'The scandal of secrecy: Canon law and the sexual abuse crisis', *Commonweal,* 21 July 2010, www.commonwealmagazine.org/scandal-secrecy (viewed on 18 October 2017); Exhibit 50-0004, 'Dr Rodger Austin, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, 2016', Case Study 50, CTJH.304.90001.0020 at 0052.
32 JP Beal, 'The 1962 instruction Crimen sollicitationis: Caught red-handed or handed a red herring?', *Studia canonica*, Vol 41, 2007, p 202.
33 JP Beal, 'The 1962 instruction Crimen sollicitationis: Caught red-handed or handed a red herring?', *Studia canonica*, Vol 41, 2007, p 201 n 8; Exhibit 50-0004, 'Kieran Tapsell, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, Issues paper No 11: Catholic Church Final Hearing, 2016', para 27, Case Study 50, SUBM.2398.001.0001 at 0015; Exhibit 50-0003, 'Précis – Father Thomas (Tom) Doyle OP', Case Study 50, IND.0656.001.0001 at 0006.
34 2010 revised norms of the 2001 motu proprio *Sacramentorum sanctitatis tutela*, Congregation for the Doctrine of the Faith, www.vatican.va/resources/resources_introd-storica_en.html (viewed 18 October 2017); Also in Exhibit 50-0004, 'Dr Rodger Austin, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, 2016', Case Study 50, CTJH.304.90001.0020 at 0053.
35 Exhibit 14-0003, 'Instruction on the Manner of Proceeding in Causes involving the Crime of Solicitation (Crimen Sollicitationis)', Case Study 14, VATC.0001.001.0006 at 0006; Exhibit 50-0004, 'Dr Rodger Austin, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, 2016', Case Study 50, CTJH.304.90001.0020 at 0052-0053.
36 N Cafardi, 'The scandal of secrecy: Canon law and the sexual abuse crisis', *Commonweal,* 21 July 2010, www.commonwealmagazine.org/scandal-secrecy (viewed 18 October 2017).
37 Exhibit 14-0003, 'Instruction on the Manner of Proceeding in Causes involving the Crime of Solicitation (Crimen Sollicitationis)', Article 42, Case Study 14, VATC.0001.001.0006 at 0011–0013.
38 Exhibit 14-0003, 'Instruction on the Manner of Proceeding in Causes involving the Crime of Solicitation (Crimen Sollicitationis)', Article 63, Case Study 14, VATC.0001.001.0006 at 0015.
39 Exhibit 14-0003, 'Instruction on the Manner of Proceeding in Causes involving the Crime of Solicitation (Crimen Sollicitationis)', Article 64, Case Study 14, VATC.0001.001.0006 at 0015–0016.
40 Exhibit 14-0003, 'Instruction on the Manner of Proceeding in Causes involving the Crime of Solicitation (Crimen Sollicitationis)', Case Study 14, VATC.0001.001.0006 at 0008;Exhibit 50-0004, 'Dr Rodger Austin, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, 2016', Case Study 50, CTJH.304.90001.0020 at 0052–0053.
41 Exhibit 14-0003, 'Instruction on the Manner of Proceeding in Causes involving the Crime of Solicitation (Crimen Sollicitationis)', Articles 11, 13, Case Study 14, VATC.0001.001.0006 at 0008; Exhibit 50-0004, 'Dr Rodger Austin, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, 2016', Case Study 50,CTJH.304.90001.0020 at 0053.
42 Exhibit 50-0004, 'Kieran Tapsell, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, Issues paper No 11: Catholic Church Final Hearing, 2016', Case Study 50, SUBM.2398.001.0001 at 0015.
43 Exhibit 50-0004, 'Dr Rodger Austin, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, 2016', para 182, Case Study 50, CTJH.304.90001.0020 at 0052-0053.
44 Exhibit 14-0003, 'Instruction on the Manner of Proceeding in Causes involving the Crime of Solicitation (Crimen Sollicitationis)', Case Study 14, VATC.0001.001.0006 at 0006.
45 Transcript of P E Wilson, Case Study 14, 25 June 2014 at 7890:33; Transcript of G J Robinson, Case Study 31, 24 August 2015, 16054:18-27; The Dublin Archdiocese Commission of Investigation, *The Commission of Investigation report into the Catholic Archdiocese of Dublin*, Minister for Justice and Equality, Dublin, 2009, p 61.
46 Transcript of G J Robinson, Case Study 31, 24 August 2015 at 16054:21–26.
47 Exhibit 50-0003, 'Précis – Father Thomas (Tom) Doyle OP', Case Study 50, IND.0656.001.0001_R at 0007_R.
48 Exhibit 50-0004, 'Dr Rodger Austin, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, 2016', Case Study 50, CTJH.304.90001.0020 at 0054.
49 Exhibit 50-0004, 'Dr Rodger Austin, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, 2016', Case Study 50, CTJH.304.90001.0020 at 0055; Exhibit 50-0004, 'Kieran Tapsell, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, Issues paper No 11: Catholic Church Final Hearing, 2016', Case Study 50, SUBM.2398.001.0001 at 0085.

50 Transcript of P E Wilson, Case Study 14, 25 June 2014 at 7888:23-7889:24.

51 Exhibit 50-0004, 'Kieran Tapsell, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, Issues paper No 11: Catholic Church Final Hearing, 2016', Case Study 50, SUBM.2398.001.0001 at 0092; N Cafardi, *Before Dallas: The US Bishops' Response to Clergy Sexual Abuse of Children*, Paulist Press, Mahwah, NJ, 2008, pp 61–62.

52 'Norms for preparing petitions in diocesan or clerical religious curias for reducing priests to the lay state with a dispensation from all the obligations arising from sacred orders', Congregation for the Doctrine of the Faith, 13 January 1971, AAS 63 (1971) 303-308; Documenta 8, www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19710113_dispensatione-oblig_en.html (viewed 20 October 2017); Exhibit 4-0001, 'Submission of the Truth, Justice and Healing Council to the Royal Commission, Issues Paper No. 2', Case Study 50, CTJH.0001.002.0001 at 0138.

53 'Procedural norms regarding the dispensation of priests from celibacy', 14 October 1980, AAS 72 (1980) 1136-7, Documenta 9, www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19801014_dispensa-celibato_en.html (viewed 20 October 2017); NP Cafardi, *Before Dallas: The US Bishops' Response to Clergy Sexual Abuse of Children*, Paulist Press, New York / Mahwah, NJ, 2008, p 63. Exhibit 50-0004, 'Kieran Tapsell, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, Issues paper No 11: Catholic Church Final Hearing, 2016', Case Study 50, SUBM.2398.001.0001 at 0093.

54 Exhibit 50-0004, 'Dr Rodger Austin, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, 2016', Case Study 50, CTJH.304.90001.0020 at 0054; Exhibit 50-0004, 'Kieran Tapsell, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, Issues paper No 11: Catholic Church Final Hearing, 2016', Case Study 50, SUBM.2398.001.0001 at 0015.

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56 Cardinal Jean Villot, Secretary of State, Rescriptum ex Audientia instructio *Secreta Continere*, de secreto pontificio, AAS Vol LXVI, 1974, N 2, pp 89–92, www.vatican.va/roman_curia/secretariat_state/card-villot/documents/rc_segst_19740204_secreta-continere_lt.html (viewed 22 October 2017).

57 Exhibit 50-0004, 'Kieran Tapsell, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, Issues paper No 11: Catholic Church Final Hearing, 2016', Case Study 50, SUBM.2398.001.0001 at 0015–0016.

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13.3 Private sessions and data about child sexual abuse in the Catholic Church

> This sexual abuse comes back to haunt you. It's not like a broken arm. You can't just fix it … You can be very busy over a period of years … And then one night it'll come back to haunt you. And you just can't shake it … And it drives you to the brink.[1]
>
> **Private session, 'Malcolm Andrew'**

13.3.1 Background

As of 31 May 2017, of the 4,029 survivors who told us during private sessions about child sexual abuse in religious institutions, 2,489 survivors (61.8 per cent) told us about abuse in Catholic institutions. Of all the religious organisations we heard about during private sessions, the Catholic Church was the most frequently named. The second most frequently named religious organisation was the Anglican Church (14.7 per cent of survivors who told us during private sessions about child sexual abuse in religious institutions told us it took place in Anglican institutions). The experiences we heard about during private sessions contributed to our understanding of the nature and extent of child sexual abuse in Catholic institutions in Australia.

We also commissioned a survey to gather data from each Catholic Church authority in Australia regarding the claims of child sexual abuse they had received. Catholic Church authorities provided information about claims of child sexual abuse, including information about where and when the alleged abuse occurred. The survey sought data regarding all claims received by a Catholic Church authority between 1 January 1980 and 28 February 2015. There was no limit on the date of the alleged incidents of child sexual abuse. In addition, we conducted surveys to gather information relating to the number of Catholic priests and non-ordained religious who ministered in Australia from 1950 to 2010.

These surveys are discussed in Chapter 6, 'The extent of child sexual abuse in religious institutions'. The resulting report, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, was published in February 2017 and revised in June 2017.[2] We refer to the data set out in that report as the 'Catholic Church claims data'.

As discussed in Chapter 6, information gathered through private sessions and the Catholic Church claims data may not represent the demographic profile or experiences of all victims of child sexual abuse in Catholic institutions. Survivors attending private sessions did so of their own accord, and in this respect they were a 'self-selected' sample. Similarly, people who made a claim to a Catholic Church authority chose to do so – not all of those who experienced child sexual abuse in an institution managed by a Catholic Church authority would have made a claim about

the abuse. Further, as discussed in Volume 4, *Identifying and disclosing child sexual abuse*, delays in reporting are common and some people never disclose that they were abused. Consequently, private sessions information and the Catholic Church claims data almost certainly under-represent the total number of victims of child sexual abuse and likely under-represent victims of more recent abuse. Further, it is not possible to compare private sessions information with the Catholic Church claims data.

The relative size of the Catholic Church in Australia, including the extent to which Catholic institutions have provided services to children, may have affected the number of allegations of child sexual abuse made in relation to Catholic institutions. Catholic Church authorities have managed a very large number of institutions providing services to children, including schools and residential institutions. It has not been possible for us to quantify the extent to which Catholic institutions have provided services to children over time, or the number of children who have had contact with Catholic institutions. In the absence of this information, it is not possible to estimate the incidence or prevalence of child sexual abuse within institutions managed by the Catholic Church.

However, from the Catholic Church claims data we have been able to estimate the proportion of priests who served in Australia between 1950 and 2010 who were alleged perpetrators, and the number of non-ordained religious members of some religious institutes who were alleged perpetrators (taking into account their duration of ministry). This has provided an indication of the prevalence of alleged perpetrators among priests and some non-ordained religious in Australia, as outlined below.

13.3.2 Number of claims made to Catholic Church authorities

> There was just so much of it over such a long period of time, I can't accurately recall the details.[3]
>
> **Private session, 'Brian Peter'**

The Catholic Church claims data showed that of the 201 Catholic Church authorities in Australia that were surveyed, 92 (46 per cent) reported having received one or more claims of child sexual abuse. The remaining 109 (54 per cent) did not report a claim of child sexual abuse.[4]

Of the 92 Catholic Church authorities that received claims of child sexual abuse:[5]

- 34 per cent were archdioceses/dioceses
- 27 per cent were female religious institutes
- 26 per cent were male religious institutes with both priest and religious brother members
- 5 per cent were male religious institutes with only religious brother members.

The Catholic Church claims data showed that, overall, 4,444 claimants[6] alleged incidents of child sexual abuse in 4,756 reported claims to Catholic Church authorities (some claimants made a claim of child sexual abuse to more than one Catholic Church authority).[7] The data also indicated that of the total number of claims:[8]

- 41 per cent were made to male religious institutes with only religious brother members
- 38 per cent were made to archdioceses/dioceses
- 12 per cent were made to male religious institutes with both priest and religious brother members
- 9 per cent were made to female religious institutes with religious sister members.

The three Catholic Church authority types above with only male members received 91 per cent of all claims.[9]

13.3.3 Victims of child sexual abuse in Catholic institutions

> He'd say 'Here, have some bread … Have a little drink of wine'. But it went further than that. After a couple of weeks, a couple of months, he put his hand down the front of my pants, and said 'You're getting to be a big boy'. And I shivered. I knew it was wrong.[10]
>
> **Private session, 'Niall'**

Gender and age of victims

As of 31 May 2017, of the 2,489 survivors who told us during private sessions about child sexual abuse in Catholic institutions, the majority (73.9 per cent) were male and 25.9 per cent were female. A small number of survivors identified as gender diverse or did not indicate their gender.

Similarly, the Catholic Church claims data showed a substantially higher number of male victims. Of those people who made a claim of child sexual abuse to a Catholic Church authority, 78 per cent were male and 22 per cent were female.[11]

The Catholic Church claims data showed that, of all claims made to male religious institutes with only religious brother members (such as the Christian Brothers or Marist Brothers), the overwhelming majority were made by males (97 per cent).[12] Of all claims made to Catholic Church authorities about child sexual abuse occurring in schools, 85 per cent of claimants were male, and of all claims about child sexual abuse occurring in residential institutions, 81 per cent of claimants were male.[13]

Of those who told us during private sessions about child sexual abuse in Catholic institutions, and who provided information about the age of the victim at the time of first abuse, the average age was 10.4 years for all victims, 10.7 years for male victims and 9.6 years for female victims.

The Catholic Church claims data showed that the average age of the claimant at the time of the first alleged incident of child sexual abuse was 11.4 years for all claimants, 10.5 years for females and 11.6 years for males.[14]

Date range and duration of abuse

Of the 2,489 survivors who told us during private sessions about child sexual abuse in Catholic institutions, most (1,923 survivors or 77.3 per cent) told us about the duration of the abuse. Of those 1,086 survivors (56.5 per cent) said the abuse lasted up to one year and 714 survivors (37.1 per cent) said the abuse lasted between one and five years. Slightly more than one in ten (201 survivors or 10.9 per cent said the abuse lasted more than five years.

The Catholic Church claims data showed that 86 per cent of claims involved alleged child sexual abuse that commenced in the period from 1950 to 1989 inclusive.[15] The largest proportion of first-alleged incidents of child sexual abuse occurred in the 1970s (1,242 claims or 29 per cent of all claims with known dates).[16] However, of those claims that identified a residential institution, the largest proportion identified first-alleged incidents of child sexual abuse in the 1950s (over 300 claims).[17]

The Catholic Church claims data showed that the average duration of abuse in Catholic institutions was 2.4 years.[18] In just over 53 per cent of claims the abuse occurred in a single year.[19] In 13 per cent of claims the abuse occurred over a period of five years or more.[20] Claims that related to residential institutions had the highest average duration of abuse (3.7 years).[21]

Forms of abuse

Many survivors told us about experiencing other forms of abuse along with sexual abuse. Of those who told us during private sessions about child sexual abuse in Catholic institutions, 1,388 survivors (55.8 per cent) told us about also experiencing other forms of abuse. Of those, 1,089 survivors (78.5 per cent) told us about emotional abuse and 908 survivors (65.4 per cent) told us about physical abuse.

Reporting of alleged child sexual abuse

The Catholic Church claims data indicated that the gap between the first alleged incident of child sexual abuse and the date the claim was received by the relevant Catholic Church authority was more than 30 years in 59 per cent of the claims, and more than 20 years in 81 per cent of claims.[22] The average time between the first alleged incident date and the date the claim was received was 33 years.[23]

The Catholic Church claims data indicated that only 1 per cent of child sexual abuse claims were received in the 1980s, while 77 per cent were received between 1 January 2000 and 28 February 2015.[24] It is likely that the existence of Towards Healing and the Melbourne Response, both established in the mid-1990s (see Section 13.7), affected the number of claims of child sexual abuse made with respect to Catholic institutions in Australia, through providing mechanisms that enabled survivors to make claims for redress.

13.3.4 Redress

> Whether you get raped once, ten times or whatever happens to you, for someone to come along and say, 'Well, that's worth $2.50, or that's worth $100,000 or that's worth one million dollars'. Who's going to come and say to someone, 'And that's worth that much'?[25]
>
> **Private session, 'Perry Alan'**

The Catholic Church claims data indicated that overall, 3,057 claims of child sexual abuse received by Catholic Church authorities resulted in a payment being made following a claim for redress (including monetary compensation, treatment, legal and other costs). Catholic Church authorities in Australia made total payments of $268.0 million in response to claims of child sexual abuse received between 1 January 1980 and 28 February 2015, including for monetary compensation, treatment, legal and other costs. Of this amount, a total of $250.7 million was paid in monetary compensation, at an average of $88,000 per claim. A total of 2,845 claims of child sexual abuse resulted in monetary compensation following a claim for redress.[26]

The Christian Brothers reported both the highest total payment and the largest number of total payments in the Catholic Church claims data (a total of $48.5 million paid in relation to 763 payments at an average of approximately $64,000 per payment).[27] The Society of Jesus (the Jesuits) had the highest average total payment at an average of approximately $257,000 per payment (of those Catholic Church authorities who made at least 10 payments).[28] The Pallottines (Society of the Catholic Apostolate) and the Good Shepherd Sisters (Our Lady of Charity of the Good Shepherd) had the lowest average at approximately $9,000 per payment (of those Catholic Church authorities who made at least 10 payments).[29]

The Catholic Church claims data indicated that the most commonly used redress process was Towards Healing (41 per cent of claims went through this redress process). Of all redress processes, the Melbourne Response had the highest proportion of claims resulting in monetary compensation (324 claims, or 84 per cent of all Melbourne Response claims).[30]

Of all redress processes, the highest amount of monetary compensation paid was through civil proceedings and 'other' redress processes ($88.9 million and $92.8 million, respectively). Of the claims made through civil proceedings, 632 claims or 67 per cent resulted in monetary compensation, and of the claims made through an 'other' redress process, 921 claims or 58 per cent resulted in monetary compensation. The highest average monetary compensation paid was through civil proceedings ($141,000 per payment). Towards Healing and the Melbourne Response had the lowest average payments (including monetary compensation and payments for treatment, legal and other costs), of approximately $47,000 per payment in each case.[31]

Of all redress processes, civil proceedings and 'other' redress processes had the highest proportion of claims that were ongoing (20 per cent). Towards Healing had the highest proportion of discontinued claims (19 per cent).[32]

13.3.5 Alleged perpetrators of child sexual abuse in Catholic institutions

> 'Father James' made me believe that having oral sex with him, masturbating him, and kissing him with an open mouth was the way I should show him love. My only alternative was to return to life on the street, which just terrified me. I used to cry a lot and tell him I didn't want to do what he was asking, but that made no difference.[33]
>
> **Private session, 'Jacob'**

Number of alleged perpetrators

The Catholic Church claims data identified a total of 1,880 alleged perpetrators (diocesan and religious priests, religious brothers, religious sisters, lay employees or volunteers). Additionally, 530 people whose identities were not known were the subject of claims. It cannot be determined whether any of those unidentified alleged perpetrators were identified by another claimant in a separate claim.[34]

Gender and age of alleged perpetrators

Of the survivors who told us during private sessions about child sexual abuse in Catholic institutions, the majority (1,489 survivors or 59.8 per cent) provided information about the age of the person who sexually abused them. Of those, 1,334 survivors (89.6 per cent) told us about abuse by an adult perpetrator and 199 survivors (13.4 per cent) told us about abuse by another child (under 18 years). A small number of survivors told us about abuse by an adult and by another child.

Of the 1,334 survivors who told us during private sessions about child sexual abuse by adult perpetrators in Catholic institutions, 1,283 survivors (96.2 per cent) said they were abused by a male adult. Far fewer (74 survivors or 5.5 per cent) said they were abused by a female adult.

The Catholic Church claims data only included information about adult alleged perpetrators. The data showed that overall, 90 per cent of alleged perpetrators were male and 10 per cent were female. Of the alleged perpetrators who were non-ordained religious, 83 per cent were (male) religious brothers and 17 per cent were (female) religious sisters. Of the alleged perpetrators who were lay people, 91 per cent were male and 9 per cent were female.[35]

The Catholic Church claims data also showed that of all people who made claims of child sexual abuse, 94 per cent made allegations only against male alleged perpetrators; 3 per cent against only female alleged perpetrators; and 2 per cent against both male and female alleged perpetrators. The gender of alleged perpetrators in 1 per cent of cases was unknown.[36]

Further, the Catholic Church claims data showed that male alleged perpetrators were the subject of a higher average number of claims than females. Religious brothers had the highest average number of claims made against them, with an average of 3.7 claims per religious brother. Religious priests had the next highest average number of claims made against them, with an average of 3.3 claims per religious priest. Religious sisters had the lowest average number of claims made against them, with an average of 1.2 claims per religious sister.[37]

The Catholic Church claims data showed that the average age of alleged perpetrators was 37 years, with 31 per cent aged under 30 years and 69 per cent aged 30 years or older at the time of the first reported incident of alleged child sexual abuse.[38]

Positions held by alleged perpetrators

The Catholic Church was the religious organisation with the highest proportion of survivors during private sessions who told us about child sexual abuse by people in religious ministry. Of the 2,489 survivors who told us during private sessions about child sexual abuse in Catholic institutions, 2,413 survivors (96.9 per cent) told us about the position held by a perpetrator.

Of these, most (74.7 per cent) told us the perpetrator was a person in religious ministry such as a priest, religious brother or religious sister. Around a quarter (27.6 per cent) told us the perpetrator was a teacher.[39] Smaller numbers of survivors told us about abuse by residential care workers or housemasters.

Some perpetrators held more than one position, such as people in religious ministry who were also teachers.

The Catholic Church claims data provided further detail on the positions held by alleged perpetrators of child sexual abuse. Of the alleged perpetrators identified in claims made to Catholic Church authorities, approximately two thirds (67 per cent) were either priests or religious brothers or sisters and just under one third (29 per cent) were lay people.[40] The Catholic Church claims data identified a total of 1,880 known alleged perpetrators.[41] Additionally, 530 people whose identities were not known were the subject of claims of child sexual abuse. Of the 1,880 known alleged perpetrators:[42]

- 693 were religious brothers and sisters (37 per cent of all known alleged perpetrators), including 597 religious brothers (32 per cent of all known alleged perpetrators) and 96 religious sisters (5 per cent of all known alleged perpetrators)
- 572 were priests (30 per cent of all known alleged perpetrators), including 384 diocesan priests and 188 religious priests
- 543 were lay people (29 per cent of all known alleged perpetrators).

In addition, for 72 identified alleged perpetrators (4 per cent) their religious status was not known.[43]

The Catholic Church claims data also provided information about the institution type most commonly reported in relation to alleged perpetrators of each religious status group, which gave some indication of the alleged perpetrator's position:[44]

- Of all claims that involved priest alleged perpetrators, 34 per cent related to abuse in a presbytery or church, 23 per cent related to abuse in a school, and 18 per cent related to abuse in a residential institution.
- Of all claims that involved male religious brother alleged perpetrators, 59 per cent related to abuse in a school, and 36 per cent related to abuse in a residential institution.
- Of all claims that involved female religious sister alleged perpetrators, 58 per cent related to a residential institution and 31 per cent related to a school.
- Of all claims that involved alleged perpetrators who were lay people, 60 per cent related to a school and 21 per cent related to a residential institution.

The Catholic Church claims data showed that as a proportion of all alleged perpetrators, those who were priests or non-ordained religious decreased over time, compared with those who were lay people.[45] The largest number of claims related to abuse that was alleged to have occurred in the 1960s, and a large proportion of those related to priests or non-ordained religious.[46] The data showed that the number and proportion of claims relating to priests or non-ordained religious alleged perpetrators decreased as the proportion of lay alleged perpetrators increased.[47]

Multiple perpetrators

Many survivors told us about experiencing abuse by more than one perpetrator. Of the 2,489 survivors who told us during private sessions about child sexual abuse in Catholic institutions, 230 survivors (9.2 per cent) told us about abuse by more than one adult perpetrator (not necessarily at the same time).

The Catholic Church claims data showed that 82 per cent of claimants made a claim about one alleged perpetrator and 17 per cent made a claim about more than one alleged perpetrator.[48] It also showed that the institution type with the highest proportion of claims identifying two or more alleged perpetrators was residential institutions (33 per cent of claims relating to residential institutions identified two or more alleged perpetrators), followed by schools (12 per cent of claims relating to schools identified two or more alleged perpetrators).[49] Claims relating to residential institutions also had the highest proportion of claims that identified three or more alleged perpetrators (13 per cent of claims relating to residential institutions identified three or more alleged perpetrators).[50]

In addition, the Catholic Church claims data indicated that the vast majority of alleged perpetrators were identified in only one claim (74 per cent); and the highest proportion of alleged perpetrators with 10 claims or more were religious brothers (8 per cent).[51]

Children with harmful sexual behaviours

Of the 1,489 survivors who told us during private sessions about child sexual abuse in Catholic institutions and who provided information about the age of the person who sexually abused them, 199 survivors (13.4 per cent) told us about abuse by another child.

Of those 199 survivors, 166 (83.4 per cent) told us about abuse by a boy and 32 survivors (16.1 per cent) told us about abuse by a girl.

The Catholic Church claims data did not include claims of child sexual abuse where the alleged abuse was by a child.

13.3.6 Proportion of priests and non-ordained religious members who were alleged perpetrators

> The sexual abuse was horrific. It was painful, it was traumatic. It was terrible. And the fact that it happened twice was inconceivable. But it was just a chapter. For me the whole experience I had in that place was of abuse at any stage, physical abuse, beatings, indiscriminate beatings. I was so traumatised. I was so scared.[52]
>
> **Private session, 'Stuart Paul'**

As discussed in Chapter 6, we conducted a survey of 75 Catholic archdioceses/dioceses and religious institutes in Australia with priest members and 10 Catholic religious institutes in Australia with non-ordained religious members. The survey sought information about the number of priests and non-ordained religious members of each Catholic Church authority who ministered in Australia in the period from 1 January 1950 to 31 December 2010, and how long each of them ministered.

We calculated the proportion of priests and non-ordained religious members of these Catholic Church authorities who ministered in the period 1950 to 2010 who were alleged perpetrators. We used a 'weighted average methodology' that took into account the duration of ministry of all priests and non-ordained religious members included in the survey. Data analysts engaged by the Royal Commission advised that this methodology should be used to calculate these proportions as it properly took into account the risk to children and was the statistically appropriate methodology for calculating proportions over a period of six decades.

The weighted average methodology was used in the calculation of both the numerator (alleged perpetrators) and the denominator (the total number of priests and non-ordained religious who ministered in each Catholic Church authority in the period from 1950 to 2010).

The weighted average methodology ensured that a statistically consistent approach was taken to individuals who were in ministry for only a few years, and individuals who were in ministry for decades. For example, if a weighted average methodology was not used, a priest who ministered for only five years in the period 1950–2010 would be counted in exactly the same way (that is, given the same weight) as a priest who ministered for 50 years in this period. Those who ministered for a shorter period of time are likely to have come into contact with fewer children, and over time posed less potential risk to children, than those who ministered for a longer period of time. The weighted average methodology ensured that each person was weighted according to their duration of ministry.

The weighted average methodology also provided an appropriate comparison between priests and non-ordained religious who ministered recently with those who ministered many decades ago because it accounted for the tendency for priests and non-ordained religious who ministered recently to have a shorter duration of ministry than priests and non-ordained religious who ministered many decades ago.

The weighted average methodology further provided an appropriate comparison between different Catholic Church authorities, as there may have been different average periods of ministry in different Catholic Church authorities.

Proportion of priests who were alleged perpetrators

The survey of the 75 Catholic Church authorities with priest members showed that 9,025 priests ministered in the period 1950 to 2010 and, of those, 507 were alleged perpetrators.[53] Seven per cent of the priests who ministered in this time period were alleged perpetrators, taking into account their duration of ministry (the weighted proportion). When duration of ministry was not taken into account, 5.6 per cent of these priests were alleged perpetrators (the unweighted proportion).[54] A full explanation of the weighted average methodology is provided in Chapter 6.

The data analysis indicated that on average, priests who were alleged perpetrators ministered for longer than priests who were not. The average duration of ministry of priests overall in the 60-year period was 24.4 years. The average duration of ministry of priests who were alleged perpetrators was 30.5 years.[55] In only five of the 26 Catholic Church authorities who received more than 20 claims of child sexual abuse and who had priest members was the average duration of ministry of alleged perpetrators shorter than the average duration of ministry of priests who were not subject to a claim of child sexual abuse.[56]

Of the total 9,025 priests, 5,174 were identified as diocesan priests (a member of an archdiocese, diocese or eparchy) and, of those, 340 were alleged perpetrators. Of the diocesan priests who ministered in this time period, 7.9 per cent were alleged perpetrators, taking into account duration of ministry. When duration of ministry was not taken into account, 6.6 per cent of diocesan priests were alleged perpetrators.[57]

Of the total 9,025 priests, 3,851 were identified as religious priests (a priest member of a religious institute) and of these 167 were alleged perpetrators. Of the religious priests who ministered in this time period, 5.6 per cent were alleged perpetrators, taking into account duration of ministry. When duration of ministry was not taken into account, 4.3 per cent of religious priests were alleged perpetrators.[58]

When taking into account the duration of ministry, the Benedictine Community of New Norcia was the religious institute with priest members which had the highest overall proportion of alleged perpetrators (21.5 per cent). The Diocese of Sale was the diocese with the highest overall proportion of priest members who were alleged perpetrators (15.1 per cent). The Archdiocese of Adelaide and the Dominican Friars had the lowest overall proportions of priests who were alleged perpetrators (2.4 per cent and 2.1 per cent respectively).[59]

Table 16.15 shows the five Catholic Church authorities with diocesan priest members with the highest overall proportion of priests who were alleged perpetrators. All of these authorities were regional dioceses with relatively few members compared to the larger dioceses and archdioceses. For each authority, the table shows the number of priests overall; the number of priest alleged perpetrators; the proportion of priest alleged perpetrators taking into account duration of ministry; and the unweighted proportion of priest alleged perpetrators for each.[60]

Table 16.15 – Catholic Church authorities with highest proportion of diocesan priest members who were alleged perpetrators, taking into account the duration of ministry

Catholic Church authority	Number of priests overall	Number of priest alleged perpetrators	Proportion of priest alleged perpetrators taking into account duration of ministry (%)	Unweighted proportion of priest alleged perpetrators (%)
Diocese of Lismore	129	15	13.9	11.6
Diocese of Port Pirie	74	7	14.1	9.5
Diocese of Sale	82	11	15.1	13.4
Diocese of Sandhurst	133	16	14.7	12.0
Diocese of Wollongong	106	9	11.7	8.5

The overall population of priests of the six archdioceses which received more than 20 claims of child sexual abuse, who ministered between 1950 and 2010, varied from 842 priests (Archdiocese of Melbourne) to 211 priests (Archdiocese of Canberra and Goulburn).[61] In these six archdioceses, the proportion of priest alleged perpetrators, taking into account duration of ministry, ranged from 2.4 per cent (Archdiocese of Adelaide) to 9.3 per cent (Archdiocese of Brisbane).[62] The unweighted proportion of priest alleged perpetrators in these archdioceses ranged from 4.1 per cent (Archdiocese of Adelaide) to 7.2 per cent (Archdiocese of Brisbane).[63]

Table 16.16 shows the five Catholic Church authorities with religious priest members with the highest overall proportion of priests who were alleged perpetrators. For each authority, the table shows the number of priests overall; the number of priest alleged perpetrators; the proportion of priest alleged perpetrators taking into account duration of ministry; and the unweighted proportion of priest alleged perpetrators.[64]

Table 16.16 – Catholic Church authorities with highest proportion of religious priest members who were alleged perpetrators, taking into account the duration of ministry

Catholic Church authority	Number of priests overall	Number of priest alleged perpetrators	Proportion of priest alleged perpetrators taking into account duration of ministry (%)	Unweighted proportion of priest alleged perpetrators (%)
Benedictine Community of New Norcia	53	10	21.5	18.9
Marist Fathers – Society of Mary	237	25	13.9	10.5
Pallottines – Society of the Catholic Apostolate	63	7	13.7	11.1
Salesians of Don Bosco	159	22	17.2	13.8
Vincentians – The Congregation of the Mission	147	13	8.0	8.8

Of the religious institutes, the Dominican Friars and the Franciscan Friars had the lowest overall proportion of priests who were alleged perpetrators, taking into account duration of ministry (2.1 per cent and 4.7 per cent respectively). In these two religious institutes, the unweighted proportion of priest alleged perpetrators was lower again, at 2.0 per cent and 3.9 per cent respectively.[65] This is because in both of these religious institutes priest alleged perpetrators were, on average, in ministry for longer than those priests not subject to a claim of child sexual abuse.[66]

Proportion of non-ordained members of religious institutes who were alleged perpetrators

Ten religious institutes were included in the survey to determine the proportion of non-ordained religious who were alleged perpetrators. The 10 religious institutes chosen included all of the male religious institutes in Australia which have only religious brothers as members (five in total). The claims received by these five religious institutes accounted for 40 per cent of all claims made to Catholic Church authorities. The survey also included three male religious institutes with both non-ordained religious and priest members and two female religious institutes, to allow a comparison between male and female religious institutes.

In these 10 religious institutes, the total population of non-ordained religious who ministered during the period 1950 to 2010 was markedly varied. For instance, the Sisters of St Joseph of the Sacred Heart had 3,122 religious sisters who ministered during this period, while the St John of God Brothers had only 112 religious brothers who ministered in the same period.[67]

The average duration of ministry of non-ordained religious members of the 10 selected religious institutes in this time period also varied significantly (between 7.5 years and 32.9 years).[68] The average duration of ministry for non-ordained religious members of the three male religious institutes with both priest and non-ordained religious members (the Missionaries of the Sacred Heart, the Salesians of Don Bosco and the Jesuits) was far lower than in the other religious institutes.[69] This is likely to be because the majority of these members later went on to become ordained members of the relevant religious institute and, therefore, their duration of ministry as a non-ordained religious member was relatively short.

For each of the 10 religious institutes, the average duration of ministry of non-ordained religious members who were alleged perpetrators was longer than the average duration of ministry of members who were not subject to a claim of child sexual abuse. The proportion of non-ordained religious members who were alleged perpetrators, when taking into account the duration of ministry for the 60-year period, was accordingly higher for each religious institute than the unweighted proportion of alleged perpetrators.[70]

The Hospitaller Order of St John of God, more commonly known as the St John of God Brothers, had the highest overall proportion of non-ordained religious alleged perpetrators, when taking into account duration of ministry (40.4 per cent).[71]

The two female religious institutes surveyed, the Sisters of St Joseph of the Sacred Heart and the Sisters of Mercy (Brisbane), had the lowest overall proportions of non-ordained religious who were alleged perpetrators, when taking into account duration of ministry (0.6 per cent and 0.3 per cent respectively).[72] Of the 3,122 members of the Sisters of St Joseph of the Sacred Heart who were in ministry between 1950 and 2010, 14 were alleged perpetrators.[73] Of the 955 members of the Sisters of Mercy (Brisbane) who were in ministry between 1950 and 2010, two were alleged perpetrators.[74]

Of the male religious institutes, the Jesuits had the lowest proportion of alleged perpetrators. The Jesuits had a total of 503 non-ordained religious members in ministry during the 60-year period and eight of those members were alleged perpetrators. The proportion of Jesuit non-ordained religious members who were alleged perpetrators, taking into account the duration of ministry, was 3.6 per cent and the unweighted proportion was 1.6 per cent.[75]

Further information about the proportion of non-ordained members of the male religious institutes surveyed who were alleged perpetrators is provided below in Section 13.3.8, which provides individual summaries for some of these Catholic Church authorities.

13.3.7 Catholic Church institutions

Of the 2,489 survivors who told us during private sessions about child sexual abuse in Catholic institutions, 28.7 per cent told us about abuse in residential institutions before 1990, 49.2 per cent told us about abuse in schools, 24.1 per cent told us about abuse in places of worship or during religious activities, and 0.3 per cent told us about abuse during recreational activities such as church-run youth camps.

In the Catholic Church claims data, a total of 1,049 separate Catholic institutions were identified in one or more claims of child sexual abuse.[76] Of these, 574 (54.7 per cent) were identified in only one claim, 305 (29.1 per cent) were identified in more than one claim but fewer than five claims; and 170 (16.2 per cent) were identified in five or more claims.[77] Each of these named institutions was allocated an institution type (school; residential institution; parish, church or formation house; or other). In many instances more than one institution was named in one claim. Of the 1,049 institutions, 549 were schools; 83 were residential institutions; 378 were a parish, church or formation house; and 39 were categorised as 'other'.[78] A 'parish' includes presbyteries and other housing where priests and religious brothers/sisters reside. A 'formation house' includes institutions where individuals live while training to become a priest or religious brother/sister, such as seminaries and novitiates.

Schools represented 52.3 per cent of the named institutions and were identified in 2,209 claims (51 per cent of the claims that identified one or more institutions). In contrast, the 83 residential institutions represented only 7.9 per cent of identified institutions but were identified in 1,323 claims (30.7 per cent of claims that identified one or more institutions). The category 'parish, church and formation houses' was comparatively under-represented in the Catholic Church claims data, accounting for 36.0 per cent of the named institutions but identified in only 712 claims (16.5 per cent of the claims that identified one or more institutions).[79]

There was an average of four claims made in relation to each school that was the subject of claims, which was significantly lower than the average number of claims made in relation to residential institutions that were the subject of claims (15.9 claims) but higher than that in relation to church, parish or formation houses (1.9 claims).[80] A total of 64 claims that related to 39 institutions were categorised as 'other'.[81]

The Catholic Church claims data showed that 28 named institutions were identified in 20 or more claims of child sexual abuse.[82] Table 16.17 provides a list of these institutions, the number of claims in respect of each of them and the state where they were located.[83]

Table 16.17 – Institutions identified in 20 or more claims of child sexual abuse in the Catholic Church claims data

Institution	Number of claims	State
BoysTown (Beaudesert)	219	Queensland
St Vincent's Orphanage, Clontarf (Waterford)	152	Western Australia
Castledare Junior Orphanage (Wilson)	142	Western Australia
St Joseph's Farm and Trade School (Bindoon)	118	Western Australia
St Vincent De Paul's Orphanage (South Melbourne)	114	Victoria
St Augustine's Boys' Home (1966–1987) (Geelong)	96	Victoria
St Vincent's Orphanage (Nudgee)	76	Queensland
St Joseph's Home (Neerkol)	71	Queensland
Marist College Canberra (Pearce)	63	ACT
St Mary's Agricultural School, Tardun (Tardun)	49	Western Australia
St Pius X College (Adamstown)	46	New South Wales
St Vincent's Boys' Home (Westmead)	45	New South Wales
Salesian College, Rupertswood (Sunbury)	44	Victoria
St Ann's Special School (Marion)	42	South Australia
Kendall Grange (Morisset Park)	41	New South Wales
St Joseph's College (Geelong)	39	Victoria
St Alipius School (Ballarat East)	38	Victoria
St Joseph's College (Hunters Hill)	31	New South Wales

Institution	Number of claims	State
Boys' Town (Engadine)	31	New South Wales
St Francis Xavier Mission (Wandering)	30	Western Australia
St Stanislaus College (Bathurst)	29	New South Wales
St Vincent de Paul Orphanage (Goodwood)	26	South Australia
Cheltenham Residential Training Centre (Cheltenham)	23	Victoria
St Leo's College (Box Hill)	21	Victoria
Parramatta Marist High (Westmead)	21	New South Wales
St Mary's Mission (New Norcia)	20	Western Australia
Marist Brothers (Hamilton)	20	New South Wales
St Patrick's College (Ballarat)	20	Victoria

The Catholic Church claims data allocated each identified institution to a particular Catholic Church authority. The allocation of each institution was based on one of two approaches:

- the Catholic Church authority which received all claims which identified the relevant institution
- in circumstances where more than one Catholic Church authority had received a claim in respect of the same institution, the Catholic Church authority that received the highest number of claims in relation to that institution.[84]

For example, the Christian Brothers were reported as having received claims in relation to the highest number of schools, being a total of 100 schools. This does not mean that the Christian Brothers were responsible for each of these 100 schools. It means that in respect of each identified school, either the Christian Brothers received all claims which identified the institution, or received the highest number of claims which identified the institution (where more than one Catholic Church authority received claims in respect of the institution).[85]

For example, St Alipius Primary School, Ballarat East, is a school operated by the Diocese of Ballarat but the majority of claims of child sexual abuse that identified the school were received by the Christian Brothers in relation to Christian Brothers working at the school. Accordingly, St Alipius Primary School has been allocated to the Christian Brothers, rather than the Diocese of Ballarat. In most cases, however, the Catholic Church authority who operated the institution received all or most of the claims with respect to the relevant institution and these were accordingly allocated to that Catholic Church authority.

Table 16.18 sets out the 15 Catholic Church authorities which received the highest number of claims of child sexual abuse in relation to identified institutions.[86]

The table includes: the total number of claims relating to named institutions; the number of schools; the number of residential institutions; the number of parish and church facilities; the number of 'other' institutions and the overall number of named institutions identified relating to each Catholic Church authority listed.[87]

Table 16.18 – Catholic Church authorities which received the highest number of claims of child sexual abuse in relation to identified institutions

Catholic Church authority	Total number of claims relating to named institutions	Number of schools	Number of residential institutions	Number of parish and church facilities	Other institutions	Total number of institutions
Christian Brothers	1,135	100	4	4	1	109
Marist Brothers	502	70	2	2	2	76
Archdiocese of Melbourne	385	99	3	103	8	213
De La Salle Brothers	332	27	4	1	2	34
Institute of Sisters of Mercy Australia and PNG	288	12	15	1	2	30
Archdiocese of Sydney	163	29	3	54	0	86
Salesians of Don Bosco	117	6	4	2	3	15
Diocese of Ballarat	102	1	0	25	0	26
Archdiocese of Brisbane	85	15	5	27	0	47
Hospitaller Order of St John of God	81	1	5	0	0	6

Catholic Church authority	Total number of claims relating to named institutions	Number of schools	Number of residential institutions	Number of parish and church facilities	Other institutions	Total number of institutions
Sisters of Mercy (Brisbane)	80	2	2	0	1	5
Diocese of Maitland-Newcastle	67	9	0	2	0	11
Archdiocese of Adelaide	62	10	0	4	0	14
Missionaries of the Sacred Heart	54	5	1	2	1	9
Benedictine Community of New Norcia	48	1	5	1	2	9
Sisters of Nazareth	48	0	5	0	0	5
Archdiocese of Perth	47	24	0	11	1	36
Pallottines – Society of the Catholic Apostolate	42	0	4	1	0	5
Patrician Brothers	40	10	0	0	0	10
Vincentians	40	2	0	3	1	6
Archdiocese of Canberra and Goulburn	25	14	0	6	2	22

13.3.8 Claims of child sexual abuse made in relation to specific Catholic Church authorities

This section provides further detail about what we have learned about the claims of child sexual abuse made in relation to some specific Catholic Church authorities. A number of criteria informed our decision about which Catholic Church authorities to include.

Four of the five religious institutes that have only religious brother members are included because these institutes accounted for a significant proportion of all claims made to Catholic Church authorities. These institutes are the Christian Brothers, the De La Salle Brothers, the Marist Brothers and the St John of God Brothers. The history of each of these institutions is set out in Section 13.1 'Structure and governance of the Catholic Church'. The fifth religious institute with only religious brother members is the Patrician Brothers.

We included a number of other Catholic Church authorities because they received a significant number of claims but could not be the subject of a Royal Commission case study due to ongoing criminal investigations relating to child sexual abuse by their members.

We have also included a number of Catholic Church authorities because they were the subject of a case study.

Finally, we included some Catholic Church authorities because they had a high proportion of priests or non-ordained religious members who ministered in the period 1950 to 2010, and who were alleged perpetrators, taking into account duration of ministry. One Catholic Church authority, namely the Society of Jesus, was included because it received a comparatively low number of claims and had a comparatively low proportion of priests and non-ordained religious members who were alleged perpetrators.

Male religious institutes

Christian Brothers

The Catholic Church claims data showed that 1,015 people made a claim of child sexual abuse to the Christian Brothers between 1980 and 2015.[88] The Christian Brothers were the Catholic Church authority that received the highest number of claims of child sexual abuse in that period (21 per cent of all claims made to a Catholic Church authority).[89] The Christian Brothers were examined in two of our case studies, *Case Study 11: Congregation of Christian Brothers in Western Australia response to child sexual abuse at Castledare Junior Orphanage, St Vincent's Orphanage Clontarf, St Mary's Agricultural School Tardun and Bindoon Farm School*[90] and *Case Study 28: Catholic Church authorities in Ballarat (Catholic Church authorities in Ballarat)*.[91]

The data indicated that almost all of the people who made a claim of child sexual abuse to the Christian Brothers were male (98 per cent).[92]

The data also showed that claims of child sexual abuse made to the Christian Brothers identified 483 alleged perpetrators, all of whom were male.[93] These 483 alleged perpetrators were 20 per cent of all alleged perpetrators identified in the Catholic Church claims data.[94]

Of these 483 alleged perpetrators, 301 were identified as religious brothers.[95] A total of 845 people identified one or more religious brothers as alleged perpetrators in claims made to the Christian Brothers.[96] Of all the alleged perpetrators, 29 (8 per cent) were the subject of 10 or more claims of child sexual abuse.[97] The highest number of claims made in relation to a single alleged perpetrator who was a Christian Brother was 78.[98]

Of the people who made a claim of child sexual abuse to the Christian Brothers over 40 per cent also made an allegation of physical abuse (42 per cent).[99]

The Christian Brothers had 1,610 non-ordained religious brothers in ministry in Australia in the period 1950 to 2010, the highest number of any male religious institute surveyed. Of the Christian Brothers who ministered during this period, the weighted proportion of alleged perpetrators, taking into account the duration of ministry, was 22 per cent and the unweighted proportion was 16.7 per cent.[100]

Of the 1,049 named institutions identified in the Catholic Church claims data, 109 were Christian Brothers institutions (10.4 per cent of the total number of institutions).[101] Of these, 100 were schools, identified in a total of 728 claims.[102] Four of the institutions were residential institutions, identified in a total of 392 claims.[103]

These institutions included St Vincent's Orphanage, Clontarf (152 claims), Castledare Junior Orphanage, Wilson (142 claims), St Joseph's Farm and Trade School, Bindoon (118 claims), St Vincent De Paul's Orphanage, South Melbourne (114 claims), St Augustine's Boys' Home, Geelong (96 claims), St Mary's Agricultural School, Tardun (49 claims), St Joseph's College, Geelong (39 claims), St Alipius School, Ballarat East (38 claims),[104] St Leo's College, Box Hill (21 claims) and St Patrick's College, Ballarat (20 claims).[105] The responses of the Christian Brothers to allegations of child sexual abuse are discussed in Sections 13.4–13.6 and 13.8–13.10.

Marist Brothers

The Catholic Church claims data showed that 486 people made a claim of child sexual abuse to the Marist Brothers between 1980 and 2015.[106] The Marist Brothers is the Catholic Church authority that received the second highest number of claims of child sexual abuse in that period (10 per cent of all claims made to a Catholic Church authority).[107] The Marist Brothers have been examined in three of our case studies, *Case Study 4: The experiences of four survivors with the Towards Healing process,*[108] *Case Study 13: The response of the Marist Brothers to allegations of child sexual abuse against Brothers Kostka Chute and Gregory Sutton*[109] and *Case Study 43: The response of Catholic Church authorities in the Maitland-Newcastle region to allegations of child sexual abuse by clergy and religious (Catholic Church authorities in Maitland-Newcastle)*.

Almost all of the people who made a claim of child sexual abuse against the Marist Brothers were male (93 per cent).[110]

The data showed that of the 222 alleged perpetrators identified in claims of child sexual abuse made to the Marist Brothers, nearly all were male (99 per cent).[111] These 222 alleged perpetrators were 9 per cent of all alleged perpetrators identified in the Catholic Church claims data.[112]

Of these 222 alleged perpetrators, 156 were identified as religious brothers.[113] A total of 409 people identified one or more religious brothers as alleged perpetrators in claims made to the Marist Brothers.[114] Of all the alleged perpetrators, 11 (5 per cent) were the subject of 10 or more claims of child sexual abuse.[115] The highest number of claims made in relation to a single alleged perpetrator who was a Marist Brother was 52.[116]

The Marist Brothers had 1,055 non-ordained religious brothers in ministry in Australia in the period 1950 to 2010, the second highest number of any male religious institute.[117] Of the Marist Brothers who ministered during this period, the weighted proportion of alleged perpetrators, taking into account the duration of ministry, was 20.4 per cent and the unweighted proportion was 14.3 per cent.[118]

Of the 1,049 named institutions identified in the Catholic Church claims data, 76 were Marist Brothers institutions (7.2 per cent of the total number of institutions).[119] Of these, 70 were schools, with 433 claims relating to schools.[120] Two of the institutions were residential institutions, identified in a total of 46 claims. [121]

Marist College Canberra was identified in 63 claims, more than any other school operated by any Catholic Church authority in the Catholic Church claims data.[122] St Vincent's Boys Home, Westmead, was the second most identified Marist Brothers institution, being the subject of 45 claims.[123] St Joseph's College, Hunters Hill, the third most identified Marist Brothers institution, was the subject of 31 claims.[124]

The responses of the Marist Brothers to allegations of child sexual abuse are discussed in Sections 13.4–13.10.

De La Salle Brothers

The Catholic Church claims data showed that 328 people made a claim of child sexual abuse to the De La Salle Brothers between 1980 and 2015. The De La Salle Brothers is the Catholic Church authority that received the fourth highest number of claims of child sexual abuse (7 per cent of all claims made to a Catholic Church authority).[125]

Almost all of the people who made a claim of child sexual abuse to the De La Salle Brothers were male (95 per cent).[126]

The data showed that of the 145 alleged perpetrators identified in claims of child sexual abuse made to the De La Salle Brothers, nearly all were male (99 per cent). These 145 alleged perpetrators were 6 per cent of all alleged perpetrators identified in claims made to Catholic Church authorities.[127]

Of these 145 alleged perpetrators, 74 were identified as religious brothers.[128] Two hundred and eighty-eight people identified one or more religious brothers as alleged perpetrators in a claim made to the De La Salle Brothers.[129] Of all the alleged perpetrators, 11 (12 per cent) were the subject of 10 or more claims of child sexual abuse. The highest number of claims made in relation to a single alleged perpetrator who was a De La Salle Brother was 36.[130]

The De La Salle Brothers had 492 non-ordained religious brothers in ministry in the period 1950 to 2010. Of the De La Salle Brothers who ministered during this period, the weighted proportion of alleged perpetrators, taking into account the duration of ministry, was 13.8 per cent and the unweighted proportion was 11.8 per cent.[131]

Of the 1,049 named institutions identified in the Catholic Church claims data, 34 were De La Salle Brothers institutions (3 per cent of the total number of institutions).[132] Of the 328 people who made a claim to the De La Salle Brothers, 219 identified BoysTown, Beaudesert as the institution where the alleged abuse occurred.[133]

BoysTown, Beaudesert, Queensland

BoysTown, Beaudesert (BoysTown) was established by the De La Salle Brothers in 1961 as a place 'where boys from disadvantaged backgrounds could receive basic training in farmwork, metalwork, woodwork and automechanics'.[134] BoysTown was subject to more claims of child sexual abuse than any other institution in the Catholic Church claims data. The 219 claims of child sexual abuse that related to BoysTown represented 67 per cent of all the claims of child sexual abuse received by the De La Salle Brothers.[135] Of the people who alleged child sexual abuse at BoysTown, 191 also alleged that they were physically abused.[136]

The data showed that the total amount paid by the De La Salle Brothers with respect to claims relating to BoysTown was $26.4 million, with an average payment of approximately $185,000. The total amount paid in relation to BoysTown represented 76 per cent of the total payments made by the De La Salle Brothers.[137]

The De La Salle Brothers received the first claim in relation to child sexual abuse at BoysTown in 1997. Between 1997 and 2011, the De La Salle Brothers received, on average, two claims per year. However, in the period from 2012 to 2014, the number of claims increased rapidly, with 181 claims received over this three-year period. The year in which the De La Salle Brothers received the highest number of claims in relation to BoysTown was 2013, with 93 claims recorded.[138]

The data identified 99 alleged perpetrators of child sexual abuse at BoysTown, with incidents alleged to have occurred between 1961 and 2003. Of these alleged perpetrators, 50 were identified, while there were 49 whose identities were unknown (or who were only partially identified). It cannot be determined whether any of these unidentified alleged perpetrators were identified in another claim.[139]

The data showed that six alleged perpetrators were the subject of more than 20 claims of child sexual abuse in relation to BoysTown. All six alleged perpetrators were De La Salle brothers. These six brothers were the subject of 140 claims of child sexual abuse made in relation to BoysTown (64 per cent of all claims that identified BoysTown).[140]

St John of God Brothers

The Catholic Church claims data showed that 74 people made a claim of child sexual abuse to the St John of God Brothers between 1980 and 2015. Almost all of the people who made a claim of child sexual abuse to the St John of God Brothers were male.[141]

The data showed that of the 46 alleged perpetrators identified in claims of child sexual abuse made to the St John of God Brothers, all were male.[142]

Of these 46 alleged perpetrators, 37 were identified as religious brothers.[143] Sixty-six people identified one or more religious brothers as alleged perpetrators.[144] Of all the alleged perpetrators, one was the subject of 10 or more claims of child sexual abuse. The highest number of claims made in relation to a single alleged perpetrator who was a St John of God brother was 21.[145]

The St John of God Brothers had 112 non-ordained religious brothers in ministry in the period 1950 to 2010.[146] Of the St John of God Brothers who ministered during this period, the weighted proportion of alleged perpetrators, taking into account the duration of ministry, was 40.4 per cent and the unweighted proportion was 30.4 per cent.[147] This was the highest proportion of alleged perpetrators in any Catholic Church authority surveyed.[148]

Of the total 1,049 named institutions identified in the Catholic Church claims data, six were St John of God Brothers institutions and, of those, five were residential institutions.[149] Of the 74 claims made to the St John of God Brothers, over half identified the residential institution Kendall Grange, Morisset Park, New South Wales, as the location of abuse (41 claims).[150]

Cheltenham Residential Training Centre in Cheltenham, Victoria, was identified in 23 claims made to the St John of God Brothers.[151] This training centre was established by the St John of God Brothers in 1953. It housed around 100 Catholic boys aged seven to 16 with mild intellectual disabilities, including state wards unable to live with their parents.[152]

Kendall Grange, Morisset Park

The Kendall Grange facility was established by the St John of God Brothers in 1948 as a residential school for boys with intellectual disabilities.[153] In 1980, Kendall Grange changed to a residential school for boys with behavioural disorders, and in 1994 it became a residential school for primary school aged boys and girls with behavioural disorders, which operated until 2000.[154] In 2001, after a request from the New South Wales Department of Community Services, Kendall Grange closed and became a community-based early intervention service, St John of God Family Services.[155]

The Catholic Church claims data showed that 41 claims of child sexual abuse identified Kendall Grange as the location of at least one alleged incident of child sexual abuse, these incidents having occurred between 1950 and 1997.[156] This figure represented 55 per cent of all claims received by the St John of God Brothers.[157] Of the 41 claimants who alleged child sexual abuse at Kendall Grange, almost half (20 claimants) also alleged that they were physically abused.[158]

The data identified 33 alleged perpetrators of child sexual abuse at Kendall Grange, with incidents alleged to have occurred between 1950 and 1997. Of these alleged perpetrators, 30 were identified, while there were three perpetrators whose identities were unknown (or who were only partially identified). A little over half of the claimants identified one alleged perpetrator in relation to abuse occurring at Kendall Grange (54 per cent) and one-third identified two alleged perpetrators.[159]

The total amount paid by the St John of God Brothers with respect to claims relating to Kendall Grange (28 of 41 claims resulted in payments) was $3.38 million, with an average payment of approximately $130,000. The total amount paid in relation to Kendall Grange represented 46 per cent of the total payments made by the St John of God Brothers.[160]

Salesians of Don Bosco

The Salesians of Don Bosco (Salesians) have both religious priest and non-ordained religious members. The Catholic Church claims data showed that 114 people made a claim of child sexual abuse to the Salesians between 1980 and 2015.[161]

Almost all of the people who made a claim of child sexual abuse to the Salesians were male (93 per cent).[162]

The data showed that all of the 46 alleged perpetrators identified in claims of child sexual abuse made to the Salesians were male.[163]

Of the 46 alleged perpetrators, 24 were identified as priests and 14 were non-ordained religious.[164] Ninety-two people identified one or more priests as alleged perpetrators and 24 people identified one or more non-ordained religious as alleged perpetrators.[165] Of all the alleged perpetrators, four (10 per cent) were the subject of 10 or more claims of child sexual abuse.[166] The highest number of claims made in relation to a single alleged perpetrator was 26.[167]

The Salesians had 246 non-ordained religious in ministry in the period 1950 to 2010.[168] Of the non-ordained religious members of the Salesians who ministered during this period, the weighted proportion of alleged perpetrators, taking into account the duration of ministry, was 20.9 per cent and the unweighted proportion was 8.9 per cent.[169]

The Salesians had 159 priests in ministry in the period 1950 to 2010.[170] Of the priest members of the Salesians who ministered during this period, the weighted proportion of alleged perpetrators, taking into account the duration of ministry, was 17.2 per cent and the unweighted proportion was 13.8 per cent.[171]

Of the total 1,049 named institutions identified in the Catholic Church claims data as locations of child sexual abuse, 15 were Salesian institutions, six of which were schools and four of which were residential institutions.[172] Of the 114 people who made a claim to the Salesians, 44 identified Salesian College, Rupertswood in Sunbury, Victoria, as the institution where the alleged abuse occurred and 31 identified BoysTown, Engadine, as the institution where the alleged abuse occurred.[173] These were the two most identified institutions in claims received by the Salesians.

Salesian College, Rupertswood in Sunbury

Salesian College, Rupertswood in Sunbury (Rupertswood) was acquired by the Salesians in 1927 to be used as an agricultural school. The Archbishop of Melbourne at this time, Dr Daniel Mannix, advocated that the Salesians operate the school as a home for Catholic boys.[174]

The Salesians' first facility for the training of novices for the religious institute was also based at Rupertswood from 1941 until 1960, when it moved to Oakleigh. By the 1940s, Rupertswood was accepting wards of the state and juvenile offenders, as well as boys placed there by their parents in the same way as any ordinary boarding school. In 1961 the school became known as Salesian College, taking both boarders and day secondary students. Salesian College remained a single-sex boarding and day school until the early 1990s, when the boarding section was phased out and the school began accepting girls.[175]

The Catholic Church claims data showed that 44 claims of child sexual abuse identified Rupertswood as the location of at least one incident of child sexual abuse. The Salesians received 43 of these claims, which were 39 per cent of all the claims of child sexual abuse received by the Salesians.[176] Of the people who alleged child sexual abuse at Rupertswood, 39 also alleged that they were physically abused.[177]

The total amount paid by the Salesians with respect to claims relating to Rupertswood was $810,000, with an average payment of approximately $40,000. The total amount paid in relation to Rupertswood represented 33 per cent of the total payments made by the Salesians.[178]

The Salesians received the first claim in relation to child sexual abuse at Rupertswood in 1989. Between 1989 and 2014, the Salesians received, on average, two claims per year.[179]

The data identified 11 alleged perpetrators of child sexual abuse at Rupertswood, with incidents alleged to have occurred between 1954 and 1992. Of these alleged perpetrators, 10 were identified, while there was one whose identity was unknown. It cannot be determined whether this unknown alleged perpetrator was identified in another claim.[180]

Society of Jesus – Jesuits

The Jesuit congregation has both religious priest and non-ordained religious members. The Catholic Church claims data showed that 45 people made a claim of child sexual abuse to the Jesuit congregation between 1980 and 2015.[181]

Of the people who made a claim of child sexual abuse to the Jesuit congregation, 87 per cent were male.[182]

The data showed that of the 29 alleged perpetrators identified in claims of child sexual abuse made to the Jesuit congregation, 97 per cent were male and 3 per cent were female.[183]

Of these 29 alleged perpetrators, 16 were identified as priests and five were non-ordained religious.[184] Twenty-seven people identified one or more priests as alleged perpetrators and 11 people identified one or more non-ordained religious as alleged perpetrators.[185] The highest number of claims made in relation to a single alleged perpetrator who was a Jesuit was five.[186]

The Jesuit congregation had 503 non-ordained religious in ministry in the period 1950 to 2010.[187] Of the non-ordained religious members of the Jesuit congregation who ministered during this period, the weighted proportion of alleged perpetrators, taking into account the duration of ministry, was 3.6 per cent and the unweighted proportion was 1.6 per cent.[188]

The Jesuit congregation had 453 priests in ministry in the period 1950 to 2010. Of the priest members of the Jesuit congregation who ministered during this period, the weighted proportion of alleged perpetrators, taking into account the duration of ministry, was 5.7 per cent and the unweighted proportion was 3.5 per cent.[189]

Missionaries of the Sacred Heart

The Missionaries of the Sacred Heart has both religious priest and non-ordained religious members. The Catholic Church claims data indicated that 86 people made a claim of child sexual abuse to the Missionaries of the Sacred Heart between 1980 and 2015.[190]

Of the people who made a claim of child sexual abuse to the Missionaries of the Sacred Heart, 88 per cent were male.[191]

The data showed that all of the 28 alleged perpetrators identified in claims of child sexual abuse made to the Missionaries of the Sacred Heart were male.[192]

Of these 28 alleged perpetrators, 14 were identified as priests and four were non-ordained religious.[193] Thirty-four people identified one or more priests as alleged perpetrators and 18 people identified one or more non-ordained religious as alleged perpetrators.[194] Of all the alleged perpetrators, three (11 per cent) were the subject of 10 or more claims of child sexual abuse.[195] The highest number of claims made in relation to a single alleged perpetrator was 26.[196]

The Missionaries of the Sacred Heart had 522 non-ordained religious in ministry in the period 1950 to 2010. Of the non-ordained religious members of the Missionaries of the Sacred Heart who ministered during this period, the weighted proportion of alleged perpetrators, taking into account the duration of ministry, was 2.6 per cent and the unweighted proportion was 1.1 per cent.[197]

The Missionaries of the Sacred Heart had 363 priests in ministry in the period 1950 to 2010.[198] Of the priest members of the Missionaries of the Sacred Heart who ministered during this period, the weighted proportion of alleged perpetrators, taking into account the duration of ministry, was 5.3 per cent and the unweighted proportion was 3.9 per cent.[199]

Of the total 1,049 named institutions identified in the Catholic Church claims data, nine were Missionaries of the Sacred Heart institutions, five of which were schools.[200]

The Congregation of the Mission (Vincentians)

The Vincentian Congregation has both priest and non-ordained religious members. The Catholic Church claims data showed that 49 people made a claim of child sexual abuse to the Vincentians between 1980 and 2015.[201] Of the people who made a claim of child sexual abuse to the Vincentians, 88 per cent were male.[202]

The data showed that of the 17 alleged perpetrators identified in claims of child sexual abuse made to the Vincentians, all were male.[203]

Of these 17 alleged perpetrators, 14 were identified as priests.[204] Forty-five of the 49 people who made a claim identified one or more priests as alleged perpetrators.[205] Of all the alleged perpetrators, two (12 per cent) were the subject of 10 or more claims of child sexual abuse.[206] The highest number of claims made in relation to a single alleged perpetrator was 19.[207]

The Vincentians had 147 priests in ministry in the period 1950 to 2010.[208] Of the Vincentian priests who ministered during this period, the weighted proportion of alleged perpetrators, taking into account the duration of ministry, was 8 per cent and the unweighted proportion was 8.8 per cent.[209]

St Stanislaus College in Bathurst, New South Wales, which was operated by the Vincentians, was identified in 29 claims received by the Vincentians.[210]

St Stanislaus College, Bathurst

St Stanislaus College, Bathurst, commenced operation in 1867. Since 1889, St Stanislaus College has been a boarding school operated by the Vincentians. The school was under the principalship of Vincentian priests until 1993 when the first lay principal was appointed to the school.[211]

The Catholic Church claims data showed that 29 claims of child sexual abuse identified St Stanislaus College as the location of at least one alleged incident of child sexual abuse, these incidents having occurred between 1966 and 1991.[212] This figure represented 59 per cent of all claims received by the Vincentians.[213]

The data identified 10 alleged perpetrators of child sexual abuse at St Stanislaus College with incidents alleged to have occurred between 1966 and 1991. Of the 29 people who identified St Stanislaus College in their claim:[214]

- 28 identified one alleged perpetrator of child sexual abuse
- 23 alleged multiple incidents of child sexual abuse.

The total amount paid by the Vincentians with respect to claims relating to St Stanislaus College (15 of 29 claims resulted in payments) was $1.97 million, with an average payment of $132,000. The total amount paid in relation to St Stanislaus College represented 53 per cent of the total payments made by the Vincentians.[215]

Benedictines of New Norcia

The Catholic Church claims data showed that 71 people made a claim of child sexual abuse to the Benedictines of New Norcia between 1980 and 2015.[216] Of the people who made a claim of child sexual abuse to the Benedictines of New Norcia, 76 per cent were male.[217]

The data showed that of the 33 alleged perpetrators identified in claims of child sexual abuse made to the Benedictines of New Norcia, 85 per cent were male.[218]

Of these 33 alleged perpetrators, 15 were identified as priests and 16 were religious brothers.[219] Fifty-five people identified one or more priests as alleged perpetrators and 16 people identified one or more religious brothers as alleged perpetrators.[220] Of all the alleged perpetrators, one (5 per cent) was the subject of 10 or more claims of child sexual abuse.[221] The highest number of claims made in relation to a single alleged perpetrator was 26.[222]

The Benedictines of New Norcia had 53 priests in ministry in the period 1950 to 2010.[223] Of the Benedictine priests who ministered during this period, the weighted proportion of alleged perpetrators, taking into account the duration of ministry, was 21.5 per cent and the unweighted proportion was 18.9 per cent.[224] This was the highest proportion of alleged perpetrators of any Catholic Church authority with priest members, including both diocesan and religious priests.[225]

St Mary's Mission, New Norcia, operated by the Benedictines of New Norcia, was identified in 20 claims.[226]

Archdioceses and dioceses

Archdiocese of Brisbane

The Catholic Church claims data showed that 152 people made a claim of child sexual abuse to the Archdiocese of Brisbane between 1980 and 2015 (3 per cent of all claims made to a Catholic Church authority). The number of claims made to the Archdiocese of Brisbane represents 9 per cent of all claims made to an archdiocese/diocese in Australia.[227]

Of the people who made a claim of child sexual abuse to the Archdiocese of Brisbane, 61 per cent were male and 38 per cent were female.[228]

The data showed that of the 76 alleged perpetrators identified in claims of child sexual abuse made to the Archdiocese of Brisbane, 99 per cent were male.[229]

Of these 76 alleged perpetrators, 48 were identified as priests and 20 were lay people.[230] A total of 114 people identified one or more priests as alleged perpetrators and 23 people identified one or more lay people as alleged perpetrators.[231] Of all the alleged perpetrators, three (5 per cent) were the subject of 10 or more claims of child sexual abuse.[232] The highest number of claims made in relation to a single alleged perpetrator was 18.[233]

The Archdiocese of Brisbane had 403 priests in ministry during the period 1950 to 2010. Of the priests who ministered during this period, the weighted proportion of alleged perpetrators, taking into account the duration of ministry, was 9.3 per cent and the unweighted proportion was 7.2 per cent. This was 2 per cent higher than the overall proportion of priests in Australia who were alleged perpetrators (7 per cent).[234]

Of the 1,049 named institutions identified in the Catholic Church claims data, 47 were identified in relation to the Archdiocese of Brisbane, including 27 parish, church and formation houses and 15 schools (identified in 47 and 30 claims respectively).[235]

Archdiocese of Melbourne

The Archdiocese of Melbourne is the largest Catholic archdiocese in Australia. The Catholic Church claims data showed that 455 people made a claim of child sexual abuse to the Archdiocese of Melbourne between 1980 and 2015 (10 per cent of all claims made to a Catholic Church authority).[236] The number of claims made to the Archdiocese of Melbourne represents one-quarter of all claims made to an archdiocese/diocese in Australia. The Archdiocese of Melbourne has been examined in two of our case studies, namely *Case Study 16: The Melbourne Response*[237] and *Case Study 35: Catholic Archdiocese of Melbourne.*[238]

Of the people who made a claim of child sexual abuse to the Archdiocese of Melbourne, 66 per cent were male and 26 per cent were female.[239]

The data showed that of the 188 alleged perpetrators identified in claims of child sexual abuse made to the Archdiocese of Melbourne, 92 per cent were male.[240] These 188 alleged perpetrators were 8 per cent of all alleged perpetrators identified in claims made to Catholic Church authorities.[241]

Of these 188 alleged perpetrators, 85 were identified as priests and 69 were lay people.[242] A total of 337 people identified one or more priests as alleged perpetrators and 80 people identified one or more lay people as alleged perpetrators.[243] Of all the alleged perpetrators, 10 (6 per cent) were the subject of 10 or more claims of child sexual abuse.[244] The highest number of claims made in relation to a single alleged perpetrator who was a diocesan priest was 56.[245]

The Archdiocese of Melbourne had 842 priests in ministry during the period 1950 to 2010, the largest number of diocesan priests in any Catholic Church authority. Of the priests who ministered during this period, the weighted proportion of alleged perpetrators, taking into account the duration of ministry, was 8.1 per cent and the unweighted proportion was 6.9 per cent.[246] This was 1 per cent higher than the overall proportion of priests in Australia who were alleged perpetrators (7 per cent).[247]

Of the 1,049 named institutions identified in the Catholic Church claims data, the highest number identified in relation to any single Catholic Church authority related to the Archdiocese of Melbourne.[248] Two-hundred and thirteen institutions were identified in relation to the Archdiocese of Melbourne, including 99 schools and 103 parish, church and formation houses (identified in 178 and 193 claims respectively).[249]

The responses of the Archdiocese of Melbourne to allegations of child sexual abuse are discussed in Sections 13.4–13.6 and 13.8–13.10.

Archdiocese of Sydney

The Catholic Church claims data showed that 169 people made a claim of child sexual abuse to the Archdiocese of Sydney between 1980 and 2015 (4 per cent of all claims made to a Catholic Church authority).[250] The number of claims made to the Archdiocese of Sydney represents 9 per cent of all claims made to an archdiocese/diocese in Australia. The Archdiocese of Sydney was examined in one of our case studies, namely *Case Study 8: Mr John Ellis's experience of the Towards Healing process and civil litigation*.[251]

Of the people who made a claim of child sexual abuse to the Archdiocese of Sydney, 56 per cent were male and 41 per cent were female.[252]

All of the 105 alleged perpetrators identified in claims of child sexual abuse made to the Archdiocese of Sydney were male. These 105 alleged perpetrators were 4 per cent of all alleged perpetrators identified in claims made to Catholic Church authorities.[253]

Of these 105 alleged perpetrators, 57 were identified as priests and 31 were lay people.[254] One hundred and seven people identified one or more priests as alleged perpetrators and 47 people identified one or more lay people as alleged perpetrators.[255] Of all the alleged perpetrators, seven (8 per cent) were the subject of 10 or more claims of child sexual abuse.[256] The highest number of claims made in relation to a single alleged perpetrator was 12.[257]

The Archdiocese of Sydney had 735 priests in ministry during the period 1950 to 2010, the second largest number of diocesan priests in any Catholic Church authority. Of the priests who ministered during this period, the weighted proportion of alleged perpetrators, taking into account the duration of ministry, was 7 per cent and the unweighted proportion was 6.3 per cent.[258]

Of the 1,049 named institutions identified in the Catholic Church claims data, 86 institutions were identified in relation to the Archdiocese of Sydney, including 29 schools and 54 parish, church and formation houses (identified in 62 and 84 claims respectively).[259]

The responses of the Archdiocese of Sydney to allegations of child sexual abuse are discussed in Sections 13.4–13.5 and 13.8–13.9.

Diocese of Ballarat

The Catholic Church claims data showed that 139 people made a claim of child sexual abuse to the Diocese of Ballarat between 1980 and 2015 (3 per cent of all claims made to a Catholic Church authority).[260] The number of claims made to the Diocese of Ballarat represents 8 per cent of all claims made to an archdiocese/diocese in Australia. The Diocese of Ballarat was examined in the *Catholic Church authorities in Ballarat* case study.[261]

Of the people who made a claim of child sexual abuse to the Diocese of Ballarat, 83 per cent were male and 17 per cent were female.[262]

All of the 21 alleged perpetrators identified in claims of child sexual abuse made to the Diocese of Ballarat were male.[263]

Of these 21 alleged perpetrators, 17 were identified as priests and three were non-ordained religious.[264] One hundred and thirty-eight people identified one or more priests as alleged perpetrators and seven people identified one or more religious brothers as alleged perpetrators.[265] Of all the alleged perpetrators, six (30 per cent) were the subject of 10 or more claims of child sexual abuse.[266]

The Diocese of Ballarat had 199 priests in ministry during the period 1950 to 2010. Of the priests who ministered during this period, the weighted proportion of alleged perpetrators, taking into account the duration of ministry, was 8.7 per cent and the unweighted proportion was 8.5 per cent.[267]

Of the 1,049 named institutions identified in the Catholic Church claims data, 26 institutions were identified in relation to the Diocese of Ballarat, including 25 parish, church and formation houses.[268] The institution identified in the most claims in relation to the Diocese of Ballarat was identified in 19 claims, namely Edenhope Parish, Edenhope. St Alipius Primary School, Ballarat East, is a school operated by the Diocese of Ballarat but the majority of claims of child sexual abuse identifying the school were received by the Christian Brothers in relation to Christian Brothers working at the school.

Diocese of Maitland-Newcastle

The Catholic Church claims data showed that 158 people made a claim of child sexual abuse to the Diocese of Maitland-Newcastle between 1980 and 2015 (3 per cent of all claims made to a Catholic Church authority).[269] This represents 9 per cent of all claims made to an archdiocese/diocese in Australia. The Diocese of Maitland-Newcastle was examined in the *Catholic Church authorities in Maitland-Newcastle* case study.

Of the people who made a claim of child sexual abuse to the Diocese of Maitland-Newcastle, 74 per cent were male and 24 per cent were female.[270]

Of the 31 alleged perpetrators identified in claims of child sexual abuse made to the Diocese of Maitland-Newcastle, 94 per cent were male and 6 per cent were female.[271]

Of these 31 alleged perpetrators, 19 were identified as priests and 11 were lay people.[272] One hundred and thirty-two people identified one or more priests as alleged perpetrators and 26 people identified one or more lay people as alleged perpetrators.[273] Of all the alleged perpetrators, three (11 per cent) were the subject of 10 or more claims of child sexual abuse.[274] The highest number of claims made in relation to a single alleged perpetrator was 62.[275]

The Diocese of Maitland-Newcastle had 207 priests in ministry during the period 1950 to 2010. Of the priests who ministered during this period, the weighted proportion of alleged perpetrators, taking into account the duration of ministry, was 7.9 per cent and the unweighted proportion was 7.7 per cent.[276]

Of the 1,049 named institutions identified in the Catholic Church claims data, 11 institutions were identified in relation to the Diocese of Maitland-Newcastle, including nine schools (identified in 65 claims).[277] The institution identified in the most claims received by the Diocese of Maitland-Newcastle was St Pius X College, Adamstown, which was identified in 46 claims.[278]

Diocese of Wollongong

The Catholic Church claims data showed that 33 people made a claim of child sexual abuse to the Diocese of Wollongong between 1980 and 2015.[279] The Diocese of Wollongong was examined in one of our case studies, *Case Study 14: The response of the Catholic Diocese of Wollongong to allegations of child sexual abuse, and related criminal proceedings, against John Gerard Nestor, a priest of the Diocese*.[280]

Of the people who made a claim of child sexual abuse to the Diocese of Wollongong, 91 per cent were male and 3 per cent were female.[281] Of the 18 alleged perpetrators identified in claims of child sexual abuse made to the Diocese of Wollongong, 94 per cent were male and 6 per cent were female, where the information was known.[282]

Of these 18 alleged perpetrators, 10 were identified as priests and five were lay people.[283] Twenty-five people identified one or more priests as alleged perpetrators and five people identified one or more lay people as alleged perpetrators.[284] The highest number of claims made in relation to a single alleged perpetrator was eight.[285]

The Diocese of Wollongong had 106 priests in ministry during the period 1950 to 2010.[286] Of the priests who ministered during this period, the weighted proportion of alleged perpetrators, taking into account the duration of ministry, was 11.7 per cent and the unweighted proportion was 8.5 per cent.[287]

Of the 1,049 named institutions identified in the Catholic Church claims data, 22 institutions were identified in relation to the Diocese of Wollongong, including 14 parish, church and formation houses and seven schools (identified in 19 and eight claims respectively).[288]

Female religious institutes

Female alleged perpetrators

As discussed in Chapter 7, 'People we heard about in religious institutions', there is limited research regarding female perpetrators of child sexual abuse, including research regarding female perpetrators of child sexual abuse in religious institutions.[289] As discussed in Volume 2, *Nature and cause*, much of the research on adult perpetrators of child sexual abuse in institutional contexts focuses on abuse by ordained clergy, particularly Catholic Church clergy, who are exclusively male.[290] In *Case Study 50: Institutional review of Catholic Church authorities*, clinical psychologist Dr Gerardine Robinson gave evidence that:

> Typically in the broader social, secular world, we used to think that women didn't perpetrate sexual abuse. They do, but certainly not to the degree that men do. Often if women are feeling unsatisfied, they will be more cruel and punitive to children.[291]

The Catholic Church claims data demonstrated that claims of child sexual abuse have alleged abuse by female perpetrators and more specifically, perpetrators who were religious sisters. The Catholic Church claims data indicated that, overall, 10 per cent of alleged perpetrators were female.[292] Of all the claims of child sexual abuse identified in the Catholic Church claims data, 3 per cent identified one female perpetrator and another 2 per cent identified both female and male alleged perpetrators.[293]

The Catholic Church claims data also showed that of the very small proportion of claims that identified a female alleged perpetrator, a high proportion also identified another alleged perpetrator who was a male. A considerable 38 per cent of the claims that identified a female alleged perpetrator identified more than one alleged perpetrator and of those claims 90 per cent also involved a male alleged perpetrator.[294] In contrast, 79 per cent of all claims identified only one male alleged perpetrator and a further 15 per cent identified more than one alleged perpetrator, all of whom were male.[295] The identification of more than one alleged perpetrator in a claim of child sexual abuse does not indicate whether or not it is alleged that abuse by more than one alleged perpetrator occurred at the same time.[296]

Alleged perpetrators who were religious sisters

Of the 201 Catholic Church authorities who completed a claims data survey, half were female religious institutes with religious sister members.[297] Of these 99 female religious institutes, 25 reported having received one or more claims of child sexual abuse.[298] The Catholic Church claims data showed that 9 per cent of claims of child sexual abuse were received by female religious institutes with religious sister members.[299] It is noted that many of these claims did not identify a religious sister as an alleged perpetrator but identified one or more priests or religious brothers.

Of the total of 1,880 known alleged perpetrators, 96 (5 per cent) were religious sisters.[300] The Catholic Church claims data indicated that 58 per cent of claims against alleged perpetrators who were religious sisters alleged child sexual abuse occurring at a residential institution and 31 per cent alleged child sexual abuse occurring at a school.[301] However, the Catholic Church claims data only identified female religious sisters as alleged perpetrators in 2 per cent of claims alleging abuse in a school and 7 per cent of claims alleging abuse in a residential institution.[302]

Of all religious sisters who were alleged perpetrators, 87 per cent were subject to one claim and 13 per cent were subject to between two and five claims.[303] On average, alleged perpetrators who were religious sisters were subject to 1.2 claims, (a lower average than those of priests, religious brothers and lay people).[304]

The highest number of claimants who identified the same religious sister as an alleged perpetrator was four.[305] This was markedly lower when compared with the highest number of claimants who identified the same priest and religious brother as an alleged perpetrator, being 80 and 78 respectively.[306]

Summaries of the data in relation to the Institute of Sisters of Mercy Australia and Papua New Guinea, and the Sisters of St Joseph of the Sacred Heart are provided below.

Institute of Sisters of Mercy Australia and Papua New Guinea

In the early 20th century, the Sisters of Mercy in Australia comprised 52 separate congregations.[307] As of mid-2017 there were four: Brisbane, North Sydney, Parramatta, and the Institute of Mercy of Australia and Papua New Guinea (PNG).[308] As discussed in Section 13.1, each congregation is autonomous in governance and comprises a number of communities.[309]

The Institute of Sisters of Mercy Australia and PNG has only female religious members. The Catholic Church claims data indicated that 174 people made a claim of child sexual abuse to the Institute of Sisters of Mercy Australia and PNG (4 per cent of all claims made to a Catholic Church authority) between 1980 and 2015.[310] This is the highest number of claims received by any female religious institute and represented 41 per cent of all the claims received by religious institutes with only religious sister members. Of the people who made a claim of child sexual abuse to the Institute of Sisters of Mercy Australia and PNG, 62 per cent were female and 37 per cent were male.[311]

The data showed that of all the 168 alleged perpetrators identified in claims of child sexual abuse made to the Institute of Sisters of Mercy Australia and PNG, 65 per cent were male and 35 per cent were female.[312] These 168 alleged perpetrators were 7 per cent of all alleged perpetrators identified in claims made to Catholic Church authorities and 34 per cent of alleged perpetrators identified by religious institutes with only religious sister members.[313] Of the 168 alleged perpetrators, 81 were identified in claims of child sexual abuse, while there were 87 alleged perpetrators whose identities were not known.[314] Of these 168 alleged perpetrators, 36 (21 per cent) were identified as non-ordained religious, 33 (20 per cent) were identified as lay people and 29 (17 per cent) were identified as priests.[315]

Forty-six people identified one or more lay people as alleged perpetrators, 38 people identified one or more priests as alleged perpetrators and 37 people identified one or more religious sisters as alleged perpetrators.[316] Of all the alleged perpetrators, five (6 per cent) were the subject of 10 or more claims of child sexual abuse.[317] The highest number of claims made in relation to a single alleged perpetrator was 11.[318]

Of the total 1,049 named institutions identified in the Catholic Church claims data, 30 were Institute of Sisters of Mercy Australia and PNG institutions, 15 of which were residential institutions, identified in a total of 267 claims and 12 of which were schools, identified in a total of 18 claims.[319] St Joseph's Home, Neerkol, was identified in 71 claims and St Vincent de Paul Orphanage, Goodwood, was identified in 26 claims.[320]

Sisters of St Joseph of the Sacred Heart

The Sisters of St Joseph of the Sacred Heart have only female religious members. The Catholic Church claims data indicated that 58 people made a claim of child sexual abuse to the Sisters of St Joseph of the Sacred Heart between 1980 and 2015. This represented 14 per cent of all the claims received by religious institutes with only religious sister members. Of the people who made a claim of child sexual abuse to the Sisters of St Joseph of the Sacred Heart, 59 per cent were male and 41 per cent were female.[321]

The data showed that of all the 69 alleged perpetrators identified in claims of child sexual abuse made to the Sisters of St Joseph of the Sacred Heart, 54 per cent were male and 46 per cent were female. These 69 alleged perpetrators were 3 per cent of all alleged perpetrators identified in claims made to Catholic Church authorities.[322]

Of these 69 alleged perpetrators, 29 (42 per cent) were identified as lay people, 28 were identified as non-ordained religious (41 per cent) and 12 (17 per cent) were identified as priests.[323] Thirty-one people identified one or more religious sisters as alleged perpetrators and 26 people identified one or more lay people as alleged perpetrators.[324] The highest number of claims made in relation to a single alleged perpetrator was four.[325]

The Sisters of St Joseph of the Sacred Heart were one of the two female religious institutes that were surveyed in the non-ordained religious survey that sought information about the number of religious members in ministry from the period 1950 to 2010. The Sisters of St Joseph of the Sacred Heart had 3,122 religious sisters in ministry in the period 1950 to 2010, being more than any other Catholic Church authority surveyed who had priest and/or non-ordained religious members.[326]

There were 14 alleged perpetrators who were religious sisters from the Sisters of St Joseph of the Sacred Heart who ministered in the period 1950 to 2010. Of the religious sisters who ministered during this period the weighted proportion of alleged perpetrators, taking into account duration of ministry, was 0.6 per cent.[327] Of the religious sisters who ministered during this period, the unweighted proportion was 0.4 per cent.[328] The average length of ministry for religious sisters who were alleged perpetrators in the congregation was a considerable 47.2 years, which was longer than the average for religious sisters who were not subject to a claim of child sexual abuse (32.9 years).[329]

Of the total 1,049 named institutions identified in the Catholic Church claims data, 20 were Sisters of St Joseph of the Sacred Heart institutions, eight of which were schools and six of which were residential institutions.[330]

Endnotes

1 Name changed, private session, 'Malcolm Andrew'.
2 See Exhibit 50-0007, 'Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia', Case Study 50, CARC.0050.025.0283; Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017.
3 Name changed, private session, 'Brian Peter'.
4 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 12.
5 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 12.
6 The number of claimants in the data report published in February 2017 (4,445 claimants) was reduced to 4,444 claimants in the revised data report published in June 2017. See Exhibit 50-0007, 'Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia', Case Study 50, CARC.0050.025.0283; Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017.
7 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 13.
8 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 13.
9 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 13.
10 Name changed, private session, 'Niall'.
11 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 25.
12 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 25.
13 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 74.
14 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 25.
15 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 20.
16 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 20.
17 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, pp 73–4.
18 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 76.
19 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 22.
20 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 22.
21 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 76.
22 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 27.
23 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 27.
24 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of complaints of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, pp 26–7.
25 Name changed, private session, 'Perry Alan'.
26 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 28.
27 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 28.
28 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 29.
29 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, June 2017, p 30.
30 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 32.
31 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, June 2017, p 32.

32 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 33.
33 Name changed, private session, 'Jacob'.
34 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 41.
35 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, pp 54–5.
36 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, pp 55–6.
37 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 60.
38 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 57.
39 The proportions sum to more than 100 per cent because some survivors told us about more than one perpetrator.
40 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 41.
41 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 41.
42 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 41.
43 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 41.
44 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 75.
45 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 22.
46 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 22.
47 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 22.
48 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, pp 56–7.
49 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 78.
50 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 78.
51 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 61.
52 Name changed, private session, 'Stuart Paul'.
53 Exhibit 50-0021, 'Explanation Document – Proportion of Alleged Perpetrators, revised, June 2017', Case Study 50, CARC.0050.025.0283 at 0284.
54 Exhibit 50-0021, 'Explanation Document – Proportion of Alleged Perpetrators, revised, June 2017', Case Study 50, CARC.0050.025.0283 at 0284.
55 Exhibit 50-0021, 'Explanation Document – Proportion of Alleged Perpetrators, revised, June 2017', Case Study 50, CARC.0050.025.0283 at 0284.
56 Exhibit 50-0021, 'Explanation Document – Proportion of Alleged Perpetrators, revised, June 2017', Case Study 50, CARC.0050.025.0283 at 0285–0295.
57 Exhibit 50-0021, 'Explanation Document – Proportion of Alleged Perpetrators, revised, June 2017', Case Study 50, CARC.0050.025.0283 at 0285.
58 Exhibit 50-0021, 'Explanation Document – Proportion of Alleged Perpetrators, revised, June 2017', Case Study 50, CARC.0050.025.0283 at 0285.
59 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 16.
60 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, pp 16–7; Exhibit 50-0021, 'Explanation Document – Proportion of Alleged Perpetrators, revised, June 2017', Case Study 50, CARC.0050.025.0283 at 0287, 0289–0291.
61 Exhibit 50-0021, 'Explanation Document – Proportion of Alleged Perpetrators, revised, June 2017', Case Study 50, CARC.0050.025.0283 at 0287, 0288. The Archdiocese of Canberra and Goulburn received a total of 14 claims.
62 Exhibit 50-0021, 'Explanation Document – Proportion of Alleged Perpetrators, revised, June 2017', Case Study 50, CARC.0050.025.0283 at 0285–0286.
63 Exhibit 50-0021, 'Explanation Document – Proportion of Alleged Perpetrators, revised, June 2017', Case Study 50, CARC.0050.025.0283 at 0285–0286.

64 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 17; Exhibit 50-0021, 'Explanation Document – Proportion of Alleged Perpetrators, revised, June 2017', Case Study 50, CARC.0050.025.0283 at 0292–0295.

65 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 16; Exhibit 50-0021, 'Explanation Document – Proportion of Alleged Perpetrators, revised, June 2017', Case Study 50, CARC.0050.025.0283 at 0292.

66 Exhibit 50-0021, 'Explanation Document – Proportion of Alleged Perpetrators, revised, June 2017', Case Study 50, CARC.0050.025.0283.

67 Exhibit 50-0021, 'Explanation Document – Proportion of Alleged Perpetrators, revised, June 2017', Case Study 50, CARC.0050.025.0283 at 0297, 0299.

68 Salesians of Don Bosco and Sisters of St Joseph of the Sacred Heart respectively. See: Exhibit 50-0021, 'Explanation Document – Proportion of Alleged Perpetrators, revised, June 2017', Case Study 50, CARC.0050.025.0283 at 0297–0298.

69 See: Exhibit 50-0021, 'Explanation Document – Proportion of Alleged Perpetrators, revised, June 2017', Case Study 50, CARC.0050.025.0283 at 0296–0297, 0298. The Society of Jesus raised concerns with the Royal Commission about the calculation of the proportion of Jesuit priests and non-ordained religious subject to claims of child sexual abuse. A submission was made on behalf of the Society of Jesus dated 6 July 2017 to which the Royal Commission responded on 24 July 2017. The submission and the response were subsequently tendered. See Exhibit 50-0022, 'Submission on behalf of the Society of Jesus to the Royal Commission with respect to the priest and non-ordained proportion analysis', 6 July 2017, Case Study 50, CCA.0197.001.0007; Exhibit 50-0023 'Response to the Society of Jesus by the Royal Commission with respect to the priest and non-ordained proportion analysis', 24 July 2017, Case Study 50, CCA.0197.001.0001.

70 Exhibit 50-0021, 'Explanation Document – Proportion of Alleged Perpetrators, revised, June 2017', Case Study 50, CARC.0050.025.0283 at 0295–0299.

71 Exhibit 50-0021, 'Explanation Document – Proportion of Alleged Perpetrators, revised, June 2017', Case Study 50, CARC.0050.025.0283 at 0299.

72 Exhibit 50-0021, 'Explanation Document – Proportion of Alleged Perpetrators, revised, June 2017', Case Study 50, CARC.0050.025.0283 at 0298.

73 Exhibit 50-0021, 'Explanation Document – Proportion of Alleged Perpetrators, revised, June 2017', Case Study 50, CARC.0050.025.0283 at 0297–0298.

74 Exhibit 50-0021, 'Explanation Document – Proportion of Alleged Perpetrators, revised, June 2017', Case Study 50, CARC.0050.025.0283 at 0298.

75 Exhibit 50-0021, 'Explanation Document – Proportion of Alleged Perpetrators, revised, June 2017', Case Study 50, CARC.0050.025.0283 at 0298–0299.

76 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 71.

77 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 71.

78 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 190.

79 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 190.

80 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 190.

81 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 190.

82 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 71.

83 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, pp 71–2.

84 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 191.

85 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 191.

86 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, pp 190–7, 199, 201.

87 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 191.

88 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 84.

89 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 84.

90 Royal Commission into Institutional Responses to Child Sexual Abuse, Report of *Case Study No 11: Congregation of Christian Brothers in Western Australia response to child sexual abuse at Castledare Junior Orphanage, St Vincent's Orphanage Clontarf, St Mary's Agricultural School Tardun and Bindoon Farm School*, Sydney, 2015.

91 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 28: Catholic Church authorities in Ballarat*, Sydney, 2017.

92 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 84.
93 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, pp 85–6.
94 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 85.
95 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, pp 85–6.
96 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 84.
97 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 86.
98 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 86.
99 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 84.
100 Exhibit 50-0021, 'Explanation Document – Proportion of Alleged Perpetrators, revised, June 2017', Case Study 50, CARC.0050.025.0283 at 0295.
101 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, pp 190, 192.
102 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 192.
103 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 192.
104 St Alipius Primary School, Ballarat East is a school operated by the Diocese of Ballarat but the majority of claims of child sexual abuse identifying the school were received by the Christian Brothers in relation to Christian Brothers working at the school. Accordingly, St Alipius Primary School has been allocated to the Christian Brothers, not the Diocese of Ballarat.
105 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, pp 71–2.
106 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 87.
107 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 87.
108 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 4: The experiences of four survivors with the Towards Healing process*, Sydney, 2014.
109 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 13: The response of the Marist Brothers to allegations of child sexual abuse against Brothers Kostka Chute and Gregory Sutton*, Sydney, 2015.
110 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 87.
111 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 88.
112 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 88.
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13.4 Awareness of allegations of child sexual abuse within the Catholic Church

> There is a two thousand year history of Biblical, Papal and Holy See statements showing awareness of clerical child sex abuse. Over the centuries, strong denunciation of clerical child sexual abuse came from Popes, Church councils and other Church sources.[1]
>
> **Dublin Archdiocese Commission of Investigation**

As set out in Chapter 3, 'Child sexual abuse in the global Catholic Church: early history and previous inquiries', and Section 13.2, canon law and other documents indicate that senior figures in the global Catholic Church have long been aware of the possibility that clergy and religious could sexually abuse children. In case studies, we have found that many senior figures in Catholic Church authorities across Australia were aware of allegations of child sexual abuse by clergy and religious throughout the 20th century. It appears that, the first reports of child sexual abuse in Catholic institutions in Australia may have been as early as 1849.[2] In this section, we discuss what we learned about the knowledge of individual Catholic Church authorities up until the announcement of this Royal Commission. The responses of Catholic Church authorities to complaints of child sexual abuse were often remarkably similar. Too often they involved inaction or insufficient action, which left children at risk. These responses are considered in Sections 13.5, 13.6, 13.8, 13.9 and 13.10.

By 1988 the sexual abuse of children by clergy and religious was being formally discussed by the Australian Catholic Bishops Conference (ACBC) (see Section 13.7). In the years that followed, there was growing awareness, particularly within the Catholic Church, of the magnitude of the problem. This had been preceded by isolated criminal proceedings against clergy and religious for child sexual abuse offences in Australia – notably, the charges against Father Michael Glennon from the Archdiocese of Melbourne in 1978.[3]

As discussed in Section 13.3, the Catholic Church claims data indicated that, of the 201 Catholic Church authorities surveyed in Australia, 92 reported having received one or more claims of child sexual abuse between 1 January 1980 and 28 February 2015.[4] Of these, a third were archdioceses and dioceses and the remainder were religious institutes. A total of 4,444 claimants[5] alleged incidents in 4,756 reported claims relating to 1,880 alleged perpetrators.[6]

It was not possible for us to inquire into what each Catholic Church authority knew about allegations of offending by each of these alleged perpetrators, either at the time of the alleged abuse or in the years that followed. This was due to the large number of institutions in which abuse was reported to have occurred and the limits of our resources. As described in Chapter 1, 'The Royal Commission's work on religious institutions', we carefully chose the matters that were examined in a public hearing. Care was also taken not to duplicate the work of previous

inquiries and regard was had to the existence of current criminal investigations, prosecutions and civil litigation. This meant that our ability to explore, and our understanding of, the knowledge of Catholic Church authorities in Australia about allegations of child sexual abuse was necessarily limited.

As discussed in Chapter 1, in relation to some case studies, criminal proceedings commenced before, during or after the completion of our evidence and before the finalisation of our case study report. Our Terms of Reference required that our inquiry not prejudice current or future criminal or civil proceedings.[7]

Consequently, in three case study reports we made redactions to material that might prejudice relevant criminal proceedings. We recommended to the Australian Government and to state and territory governments that the redacted version of each of those case study reports be tabled and published. We further recommended that those case study reports be published in unredacted form at the conclusion of relevant criminal proceedings.[8] Where we refer in this section to case study reports which have been tabled with redactions, we apply the same redactions. We recommended that relevant parts of this Final Report be published in unredacted form at the conclusion of relevant criminal proceedings.

In two case study reports, redactions would not have been sufficient to address potential prejudice to relevant criminal proceedings. In relation to those case study reports, we recommended to the Australian Government, and to state and territory governments, that they not be tabled and published until the conclusion of relevant criminal proceedings.[9] In this and later sections of Chapter 13 we refer to transcripts and exhibits from those two case studies where that material does not prejudice relevant criminal proceedings.

Evidence in case studies and information from private sessions indicate that in some cases allegations of child sexual abuse against priests or religious were the subject of gossip or rumours among clergy or in the community. Our inquiries also revealed practices by various Catholic Church authorities that render it difficult to establish the true extent of knowledge of child sexual abuse in the Catholic Church in Australia. As discussed in Chapter 23, 'Recordkeeping and information sharing in religious institutions', these practices included not making, failing to maintain, or destroying records of allegations of child sexual abuse made against priests or religious.[10] We also heard that the use of euphemisms to describe child sexual abuse was widespread and that in some cases there were no, or inadequate, inquiries made to determine the nature or extent of complaints made against priests and religious.[11]

We note that a number of other Australian inquiries have found that senior officials in various Catholic Church authorities knew of allegations that particular clergy and religious had sexually abused children and that, despite that knowledge, the individual concerned was allowed to remain in ministry.[12]

Overseas inquiries have also found that there was widespread knowledge of offending by clergy and religious in various Catholic Church authorities during much of the 20th century and even before that time (see Chapter 3). In Ireland, the Commission of Investigation into Catholic Archdiocese of Dublin (Murphy Commission) rejected the claim that bishops and other senior Catholic Church officials in the Archdiocese of Dublin were on a 'learning curve' about child sexual abuse. It found that the archbishop at the time had dealt with cases of sexual abuse by priests during the 1950s and 1960s.[13]

Another Irish inquiry in 2009 found that 'Sexual abuse was known to religious authorities to be a persistent problem in male religious organisations throughout the relevant period [1940–1999]'.[14] This inquiry also found that, contrary to the claims of the Catholic religious congregations, they 'were aware of the propensity for abusers to re-abuse'.[15] These findings have been echoed in inquiries in Canada, the United States and the Netherlands.[16]

Our analysis in this section is based primarily on two areas of our work: evidence and findings from case studies[17] and our review of documents produced by Catholic Church Insurance Limited (CCI) relating to its investigations into prior knowledge.

As noted in Section 13.1, CCI is the principal insurer of most Catholic Church authorities in Australia. CCI provides a range of insurance policies to Catholic Church bodies, including insurance cover for sexual abuse claims. When assessing whether indemnity is available for a claim of child sexual abuse, CCI conducts investigations to establish whether the relevant insured Catholic Church authority had prior knowledge of an alleged perpetrator's propensity to abuse.

We reviewed documents we received from CCI to identify cases in which CCI determined that a relevant Catholic Church authority had prior knowledge. Documents relating to CCI's determinations of prior knowledge in respect of 22 alleged perpetrators were tendered in *Case Study 50: Institutional review of Catholic Church authorities (Institutional review of Catholic Church authorities)* in February 2017. We also prepared summaries of these documents, which were provided to CCI and to relevant Catholic Church authorities for comment. These summaries are set out in full in Appendix C.

Some of our analysis in this section also draws on documentary evidence we obtained regarding the Society of St Gerard Majella (the Society), a religious institute. Documents relating to the Society were tendered in the *Institutional review of Catholic Church authorities* hearing. These documents were not the subject of examination during that hearing. We summarised the evidence regarding the Society and provided the initial summary to relevant Catholic Church authorities for comment. We took those authorities' responses into account in preparing the final summary, which is at Appendix D.

We note that, in the time period considered in this section, some Australian jurisdictions had misprision of felony offences. In *R v Lovegrove,* Cox J described what was required in order to avoid committing this offence in the following way, 'A person who knows of the existence of a felony must tell the authorities about both the crime and the criminal'.[18]

If we received information relating to potential contraventions of Australian law, we made referrals to police in cases where the alleged perpetrator could have been alive and the survivor wished us to report the matter.[19] There were many cases where the alleged perpetrator was either known to be, or was almost certainly, deceased. If there was a prospective risk to any child a referral was made irrespective of the wish of the survivor. As of 31 July 2017, we had made 2,252 referrals to police, and police had laid charges in a number of cases. Of those 2,252 referrals, 1,229 related to child sexual abuse in religious institutions.

13.4.1 Awareness of allegations of child sexual abuse in Catholic dioceses in Australia

In 2017 in Australia there are seven archdioceses, 21 dioceses and five Eastern-rite dioceses. Each of these is substantially independent and autonomous. We discuss the structure and governance of the Catholic Church in Australia in Section 13.1.

The Catholic Church claims data indicated that, of the 34 archdioceses and dioceses surveyed in Australia for the period 1 January 1980 to 28 February 2015, 31 received one or more claims of child sexual abuse during that period.[20]

This section considers what we have learned about the awareness of bishops and other senior diocesan figures – including vicars general, members of diocesan colleges of consultors (an advisory body) and bishops' secretaries – of child sexual abuse in the Catholic Church. It focuses on eleven dioceses:

- Archdiocese of Melbourne
- Diocese of Ballarat
- Archdiocese of Sydney
- Diocese of Maitland-Newcastle
- Diocese of Wollongong
- Diocese of Parramatta
- Diocese of Rockhampton
- Diocese of Bunbury
- Diocese of Sale
- Diocese of Sandhurst
- Diocese of Port Pirie.

As set out in the following sections, in case studies we have made findings that various bishops received or otherwise became aware of complaints relating to sexual abuse of children by priests. These include, for example, our findings that:

- during the 1960s, Bishop James O'Collins of Ballarat received a complaint that Father Gerald Ridsdale had sexually abused a boy[21]
- in the early 1970s, Bishop Ronald Mulkearns of Ballarat knew of a number of allegations that Monsignor John Day had sexually abused children, and by late 1975 Father Ridsdale had admitted to Bishop Mulkearns that he had offended against children[22]
- in 1978, Archbishop Frank Little of Melbourne knew that Father Wilfred Baker had touched a boy in a sexual manner and he knew that Father Glennon had been sentenced to two years' imprisonment for indecently assaulting a child[23]
- in the early 1980s, the Archbishop of Sydney, Cardinal James Freeman, and subsequently his successor, Cardinal Edward Clancy, were told that Father Ridsdale's access to children needed to be restricted and that he needed counselling. Cardinal Clancy was told in 1983 that Father Ridsdale had 'certain sexual problems'.[24]

We have also considered documents relating to CCI's determinations that three other Australian bishops knew of at least one complaint or allegation in relation to priests in the 1980s, namely, determinations that:

- the Diocese of Port Pirie had knowledge of Father Charles Barnett's propensity to offend by 17 March 1983, based on a complaint made by a family that was reported to Bishop Peter De Campo by another priest of the diocese[25]
- the Diocese of Sale had knowledge of Father Daniel Hourigan's propensity to offend in 1986, based on a letter from parents to Bishop Eric D'Arcy in 1987 about the abuse of their son[26] (the Diocese of Sale informed us that it has accepted that there was prior knowledge of Father Hourigan from 1986)[27]
- the Diocese of Sandhurst had knowledge of Father Kevin Howarth's propensity to offend in early 1984, based on a complaint made by parents to Bishop Noel Daly and the bishop's decision to send Father Howarth to a counsellor.[28]

We note that the Special Commission of Inquiry into Matters Relating to the Police Investigation of Certain Child Sexual Abuse Allegations in the Catholic Diocese of Maitland-Newcastle (Special Commission of Inquiry) found that, in 1954, the Bishop of Maitland-Newcastle, John Toohey, received a complaint that Father Denis McAlinden had sexually abused a girl.[29] In addition, the Royal Commission into the New South Wales Police Service (Wood Royal Commission) found that Bishop William Murray of Wollongong knew of complaints against a parish priest and a Christian Brother in 1984.[30]

It is significant that so many bishops knew of at least one complaint of a priest or brother sexually abusing a child well before this issue was formally raised at the ACBC in the late 1980s. As we discuss in Section 13.5, although there were no formal procedures in place for responding to allegations of child sexual abuse at that time, responses to priests the subject of allegations were remarkably similar and frequently inadequate.

Archdiocese of Melbourne

As noted above, our Terms of Reference required that our inquiry not prejudice current or future criminal proceedings.[31] Consequently, we made redactions to material in the report of *Case Study 35: Catholic Archdiocese of Melbourne (Catholic Archdiocese of Melbourne)*. In this section, we have also applied redactions where appropriate.

The Archdiocese of Melbourne consists of four geographical regions, encompassing 216 parishes and 331 schools. Thomas Francis Little was Archbishop of Melbourne from July 1974 until July 1996, when he retired and was succeeded by Archbishop George Pell. Archbishop Denis Hart replaced Archbishop Pell in 2001. The following priests served as vicars general of the archdiocese during the time Archbishop Little was Archbishop: [32]

- Monsignor Peter Connors (June 1976–March 1987)
- Monsignor Hilton Deakin (May 1987–December 1992)
- Monsignor Gerald Cudmore (February 1993–September 1996).

We examined the response of the archdiocese to allegations of child sexual abuse in two case studies:

- *Case Study 16: The Melbourne Response (Melbourne Response)*, which considered allegations of child sexual abuse against Fathers Kevin O'Donnell, Michael Glennon and Victor Rubeo in the context of redress
- *Case Study 35: Catholic Archdiocese of Melbourne (Catholic Archdiocese of Melbourne)*, which considered allegations of child sexual abuse against Fathers Peter Searson, Wilfred 'Bill' James Baker, Ronald Pickering, Nazareno Fasciale, Kevin O'Donnell, Desmond Gannon and David Daniel.

These case studies primarily examined awareness of child sexual abuse within the archdiocese while Archbishop Little was Archbishop of Melbourne. As set out in this section, we have found that Archbishop Little knew of a number of allegations of child sexual abuse against priests in the archdiocese throughout the 1970s and 1980s, including knowledge:

- that, in 1978, Father Baker had showered with a boy and touched him in a sexual manner[33]
- that, in June 1978, Father Glennon had been sentenced to two years' imprisonment for the indecent assault of a girl[34]
- of a concern in December 1978 that the parish priest of Gardenvale, Father Pickering, was sexually abusing boys and constantly had boys in his bedroom in the presbytery[35]
- of a further complaint in 1986 that Father Pickering had sexually abused a boy on two occasions and offered him alcohol in the presbytery[36]
- of a complaint in 1986 that the parish priest of Oakleigh, Father Kevin O'Donnell, had sexually abused a child.[37]

In the late 1980s and early 1990s, Archbishop Little received complaints against six priests.[38] Four of these – Father Kevin O'Donnell, and Fathers Baker, Searson and Pickering – had been the subject of earlier complaints to him.[39]

[redacted]

[redacted]

Father Wilfred Baker

Father Baker was ordained as a priest in the Archdiocese of Melbourne in July 1961. He held a number of appointments as assistant priest in different parishes in the archdiocese.[41]

In January 1975, Father Baker was appointed parish priest of Gladstone Park. We heard from witness BTO, who gave evidence that he was sexually abused by Father Baker when he was 12 years old. BTO told us that, in late 1977 or early 1978, he disclosed Father Baker's sexual abuse to his mother and then to Father Phillip O'Donnell, who was at that time an assistant priest at Gladstone Park.[42]

We also received evidence from Mr Bryan Cosgriff, who at the time was chairman of the local primary school council and a magistrate. Mr Cosgriff told us in a statement that in 1978 he and a lawyer met with Archbishop Little at his residence. He told Archbishop Little an allegation had been made that Father Baker had taken BTO away for the weekend, they had showered together and Father Baker was alleged to have touched him sexually. Mr Cosgriff's evidence was that:

> I recall Archbishop Little remained standing for the entire meeting and appeared to be angry toward us. He said he thought we were despicable and that the allegations were despicable and that he did not believe them.[43]

Mr Cosgriff also told us in his statement that, in about June 1978, he received an unexpected phone call from Archbishop Little in which he said to Mr Cosgriff, 'the matter to do with Father Baker has been resolved. He will be moved out of Gladstone Park Parish', or words to that effect.[44] Monsignor Connors also became aware of BTO's complaint against Father Baker in 1978, and he told us he accepted the complaint as true.[45]

Father Baker was appointed parish priest of Eltham parish in June 1978. In our report on the *Catholic Archdiocese of Melbourne* we found that Archbishop Little transferred Father Baker to the new parish because he had been the subject of a complaint of child sexual abuse. Nothing was done to protect the children of Eltham parish from Father Baker. The Catholic Church claims data indicated that there were claims of child sexual abuse made against Father Baker in relation to Eltham parish.[46]

Father Baker was the subject of further complaints during the 1990s, when he was the parish priest of North Richmond. Ms Patricia Taylor, the principal of a primary school in North Richmond, told us that she was warned by staff of the Catholic Education Office never to let children be alone with Father Baker. She was also told by a man that he had been sexually abused by Father Baker in the past. In 1992, she told Monsignor Connors about these matters. Monsignor Connors was an auxiliary bishop at the time. Monsignor Connors said to her, 'Research shows that, once a paedophile, always a paedophile'. Father Baker remained in ministry.[47]

We found that Archbishop Little was aware of Ms Taylor's complaint and took no action to restrict Father Baker's access to children. We found the most likely reason for inaction by Archbishop Little was to protect the reputation of the Church.[48]

In 1993 Monsignor Cudmore, the vicar general, became aware of a complaint that Father Baker had engaged in sexual activities with a boy in the 1960s. The following year, Monsignor Cudmore received a further complaint that Father Baker had sexually abused another boy. Father Baker remained in ministry.[49]

[redacted] Baker was laicised in 2012 after an application by Archbishop Hart in 2010. Baker has been convicted of multiple counts of child sexual abuse offences.[50] The Catholic Church claims data showed that 21 people made a claim of child sexual abuse against Baker.[51]

Father Ronald Pickering

Father Pickering arrived in Australia in November 1957, shortly after having been ordained in England.[52]

We received evidence from BTU that he was sexually abused by Father Pickering for 12 years, beginning in 1966, when he was 11 years old.[53] BTU said in his statement that the first person he told about Father Pickering sexually abusing him was Father Wilfred Baker, when he attended confession in about 1968 at a neighbouring parish. BTU said that, as soon as his confession was finished, 'Father Baker wanted to chat to me' and they had a conversation in the church about what BTU had confessed.[54] BTU said that a few months later Father Pickering confronted him and told him that he was stupid for telling Father Baker.[55] As set out in the previous section, Baker was later convicted of sexually abusing a number of children.

Father Pickering was appointed parish priest of Gardenvale in 1978.[56] In December 1978, a sister of the Presentation Sisters (a Catholic order) told Archbishop Little about a concern that the parish priest of Gardenvale was sexually abusing boys and that he constantly had boys in the presbytery and in his bedroom. Archbishop Little took no action to determine if the allegation was true and did nothing to protect children from Father Pickering.[57] Father Pickering remained parish priest of Gardenvale for another 15 years.[58]

In 1986, Monsignor Connors received a complaint about Father Pickering, this time from a doctor. The doctor reported that Father Pickering had sexually abused a boy on two occasions and offered him alcohol in the presbytery. Archbishop Little subsequently spoke to Father Pickering about this complaint. Father Pickering took extended leave but then returned to the parish. No other action to protect children was taken. Father Pickering remained parish priest of Gardenvale until 1993, when he retired and returned to England.[59]

The Catholic Church claims data showed that one claim of child sexual abuse was made after 1986 in relation to an incident that occurred at Gardenvale. Overall, the Catholic Church claims data indicated that 19 people made a claim of child sexual abuse in relation to Father Pickering.[60]

Father Pickering's faculties were withdrawn following a meeting of the Curia in December 1993.[61] He died in 2009.[62]

Father Nazareno Fasciale

Father Fasciale was ordained in Melbourne in July 1952. His first appointment was assistant priest of Geelong parish.[63]

In about 1954, BTE found out from each of his two daughters that Father Fasciale had touched them on their vaginas on the inside of their clothing. BTE met with another priest of the archdiocese, Father O'Regan, and told him, 'My two girls have been molested by Fr Fasciale'. We found that no action was taken to discipline Father Fasciale in relation to the complaint or to protect other children from him.[64]

In early 1960, a mother told Father Tom Little (a parish priest) and the Vicar General of the Archdiocese of Melbourne, Monsignor Lawrence Moran, that Father Fasciale had touched her daughter on her vagina. Father Fasciale admitted the allegation to the mother. Father Little told the mother to keep quiet and not to say anything to anyone about the matter. Monsignor Moran told her to 'try to forget about it and get on with things' and it 'was bad for the church and bad for the priests'.[65]

A complaint that Father Fasciale was 'too close' to a boy was made in 1977 to a parish priest. This priest informed Auxiliary Bishop Joseph Peter O'Connell, who met with the parent who had complained. At this time, Father Fasciale was receiving treatment at the direction of Archbishop Little. We found it was likely that the complaint was about improper conduct of a sexual nature.[66]

Further complaints were made to the archdiocese about Father Fasciale in December 1992 and during 1993.[67] On 6 December 1993, Father Fasciale offered his resignation as parish priest of Yarraville parish, which Archbishop Little accepted. The reason Father Fasciale cited was ill health and stress. We found that he did not resign solely because of his health and that his resignation was also a result of complaints that he had sexually abused children in the 1950s and 1960s. The archbishop removed his faculties in February 1994.[68]

Father Fasciale died in 1996. No charges had been brought against him, although a number of victims had made police statements alleging that he sexually abused them.[69] The Catholic Church claims data indicated that 20 people made a claim of child sexual abuse by Father Fasciale.[70]

Father Kevin O'Donnell

Father O'Donnell was ordained in July 1942. He held a number of appointments in the archdiocese between 1942 and 1992.[71]

The archdiocese was aware of a complaint about the conduct of Father O'Donnell by at least 1958.[72] On 31 October 1994, Father Anthony Guelen wrote to Monsignor Cudmore about an interview he had with a man, referred to in the hearing as 'A', on 13 September 1994. He wrote:

> As far as he [A] recalls, a young fellow [B] approached him in 1958 (he thinks that's the year) regarding interfering by Kevin O'Donnell with this boy. [A] agreed with [B] to approach the authorities at the Cathedral. He and a [Mr C] went to see Monsignor Lawrence Moran, the administrator of the Cathedral. He received them well, was kind and listened to their story (complaint). From that day onwards he [Mr A] was out of the case.[73]

In our report on the *Catholic Archdiocese of Melbourne*, we found that Sister Rose Wood wrote a letter to Archbishop Little in around June 1986 which said that BTZ had disclosed to her that Father O'Donnell 'caused [BTZ] to masturbate'. She did not receive a response from Archbishop Little about this matter. We found that the failure of Archbishop Little to act on the

information provided by Sister Wood was an abandonment of his obligation to take immediate and effective action against Father O'Donnell to protect other children and their families within the archdiocese.[74]

Ms Emma Foster began attending preparatory school at Sacred Heart Primary School in Oakleigh in 1987 and her sister, Ms Katie Foster, began in 1989.[75] Father O'Donnell often visited the primary school and the playgrounds.[76] There is evidence that both Emma and Katie were sexually abused by Father O'Donnell when he was the parish priest of Oakleigh in the late 1980s or early 1990s.[77]

In November 1992, the archdiocese received a complaint that Father O'Donnell had sexually abused a child in the late 1950s to early 1960s.[78] His faculties were removed in July 1993.[79] In 1995, Father O'Donnell was convicted of 11 counts of indecent assault against 10 boys and two girls between 1954 and 1972.[80] The Catholic Church claims data indicated that 56 people made a claim of child sexual abuse against Father O'Donnell.[81] Father O'Donnell died on 11 March 1997. He died a pastor emeritus, having been given that title when he retired by Archbishop Little.[82]

Father Desmond Gannon

Father Gannon was ordained in July 1956 and held a number of appointments in the archdiocese during the following decades.[83] In our *Catholic Archdiocese of Melbourne* public hearing we heard evidence that in April 1997 BTS was interviewed by Independent Commissioner Peter O'Callaghan QC about his allegation that he had been sexually abused by Father Gannon in around 1960. BTS told the Independent Commissioner that he disclosed the abuse at the time to his mother. BTS disclosed that his mother told a Father Connellan about the abuse, but Father Connellan responded that the allegations were made up. The Archbishop of Melbourne at the time of the public hearing, Archbishop Hart, told us that it appears Father Connellan 'rebuffed the complaint and never gave it proper consideration'.[84]

In April 1993, BTP told Archbishop Little that Father Gannon had used him for sexual gratification when BTP was a young boy. BTP also told the vicar general, Monsignor Cudmore, that Father Gannon had sexually abused him in around 1956 and that the abuse had lasted two to three years. Father Gannon admitted to Monsignor Cudmore that 'something did happen' with BTP and said there had also been five or six other 'involvements' in different parishes before 1980.[85]

Father Gannon subsequently tendered his resignation. We found that Archbishop Little and Monsignor Cudmore sought Father Gannon's resignation on health grounds in order to conceal the fact that he resigned because he had admitted to sexually inappropriate behaviour with children. Father Gannon's faculties were withdrawn in August 1993.[86]

On 4 April 1995, Father Gannon was convicted of nine counts of indecent assault and sentenced to nine one-year sentences, to be served concurrently.[87] He was convicted of further offences in 1997, 2000 and 2009.[88] The Catholic Church claims data indicated that 25 people made a claim of child sexual abuse in relation to Father Gannon.[89]

Father Peter Searson

Father Searson was ordained a priest in 1962 after having spent almost 20 years as a member of the Marist Brothers.[90] In addition to complaints of child sexual abuse, over the years a large number of other allegations were made about his behaviour generally. These included allegations of unpleasant, strange, aggressive and violent conduct.[91]

In late 1974, Archbishop Little received an allegation that Father Searson had raped a young adult woman. At the time, Father Searson was chaplain to the Villa Maria Society for the Blind. No effective action was taken in response to that complaint. Father Searson remained as chaplain until 1977.[92]

Father Searson was the parish priest of Sunbury from June 1977 to January 1984. During this time, Archbishop Little received complaints about him. These included a concern that Father Searson should not be alone with children and general concerns about his character and conduct. We found that Archbishop Little was probably told of an allegation that Father Searson was conducting one-on-one sex education lessons with children in his bedroom. The archbishop failed to respond to these allegations and, instead, transferred Father Searson to Doveton parish in 1984. We found that Archbishop Little's failure to recognise or respond to the indications that Father Searson posed a risk to children was appalling in light of his knowledge of the earlier allegation that Father Searson had raped a young adult woman in 1974.[93]

Father Searson was appointed parish priest of Doveton in January 1984 and remained in this position for more than 13 years. During that time, in Archbishop Hart's words, there was a 'staggering number' of complaints.[94] These complaints were of violent, aggressive or disturbed behaviour that indicated Father Searson posed a threat to the safety and wellbeing of parishioners, including children. Among the many complaints there were, as Archbishop Hart stated, 'some very significant complaints of sexual conduct towards children'.[95]

We heard that in 1985 a Grade 4 student, Ms Julie Stewart, came running out of the confessional in a distressed state, where she had been with Father Searson. Although Ms Stewart did not report what had happened to her, two female teachers told the principal that Father Searson had 'interfered' with her. The principal reported to the Catholic Education Office that he had observed Ms Stewart in obvious distress and that he suspected that a sexual interference had occurred. Father Searson denied any wrongdoing.[96] Two years later, in 1987, Ms Stewart told the principal at her new school that Father Searson had made her sit on his knee during confession, kiss him and tell him that she loved him. That information was reported to the Catholic Education Office and Archbishop Little. [redacted][97]

In early 1991, Monsignor Deakin (the vicar general), Archbishop Little and the Catholic Education Office became aware that the police were investigating Ms Stewart's allegations. The police matter did not proceed.[98]

In June 1992, an allegation was made that Father Searson had molested a teenage girl in a car when driving her home from school. Another allegation was that Grade 6 boys had provided concerning responses regarding Father Searson during a sex education class. These allegations were reported to the Catholic education office, the vicar general and Archbishop Little.[99]

In October 1992, a student reported that Father Searson had 'felt' him and another said 'we don't know where he is going to touch us next. He might touch us you know where'. These matters were referred to the Catholic education office and Bishop O'Connell, then an auxiliary bishop of the archdiocese. They were also discussed at a meeting of the Curia.[100]

Other allegations made against Father Searson included that he had pointed a gun at children, that he killed a cat, that he stabbed a bird to death, that he showed children a dead body in a coffin and that he threatened a girl with a knife.[101]

We found that, by October 1986, the complaints that Archbishop Little was aware of in relation to Father Searson's conduct with children were sufficient for any reasonable person to form the view that he ought to be removed from parish ministry. He did not take that action. We found that each subsequent occasion on which complaints were made was a missed opportunity for action by Archbishop Little. We also found that some staff at the Catholic education office and Monsignor Deakin, Monsignor Connors, Monsignor Doyle and Monsignor Cudmore failed to recognise the need for action in relation to Father Searson.[102]

Father Searson was placed on administrative leave in March 1997 by Archbishop Pell. He died in June 2009. Although he pleaded guilty to physically assaulting a child in 1997, he was never charged with any offences in relation to the sexual abuse of children. He was never laicised.[103]

The Catholic Church claims data reported that three people made a claim of child sexual abuse in relation to Father Searson. The incidents the subject of those claims and complaints were alleged to have occurred between 1974 and 1985.[104]

Diocese of Ballarat

Similarly to the *Catholic Archdiocese of Melbourne* report, we made redactions to material in the report of *Case Study 28: Catholic Church authorities in Ballarat (Catholic Church authorities in Ballarat)*. Having regard to this, where appropriate we do not refer in this section to some evidence we received or some of our findings in *Catholic Church authorities in Ballarat*. We have also applied redactions where appropriate.

Bishop O'Collins was Bishop of Ballarat from 1942 until May 1971, when he retired. In *Catholic Church authorities in Ballarat* we examined the responses of various institutions run by Catholic Church authorities in and around Ballarat to allegations of child sexual abuse by clergy and religious. We found that while he was Bishop of Ballarat, Bishop O'Collins was aware of allegations in relation to at least two priests in the diocese (Monsignor Day and Father Ridsdale).[105]

Bishop Mulkearns came to Ballarat in 1968 as a co-adjutor bishop and succeeded Bishop O'Collins as bishop in May 1971. He retired in 1997.[106] In *Catholic Church authorities in Ballarat*, we considered Bishop Mulkearns' knowledge of complaints of child sexual abuse against four priests. We discuss two of these below – namely, Father Ridsdale and Monsignor Day. In summary, we found that, during his time as Bishop of Ballarat, Bishop Mulkearns was told of a series of allegations that clergy and religious had sexually abused children, including:

- complaints, shortly after he became Bishop of Ballarat in 1971, that Monsignor Day had sexually abused a number of children in his parish[107]
- a complaint in 1973 that Christian Brother BWX had sexually abused two students at a school in Ballarat[108] (we discuss Brother BWX in Section 13.4.2)
- a complaint from a parishioner in 1975 about a priest's conduct of a sexual nature with respect to that parishioner's children[109]
- being told in late 1975, and on numerous occasions thereafter, of allegations that Father Ridsdale had sexually abused children[110]
- a report from a parishioner in 1989 that a priest made sexual advances to and fondled his son and a complaint in 1992 about that priest's 'undue interest in children'.[111]

In *Catholic Church authorities in Ballarat* we also considered what other figures in the Diocese – including vicars general, members of the College of Consultors, and the bishop's secretary – knew of allegations of child sexual abuse by priests. The following were vicars general while Bishop Mulkearns was Bishop of Ballarat:[112]

- Father Francis Madden (May 1971–April 1976)
- Monsignor Leo Fiscalini (3 April 1976–June 1982)
- Monsignor Henry Nolan (June 1982–August 1991)
- Father Brian Finnigan (September 1991 until 1997).

The College of Consultors is a group of priests, including the vicar general, appointed by the bishop of a diocese to assist him in his governance of the diocese. The role of consultors was to give advice to the bishop on various matters he brought before them, including the appointment and transfer of priests.[113] The bishop's secretary was the secretary and minute taker to the consultors and attended the consultors' meetings in that capacity but was not himself a consultor and did not participate in the meetings.

In our *Catholic Church authorities in Ballarat* case study we found that, over decades, there had been a catastrophic failure in the leadership of the diocese, and ultimately in the structure and culture of the Church, to effectively respond to the sexual abuse of children by its priests.[114] The bishop was autonomous and he alone was the decision-maker about his priests. However, we found that the structure was hierarchical and did not encourage priests to challenge or otherwise influence the actions taken by the bishop. Even if the structure had done so, other priests in the parish, including consultors and vicars general, were part of the same culture as the bishop.[115]

Monsignor John Day

Monsignor Day was ordained a priest in the Diocese of Ballarat in 1930. He was assistant or parish priest in a number of parishes from this time until July 1956, when he was appointed parish priest of Mildura.[116]

We found that between January and May 1971, a group of parents complained to Bishop O'Collins about Monsignor Day's conduct with adolescent boys.[117]

By December 1971, Bishop Mulkearns had been informed of allegations that Monsignor Day had sexually abused children in Mildura. In Chapter 18, 'Responses of other key institutions to child sexual abuse in religious institutions', we discuss the role of former police officer Mr Denis Ryan in bringing these allegations to the attention of Bishop Mulkearns and the leadership of Victoria Police. Bishop Mulkearns had told Father Madden, who was the vicar general (and a consultor), about these complaints after he was visited by Victoria Police.[118]

By January 1972, at least three priests, including the vicar general, as well as at least some teachers at Catholic schools in Mildura had received complaints or were aware of allegations that Monsignor Day had sexually abused children. In addition, Father Gerald Baldock, Father Paul David Ryan and Father Pell had heard gossip about Monsignor Day's sexual activity with children.[119]

Monsignor Day was asked or told to resign as parish priest of Mildura at the end of January 1972, and in January 1973 Bishop Mulkearns appointed him parish priest of a different parish in the Diocese of Ballarat, far removed from Mildura.[120]

In May 1972, Bishop Mulkearns was informed by Victoria Police that the Solicitor-General had considered allegations against Monsignor Day and that, while the Solicitor-General advised the evidence was insufficient to warrant launching prosecutions, he had commented that 'there would appear to be little room for doubt that Day misconducted himself'.[121]

The Diocesan Council, which later became known as the College of Consultors, discussed Monsignor Day at four meetings after his resignation as parish priest of Mildura. In *Catholic Church authorities in Ballarat*, we found that:[122]

1. Bishop Mulkearns told a meeting of the consultors on 14 March 1972 that Monsignor Day was asked or told to resign as parish priest of Mildura as a result of the police informing Bishop Mulkearns of allegations of sexual abuse of children by Monsignor Day.
2. At a meeting of the consultors on 15 June 1972, Bishop Mulkearns considered sending Monsignor Day to the Diocese of Geraldton in Western Australia. The consultors at this meeting knew that Monsignor Day had resigned from Mildura less than five months earlier as a result of the police informing Bishop Mulkearns of allegations of sexual abuse of children. By this time, Bishop Mulkearns also knew of the Solicitor-General's view that, although there was insufficient evidence to prosecute Monsignor Day, there was room for little doubt that he committed the offences.
3. Another meeting of the consultors was held on 19 September 1972. This meeting occurred after an article had been published in a Melbourne newspaper which stated that a priest in Mildura had indecently assaulted children over a 14-year period and that the Bishop of Ballarat had been told about these alleged activities. The consultors at this meeting all knew that Monsignor Day had resigned from the Parish of Mildura because he was being investigated for child sexual abuse, and all consultors present would have been aware of the contents of the article.
4. On 12 January 1973, a further meeting of the consultors was held. The consultors present at this meeting had all attended earlier consultors' meetings at which we found there were discussions about the allegations that Monsignor Day had sexually abused children in Mildura. At this meeting, Monsignor Day was appointed parish priest of Timboon, also in the Diocese of Ballarat. We found that it was unacceptable for the consultors to raise no objection to the appointment, despite the knowledge they had of the allegations against Monsignor Day.

Monsignor Day died in 1978. He was still the parish priest of Timboon at the time of his death.[123] He was never charged with child sexual offences. The Catholic Church claims data indicated that 15 people made a claim of child sexual abuse against Monsignor Day relating to alleged incidents between 1954 and 1973.[124]

Father Gerald Ridsdale

Father Ridsdale was ordained a priest in the Diocese of Ballarat in July 1961. He held a large number of appointments in the diocese from this time until the late 1980s.[125]

In the early 1960s, Bishop O'Collins received a complaint that Father Ridsdale had sexually abused a child. Bishop O'Collins transferred Father Ridsdale to a different parish and told him if it happened again he would be 'off to the Missions' or 'off the mission' (the latter meaning that he would be removed from the priesthood). Bishop O'Collins sent Father Ridsdale to a psychiatrist for treatment following this complaint, but Ridsdale told us that he did not think Bishop O'Collins placed any condition, restriction or supervision on him at the new parish.[126]

In about late 1975, while Father Ridsdale was parish priest of the Parish of Inglewood, a woman told him one day after Mass that 'There is talk around the town that you have been interfering with the boys and ... the Police have been around making inquiries'. He panicked, packed up his things and left Inglewood late in the evening. The next day, he went to see Bishop Mulkearns.[127]

At around the same time, a Victorian police officer from Bendigo obtained a statement from at least one boy in Inglewood that Father Ridsdale had indecently assaulted him. The police officer provided the statement to Bishop Mulkearns. Bishop Mulkearns met with Father Ridsdale and the police officer in separate meetings on the same day in mid-January 1976. Father Ridsdale admitted to Bishop Mulkearns that he had been offending against children.[128]

Following Father Ridsdale's admission, Bishop Mulkearns removed him from Inglewood parish. Bishop Mulkearns also sent him to counselling with Dr Peter Evans, a psychiatrist and former Franciscan priest, in Melbourne. He attended between one and three sessions. We found that Dr Evans was not asked by Bishop Mulkearns or anyone else to express a view on Father Ridsdale's suitability to return to a parish.[129] In Section 13.5 we discuss this further.

The College of Consultors discussed Father Ridsdale at a meeting on 16 January 1976. The outcome of the meeting was that Father Ridsdale was given a temporary appointment to the Parish of Bungaree. We found that Bishop Mulkearns told the consultors at this meeting of Father Ridsdale's sexual transgressions.[130]

After his temporary appointment at Bungaree, Father Ridsdale was appointed to the Parish of Edenhope, first as a temporary administrator in March 1976. He then received a permanent appointment as parish priest in July 1977.[131]

In January 1981, Father Ridsdale was appointed parish priest at Mortlake. He was appointed to that parish after spending a study year in 1980 at the National Pastoral Institute in Elsternwick, Victoria. He remained at Mortlake parish until late 1982.[132]

During 1981, Father Brian Finnigan (who at the time was the bishop's secretary) received several reports about Father Ridsdale. We found that Father Finnigan received a complaint from the mother of a boy and three or four other reports from Mortlake parents about Father Ridsdale's conduct. Father Finnigan understood the complaints to be serious matters concerning an improper relationship that Father Ridsdale was having with the children.[133]

We also found that another senior priest in the diocese received a complaint about Father Ridsdale's conduct at Mortlake. The parents of a boy visited Monsignor Fiscalini in late 1981 to report 'sexual molestation' of their son by Father Ridsdale. He reported the complaint to Bishop Mulkearns, but Father Ridsdale remained in the parish for a further nine months.[134]

In early 1982, a young boy, Mr Paul Levey, went to live in the presbytery at Mortlake with Father Ridsdale. His parents had separated, and his father had arranged for Mr Levey to live in the presbytery and attend the Catholic Regional College. Mr Levey gave evidence that he was sexually abused 'all the time, just about every day' while he lived with Father Ridsdale.[135]

Mr Levey's mother contacted Bishop Mulkearns about the arrangement on several occasions. She asked, 'How can you let a child live in a presbytery with a priest? That's not appropriate. I want Paul taken out of there'. We found that Bishop Mulkearns knew that the boy's mother was concerned about the situation and sought his assistance, but he ignored her. We also found that two nuns and two priests knew that Father Ridsdale had a boy living with him in the presbytery at Mortlake.[136]

By August 1982, Bishop Mulkearns received reports from two sets of parents and a nun that Father Ridsdale had sexually abused multiple boys in Mortlake parish. We found that he responded dismissively to these reports.[137]

In about mid-1982, the vicar general, Monsignor Henry Nolan, came to Mortlake to speak with Father Ridsdale about the allegations. When Monsignor Nolan met with Father Ridsdale, he became aware that Mr Levey was living in the presbytery and had him moved to short-term care with a local family. Monsignor Nolan was told about the allegations by the nun and the president of the school council at St Colman's School in Mortlake. We found that the president told Monsignor Nolan that the problem was widespread.[138]

We found that there were rumours that some parish priests around Mortlake met to discuss Father Ridsdale and the concern of the locals of Mortlake and the wider Catholic community, which was a 'public problem' in the community.[139]

Bishop Mulkearns removed Father Ridsdale from the parish of Mortlake in late 1982.[140]

In September 1982, the College of Consultors met. Father Ridsdale's removal from Mortlake was discussed at this meeting. We found that Bishop Mulkearns told the consultors at the meeting the reason that Father Ridsdale was being removed from Mortlake and from parish work was because of complaints that he had sexually abused children. Bishop Mulkearns negotiated with the Archdiocese of Sydney for a position for Father Ridsdale at the Catholic Enquiry Centre in Sydney. We found that there was a belief that an appointment to the Catholic Enquiry Centre, out of an ordinary parish environment, would reduce Father Ridsdale's access to children.[141]

Father Ridsdale remained at the Catholic Enquiry Centre until early 1986, when the director of the centre asked him to leave. The director learned that a young boy or teenager had stayed overnight at the centre with Father Ridsdale. He called Bishop Mulkearns and said, 'Get him out of here, I don't want him'. When Father Ridsdale returned to the Diocese of Ballarat, Bishop Mulkearns appointed him assistant priest at Horsham parish. His appointment was discussed at a meeting of the College of Consultors in January 1986. We found that Bishop Mulkearns did not withhold information about Father Ridsdale's past conduct at this meeting.[142]

In mid-1987, while Father Ridsdale was at Horsham, the mother of a boy complained to the bishop's secretary, Father Brian McDermott, that her son had been molested by Father Ridsdale in 1978. Bishop Mulkearns was informed of the complaint, but Father Ridsdale was not removed from the parish.[143]

The following year, in early 1988, Bishop Mulkearns was informed of another complaint about Father Ridsdale. The parents of a boy from Sydney wrote to Bishop Mulkearns to report that their son had been sexually interfered with on several occasions while Father Ridsdale was at the Catholic Enquiry Centre. They wrote that they believed their son was 'scarred for life', and police were investigating the matter. The parents also wrote at about the same time to the Archbishop of Sydney. Within a month, Father Ridsdale resigned from parish work. We found that Bishop Mulkearns asked or required Father Ridsdale to resign from Horsham parish as a consequence of the parents' complaint to him, to the Archbishop of Sydney, and to the police. A significant difference in the circumstances on this occasion was that the matter had already been reported to the police.[144]

Bishop Mulkearns wrote to the priests of the diocese that Father Ridsdale had been granted 'extended leave' from parish work. The College of Consultors met in June 1988, two months after Father Ridsdale's resignation. We found that, by the time of this meeting, most if not all of the consultors at this meeting would have been aware that Father Ridsdale was being removed as assistant priest of Horsham due to complaints or allegations that he had sexually abused children.[145]

Ridsdale was dismissed from the priesthood in 1993.[146] He has been convicted of child sexual offences that occurred in parishes including Ballarat East, Swan Hill, Warrnambool, Apollo Bay, Inglewood, Edenhope and Mortlake.[147] The Catholic Church claims data showed that 78 people made a claim of child sexual abuse against him to the Diocese of Ballarat.[148]

Archdiocese of Sydney

Previous archbishops of Sydney include:[149]

- Cardinal Norman Thomas Gilroy (1940–July 1971)
- Cardinal James Darcy Freeman (July 1971–February 1983)
- Cardinal Edward Bede Clancy (February 1983–March 2001).

As discussed above, in our report on the *Catholic Church authorities in Ballarat* we found that, following a series of complaints against Father Ridsdale in the Diocese of Ballarat, in 1983 he was sent to work at the Catholic Enquiry Centre located in the Archdiocese of Sydney. We found that the Bishop of Ballarat, Bishop Mulkearns, spoke to both Cardinal Freeman and his successor, Cardinal Clancy, about Father Ridsdale. Bishop Mulkearns explained to Cardinal

Clancy that Father Ridsdale had 'certain sexual problems, was under professional treatment' and had gone to Sydney to get away from the problems in Victoria.[150] Cardinal Clancy indicated to Bishop Mulkearns that he would subscribe to the conditions that had been agreed with his predecessor, Cardinal Freeman, which included that Father Ridsdale would not be in contact with children and would continue with his counselling.[151]

We considered the Archdiocese of Sydney in *Case Study 8: Mr John Ellis's experience of the Towards Healing process and civil litigation (Mr John Ellis, Towards Healing and civil litigation)*. However, this case study focused on survivor Mr John Ellis's experience of Towards Healing and civil litigation rather than the knowledge of senior personnel in the archdiocese of child sexual abuse. We discuss this case study later in this chapter, in Section 13.9.

As set out below, we have also considered documents relating to CCI's determinations that the Archdiocese of Sydney had prior knowledge of the propensity to offend of two priests in the 1960s and 1970s: Father Robert McNeill and Father Robert Francis Flaherty. We have also considered documents relating to knowledge of the Archbishop of Sydney with respect to the Society of St Gerard Majella (the Society) – an order of male religious.

Father Robert McNeill

Father McNeill was ordained in the Archdiocese of Sydney in 1952 and was an assistant priest in various parishes across Sydney between the 1950s and the late 1960s.[152]

CCI determined that the Archdiocese of Sydney had knowledge of Father McNeill's propensity to offend in '1969/1970' based on his conviction for sexual offences involving children, which was brought to the attention of Cardinal Gilroy, the Archbishop of Sydney at the time.[153]

A 2002 Towards Healing assessment report recorded that Father McNeill said he went to court in 1969 for 'exposing himself to school children' and that he was found guilty and fined.[154] Father McNeill also said that Cardinal Gilroy was made aware of the conviction.[155] Father McNeill told the Towards Healing assessor that 'there were two incidents, one in 1969 and one in 1970' and that, after he was convicted, Cardinal Gilroy 'forbade him to exercise mass'.[156] He said that Cardinal Gilroy sent him to a location in regional Victoria after the first incident, and after the second incident asked him to apply for laicisation, 'and I told him I would not that I was a sick man'.[157] Father McNeill was admitted to a St John of God Hospital in July 1969 after undergoing 'an acute nervous breakdown'.[158]

Father McNeill also told the Towards Healing Assessor that Cardinal Gilroy told him to return to Sydney and sent him to stay with the Brothers of St Gerard Majella, where he remained for about six years.[159] CCI's lawyers reported that a 2004 record of interview between the (then) Bishop of Broken Bay, Bishop David Walker, and Father McNeill revealed that Cardinal Gilroy allowed Father McNeill to do some supply work in the period he was with the Brothers of St Gerard Majella.[160]

In May 1976, Father McNeill was appointed to a different parish in Sydney.[161] One person later made a claim that he was sexually abused by Father McNeill at this parish between 1979 and 1985.[162]

In May 1983, Father McNeill was appointed assistant priest of the parish of Berowra and in this position had responsibility for, and resided in, Brooklyn, New South Wales.[163] Between 1983 and 1986, he was associated with a primary school and an orphanage in Brooklyn.[164]

Father McNeill was in Brooklyn at the time the Diocese of Broken Bay was established (in 1986), and he was incardinated into the Diocese of Broken Bay.[165] He retired in 1990.[166] In 2002, the Bishop of Broken Bay told the Professional Standards Office NSW/ACT that Father McNeill 'has had his faculties withdrawn, and is now only permitted to celebrate Mass alone'.[167]

Father Robert Francis Flaherty

Father Flaherty was ordained in the Archdiocese of Sydney in 1966.[168] Between 1966 and December 1972, he was an assistant priest in three parishes across New South Wales.[169]

CCI determined that the Archdiocese of Sydney had knowledge of Father Flaherty's propensity to offend by 29 November 1972, based on correspondence between Archbishop Freeman and a father who said his son, GJP, had been sexually abused by Father Flaherty. Archbishop Freeman then transferred Father Flaherty to another parish in December 1972.[170]

On 27 November 1972, GJP's father wrote to Archbishop Freeman:

> My 15-year-old son [GJP] has made serious allegations to me concerning the conduct of Father R. Flaherty … [GJP] has stated that he has been sexually assaulted on three occasions by this priest … Several days after the last two events, [GJP] informed one of his schoolteachers … of what had happened … [The schoolteacher] obtained [GJP]'s permission to report the matter to His Lordship, Bishop Kelly, which he did on November 5th.[171]

Bishop Edward Kelly was an auxiliary bishop of Sydney between 1969 and 1975. Archbishop James Carroll was an auxiliary bishop of Sydney from 1954. He was appointed Titular Archbishop of Amasea in 1965 and retired in 1984.[172]

GJP's father told Archbishop Freeman that after his son told him what happened concerning Father Flaherty:

> As nearly three weeks had elapsed since [the schoolteacher]'s interview with Bishop Kelly, and since he had previously arranged a follow-up meeting for November 25th, it was decided that I would accompany him. His Lordship informed us that immediately upon receipt of [the schoolteacher]'s information, he had discussed the matter with His Grace, Archbishop Carroll who had subsequently interviewed Father Flaherty. We understood from Bishop Kelly that Father had denied any misconduct.[173]

On 19 December 1972, Archbishop Freeman wrote to GJP's father: 'I wish to acknowledge the receipt of your letter of the 27th November, and to advise that the matter is being examined.'[174] On the same day, the archbishop also wrote to Father Flaherty appointing him assistant priest in another parish in Sydney with effect from 29 December 1972. He wrote, 'While wishing you every Blessing in your new Apostolate, I thank you for the work already performed by you in your present assignment'.[175]

Father Flaherty continued in ministry in parishes across New South Wales until at least 1994.[176] Two people have made claims to the Archdiocese of Sydney, in 1996 and 2015 respectively, that they were sexually abused by Father Flaherty between 1977 and 1981.[177]

Father Flaherty was interviewed by police about the allegations of sexual abuse made in 1996, after which the archdiocese placed him on restricted ministry in 1997.[178] The Archdiocese of Sydney told CCI in 2015 that Father Flaherty retired in September 2010.[179] Father Flaherty's faculties were withdrawn by Cardinal Pell in 2011 and he was referred to the Congregation for the Doctrine of the Faith in 2012.[180] In a 2015 email to the Archdiocese of Sydney, CCI wrote, 'Fr. Flaherty was recently convicted in relation to offences relating to [one victim]'.[181]

Brothers of the Society of St Gerard Majella

In our *Institutional review of Catholic Church authorities* public hearing, we accepted documents into evidence relating to the Society. Our summary of this evidence is set out in Appendix D. As discussed in that summary, in around 1958 Brother John Sweeney began the process of establishing the Society in the Archdiocese of Sydney, primarily to minister to Catholic students attending state schools and to their families.[182]

In early 1960, Brother Sweeney sought the approval of the archdiocese for the Society's constitution, proposed first community, appointment of superiors and apostolic undertakings.[183] The first formal community of the Society was established in the Parish of Leichhardt.[184] Early concerns about the Society were raised in an anonymous letter dated 14 May 1960 and addressed to 'Your Eminence', a copy of which was provided to us by the Archdiocese of Sydney. The author of the letter commented: 'Young boys are often entertained in the private rooms of these brothers, which can lead to abuses.' The author warned that 'no good can come to [the brothers] or from them without proper supervision'.[185]

In 1967 the archbishop, Cardinal Gilroy, blessed and opened the Society's Novitiate House at Mount Vernon, Kemp's Creek.[186] The following year, the Society took control of St Simon Stock Boys School at Pendle Hill at the request of Cardinal Gilroy.[187] On 24 March 1973, Archbishop Freeman erected the Society as a lay Religious Congregation of Diocesan Right.[188] The term 'Diocesan Right' meant that the Society was accountable to the relevant diocese for its activities (and specifically the local bishop, who at that time was the Archbishop of Sydney).[189]

In 1985, by agreement with Archbishop Clancy, the Society took over responsibility for the pastoral care of the Parish of Greystanes, with Brother Sweeney taking on the role of parish priest.[190]

In 1986, the Archdiocese of Sydney was subdivided to create the additional dioceses of Parramatta and Broken Bay. The Society was placed under the supervision of the new Bishop of Parramatta, Bishop Bede Vincent Heather.[191] The knowledge and response of the Diocese of Parramatta to allegations of child sexual abuse against the brothers in the Society is discussed below.

Two brothers who were members of the Society, Brother Stephen Robinson and Brother Joseph Pritchard, were later convicted for sexual offences against children which took place in the late 1970s and early 1980s, while the Society was part of the Archdiocese of Sydney.[192]

Diocese of Maitland-Newcastle

We considered the knowledge and response of Catholic Church authorities in the Diocese of Maitland-Newcastle to allegations of child sexual abuse by clergy and religious in *Case Study 43: The response of Catholic Church authorities in the Maitland-Newcastle region to allegations of child sexual abuse by clergy and religious (Catholic Church authorities in Maitland-Newcastle)*.

In that case study, we considered the knowledge of successive bishops and the Vicar General of the Diocese of Maitland-Newcastle from 1976 of complaints about a priest of the diocese. Our findings are set out in our report on *Catholic Church authorities in Maitland-Newcastle*.

As redactions to the *Catholic Church authorities in Maitland-Newcastle* case study report would not have been sufficient to address potential prejudice to relevant criminal proceedings, we do not refer to our findings in that report here.

Findings of the Special Commission of Inquiry in relation to Father Denis McAlinden and Father James Fletcher

The Special Commission of Inquiry made findings about what officials in the Diocese of Maitland-Newcastle knew of allegations of child sexual abuse by two different diocesan priests – Father Denis McAlinden and Father James Fletcher.

In relation to Father McAlinden, the Special Commission of Inquiry found that 'The earliest incident of sexual abuse by him and reported to the Diocese occurred in 1949 and the latest in 1996'.[193] In particular, as set out earlier, the Special Commission of Inquiry found that in or around 1954 then co-adjutor Bishop Toohey received a complaint that Father McAlinden had sexually abused a girl.[194]

The Special Commission of Inquiry also found that, by 1976, both Bishop Leo Clarke and Monsignor Patrick Cotter were aware of complaints about Father McAlinden's sexual abuse of children.[195] In particular, it found that Bishop Clarke received a letter dated May 1976 from Monsignor Cotter, in which Monsignor Cotter stated that Father McAlinden 'has an inclination to interfere (touching only) with young girls aged perhaps 7 to 12 or so' and that he had admitted to some 'indiscretions'.[196] He continued:

> I've never heard of this condition before and knowing Father Mac [McAlinden], as we do, we think it cannot be real serious, nor do we believe that there is any danger of a development into assault or rape. At the same time what has been going on is more than can be tolerated.[197]

Father McAlinden ministered in a number of dioceses around Australia and overseas until he was charged with child sexual abuse offences in late 1991.[198] He was acquitted of these offences in 1992 and by March 1993 had left Australia.[199]

The Special Commission of Inquiry also made findings about Bishop Michael Malone's knowledge and response to Fathers McAlinden and Fletcher from 1995, when he was installed as bishop.[200]

In relation to Father Fletcher, the Special Commission of Inquiry received evidence that from 1976 'at least one official of Maitland-Newcastle Diocese had knowledge of Fletcher's propensity for sexually abusing young boys in the early 1970s'.[201] However, the identity of this official was dealt with in the confidential volume to that report.[202] Father Fletcher continued in ministry until 2003, when he was charged with child sexual abuse offences.[203]

Diocese of Wollongong

Bishop William Murray was Bishop of Wollongong from June 1975 until his retirement in April 1996.[204] Bishop Murray's knowledge of complaints of child sexual abuse was considered by the 1997 Wood Royal Commission. That commission found that in 1984 a victim complained to Bishop Murray that he had been sexually abused by Christian Brother Michael Evans and parish priest Father Peter Comensoli.[205] It reported that Bishop Murray gave evidence that he took no action at that stage, as he had not understood the victim to be making a formal complaint and he had not wanted to disturb Brother Evans' planned preparation for seminary.[206]

The Wood Royal Commission also found that in 1989 a further complaint about Brother Evans was made to an unidentified priest. That priest encouraged the victim to report to Wollongong police, which he did.[207] Following a newspaper report in October 1994, Bishop Murray asked for Father Comensoli's resignation. In June 1994, Father Comensoli was convicted of two charges of indecent assault.[208]

In *Case Study 14: The response of the Catholic Diocese of Wollongong to allegations of child sexual abuse, and related criminal proceedings, against John Gerard Nestor, a priest of the Diocese (Catholic Diocese of Wollongong)*, we considered the response of the Catholic Church to rumours and complaints about Father John Gerard Nestor. From about the late 1980s, Father Nestor organised camps for children in the diocese.[209] In the early 1990s, Father Graham Schmitzer, the chancellor and private secretary to Bishop Murray, heard rumours that at these camps boys were skinny dipping and showering in the open and that Father Nestor had conversations with boys about the size of their genitalia. About this time Father Schmitzer also knew that some priests in other parishes had decided not to advertise the camps because they had also heard rumours about Father Nestor's conduct at them. Father Schmitzer told Bishop Murray about these rumours and that other priests had decided not to advertise the camps.[210]

We heard that several other complaints were made against Father Nestor between 1991 and 1993. In 1993, an assistant on the camps and a parent (ABQ) separately reported their concerns about the camps to Centacare Wollongong. The Director of Centacare Wollongong passed ABQ's complaints on to Bishop Murray and to the New South Wales Department of Community Services.[211]

On 17 May 1994, Father Schmitzer submitted an incident form about Father Nestor's conduct at camps to CCI. That report referred to allegations received by the director of Wollongong Centacare about allegations 'concerning misconduct by Fr Nestor on these camps' and continued, 'This Chancery Office knows nothing of details regarding victims or dates. The Bishop feels that nothing of a criminal nature happened'.[212] Shortly after, Bishop Murray refused Father Nestor permission to organise another camp, 'In view of the present 'witch hunting' mentality of our local media'.[213]

Father Nestor subsequently went to the United States to study theology. He returned to Australia in March 1996, and Bishop Murray appointed him assistant priest in the Parish of Kiama. Some months later, Father Nestor moved to the Parish of Fairy Meadow of his own accord.[214] In April 1996, Bishop Murray retired. Shortly after Bishop Murray's retirement, Father Nestor was arrested and charged in relation to the assault of a boy in 1991.[215] His conviction on these charges was overturned following an appeal.[216] Nestor was ultimately dismissed from the priesthood by Pope Benedict XVI in October 2008.[217]

Diocese of Parramatta

The Diocese of Parramatta is located in New South Wales and was formed following the subdivision of the Archdiocese of Sydney in 1986.[218] In *Case Study 44: The response of the Catholic Dioceses of Armidale and Parramatta to allegations of child sexual abuse against a priest (Catholic Dioceses of Armidale and Parramatta*) we considered the knowledge of senior figures in the Diocese of Armidale and the Diocese of Parramatta of complaints of sexual offending by a priest. Our findings are set out in the report on that case study.

Similar to the *Catholic Church authorities in Maitland-Newcastle* report, as redactions to the *Catholic Dioceses of Armidale and Parramatta* case study report would not have been sufficient to address potential prejudice to relevant criminal proceedings, we do not refer to our findings in that report. We refer to transcripts and exhibits from the case study where the material does not prejudice relevant criminal proceedings.

As mentioned above (in relation to the Archdiocese of Sydney), we received evidence relating to the Society, which was tendered in the *Institutional review of Catholic Church authorities* hearing and is summarised in Appendix D. The Society was established in the Archdiocese of Sydney but came under the supervision of the Bishop of Parramatta, Bishop Heather, when the Diocese of Parramatta was created in 1986.

On 26 August 1992, Brother Pritchard, a senior member of the Society, was charged with sexual offences in relation to the abuse of a 17-year-old naval cadet at HMAS *Nirimba*, where Brother Pritchard was working as a chaplain.[219] On 16 April 1993 he was convicted of one count of indecent assault against the 17-year-old, for which he was later given a two-year good behaviour bond.[220]

In April 1993, a number of brothers in the Society wrote to Father Rodger Austin, a canon lawyer, alleging they had been sexually abused by three senior brothers in the Society – Brother Sweeney (the founder of the Society and superior general until 1991), Brother Robinson (the superior general from 1991 to 1993) and Brother Pritchard.[221] The authors of the letters all alleged that the abuse had started when they were postulants or novices in the Society. At least one person, HBA, explicitly alleged that he was a minor at the time the abuse started, and the letters from another two persons (including one, HBB, who alleged abuse by Brother Robinson) raised this possibility.[222] Later in April 1993, Father Austin had a meeting with Bishop Heather regarding the allegations of sexual abuse and provided him with the letters he had received.[223]

On 4 May 1993, Bishop Heather established a special enquiry, to be conducted by Father Austin and Father Peter Blayney, in part to enquire into 'the sexual impropriety which is alleged to have taken place within the Society of St Gerard Majella'.[224] According to Father Blayney, Bishop Heather established the special enquiry 'outside the guidelines of the Protocol'. Father Blayney was referring to the ACBC Special Issues Committee's *1992 Protocol for Dealing with Allegations of Criminal Behaviour* (the 1992 Protocol).[225]

On 31 August 1993 the special enquiry completed its final report to Bishop Heather. The special enquiry concluded that all of the allegations it had received against Brothers Sweeney, Robinson and Pritchard of 'sexual impropriety' (which the authors said was a term used synonymously with sexual abuse) were substantiated.[226] The allegations related to multiple incidents and multiple victims on the part of each of the three brothers. The incidents of abuse had started in the late 1960s and continued until the early 1990s. All of those who had been abused had at some point been members of the Society, and for the majority the abuse had started when they were postulants or novices.

Fathers Austin and Blayney did not explicitly identify the ages of the persons whom they concluded had been sexually abused. However, it is apparent from the report and its appendices (which included the letters written to Father Austin in April 1993) that some of the victims alleged they were under 18 years old at the time the abuse started.[227] The special enquiry also explicitly stated that Brother Sweeney had 'perform[ed] acts' with 17–26-year-olds.[228]

The special enquiry also found that Brother Sweeney, when superior general, had been informed that Brother Pritchard was engaging in 'sexual impropriety' with 'young males' as early as 1974.[229] Despite this, subsequent to 1974 Brother Pritchard was appointed principal of Newman High School. The special enquiry found that he sexually 'interfered' with a student at the school.[230]

Diocese of Rockhampton

In *Case Study 26: The response of the Sisters of Mercy, the Catholic Diocese of Rockhampton and the Queensland Government to allegations of child sexual abuse at St Joseph's Orphanage, Neerkol* we considered the response of the Diocese of Rockhampton to allegations of child sexual abuse at St Joseph's Orphanage, Neerkol. The boys and girls who were resident at the orphanage ranged in age from newborns to 18 years and were mostly 'state wards', which included Aboriginal and Torres Strait Islander children.[231] St Joseph's Orphanage was also considered in two earlier inquiries. The Commission of Inquiry into Abuse of Children in Queensland Institutions reported on Neerkol in a closed portion of its 1999 *Report of the Commission of Inquiry into Abuse of Children in Queensland Institutions*.[232] The closed portion of this report, titled 'Neerkol closed section' was released in late 2000.[233] The Senate Community Affairs References Committee (Forgotten Australians Senate inquiry) also reported on St Joseph's Orphanage in its 2004 report *Forgotten Australians: A report on Australians who experienced institutional or out- of-home care as children*.[234]

Twelve former residents of St Joseph's Orphanage provided evidence during the public hearing. They detailed serious emotional, physical and sexual abuse they suffered while living there.[235] Two former residents gave evidence that in the 1960s they reported their sexual abuse by a lay employee at St Joseph's Orphanage to Father John Anderson, then parish priest of Neerkol, in confession. Both gave evidence that they were given penance. One of these former residents believed Father Anderson may have told 'Mother Regis or Clare' about her confession because after this point she was made to scrub the floor and the 'beltings got more often'.[236] Two witnesses gave evidence that they were sexually abused by Father Anderson while at St Joseph's Orphanage.[237]

In 1982, AYB telephoned Archbishop Francis Rush, who was at that time Archbishop of Brisbane. Archbishop Rush had been the Bishop of Rockhampton when Father Reginald Durham was a parish priest at Neerkol. During the phone call, AYB told Archbishop Rush that she had been

sexually abused by a priest for a number of years. Archbishop Rush asked her who it was. AYB told him she could not say. Archbishop Rush responded by saying: 'It was Reggie wasn't it?' AYB said Archbishop Rush stated he would pray for her.[238]

We heard that in early 1994, the Bishop of Rockhampton Brian Heenan, received a complaint of child sexual abuse against Father Durham which he accepted as truthful. By 1994, Father Durham was administrator of the Neerkol parish, having resigned as parish priest of Neerkol the previous year. We found that, despite this knowledge, Bishop Heenan did not take steps to place any restrictions on Father Durham's contact with children within the ministry or report the matter to police.[239]

Bishop Heenan learned of a further complaint against Father Durham in around May 1996. We found that, although Bishop Heenan placed restrictions on Father Durham approaching children, he did not monitor or supervise those restrictions.[240] Father Durham was interviewed by police in September 1996, but Bishop Heenan did not require Father Durham to resign from his position as administrator of the Neerkol parish or leave the presbytery at Neerkol until he was charged with child sexual offences in February 1997.[241]

Diocese of Sale

Father Daniel Hourigan was ordained in the Diocese of Sale in 1976.[242] Between 1977 and 1985, he was an assistant priest in three parishes in the diocese. He was appointed parish priest of another parish from 1985 until 1986 or 1987.[243] He was also Diocesan Director of Religious Education at the Catholic Education Office from late 1986 until 1987.[244]

CCI determined that the Diocese of Sale had knowledge of Father Hourigan's propensity to offend in 1986. This was based on a letter written to Bishop Eric D'Arcy in May 1987 by a mother and father regarding the abuse of their son, GHY, in which they said they first made an official complaint about Father Hourigan in January 1986.[245] In correspondence dated 29 November 2016, the Diocese of Sale informed us that it has accepted that there was prior knowledge of Father Hourigan from 1986.[246]

In a police statement, GHY said he told his brother and parents in 1985 that Father Hourigan had sexually abused him. He said they then telephoned a priest of the Archdiocese of Melbourne, who contacted Father Ian Waters, the Judicial Vicar for the Archdiocese of Melbourne at the time.[247] GHY said he met with Father Waters and the other priest in early 1986 and told them what had occurred, after which they went to confront Father Hourigan.[248]

In December 1986, Father Waters wrote to Bishop D'Arcy:

> In our telephone conversation [on 26 December 1986], I mentioned that I understood that you had been warned about Father's problems and you said that you could not recall being warned. I have checked with Mgr. Peter Connors [the (then) Vicar General of the

> Archdiocese of Melbourne], who was the one who 'warned' you. Peter recalls mentioning the matter to you … during a visit by him to Sale during 1986 … Peter believes he asked you whether you had ever had complaints about sexual misconduct by Father [Hourigan]. Peter recalls you answering in the negative, and that he told you that such an accusation had been made. Such a warning was meant to alert you confidentially.[249]

GHY's parents said in their 1987 letter to Bishop D'Arcy:

> You are aware, of course, that we made our first official move in January of 1986. The Vicar General visited you in February [1986] and informed you of a report of Father Hourigan's homosexual activities. In April of that same year we were given definite assurance that this meeting had taken place and we felt confidence in your perspicacity as our bishop and firmly believed that we had nothing more to fear.[250]

In November 1986 or September 1987, Father Hourigan was appointed parish priest of a different parish in the diocese.[251]

In his December 1986 letter to Bishop D'Arcy, Father Waters said that on 27 December 1986 he had interviewed GHY and another boy and that the abuse they disclosed was 'very serious'.[252] Father Waters said that he then went to see Father Hourigan.[253] Father Waters said, 'At first [Father Hourigan] said that the activities could be viewed from different points of view … I then said that the activity, as described by the lads to me, was clearly criminal'. Father Waters said Father Hourigan then 'calmly and humbly admitted he was guilty and needed help … I said I would arrange for him to see Dr Eric Seal, psychiatrist, that I would report to you and that I would guarantee the [parents] that Father would not visit them or make any contact'.[254]

In May 1987, GHY's parents wrote to Bishop D'Arcy that they were concerned Father Hourigan had been appointed Diocesan Director of Religious Education.[255] GHY's mother told CCI's investigators that Bishop D'Arcy invited them to Sale for a meeting and Father Hourigan's appointment as Director of Catholic Education was withdrawn.[256]

In August 1987, Father Hourigan wrote to Bishop D'Arcy requesting a transfer to another parish for 'health reasons'.[257] Father Hourigan was appointed parish priest of another parish in September 1987 or November 1988 and remained there until May 1990.[258]

Bishop Jeremiah Coffey, the Bishop of Sale from 1989 to 2008, said in an interview with CCI's investigators that, when he had been nominated for the Diocese of Sale but was not yet bishop, another person, GID, told him he had been sexually abused by Father Hourigan as a child.[259] A 1996 report prepared for Bishop Coffey in response to a request from the National Committee for Professional Standards (the 1996 report) noted that in June 1989 Bishop Coffey was told by Bishop D'Arcy about 'very serious allegations made against Father Dan Hourigan'.[260]

Bishop Coffey told CCI's investigators that, after he was appointed bishop in 1989, he confronted Father Hourigan about GID's allegation and that Father Hourigan 'denied every single thing about this molestation of [GID]. I had some other information at that time and it seemed to be a pattern of his behaviour'.[261]

Between May 1990 and February 1993, Father Hourigan was appointed assistant priest at St Mary's Cathedral Parish, Sale.[262] At the same time, Bishop Coffey put Father Hourigan on sick leave.[263] In August 1990, the administrator of the cathedral at Sale appointed Father Hourigan chaplain to senior boys and girls at a school in the diocese.[264] The 1996 report said, 'This again was most inappropriate and should not have happened'.[265] In 1995, Bishop Coffey told CCI's investigators, 'As far as we know, nothing happened, but as soon as we could get him out quietly at the end of the term we did'.[266]

Father Hourigan was placed on restricted ministry in 1992 and retired in early 1993.[267] He continued his pastoral work during his retirement, including celebrating mass.[268] He was placed on administrative leave in 1994,[269] and his priestly faculties were withdrawn on 14 February 1994.[270] The 1996 report said that in 1995 the police interviewed Father Hourigan.[271] Father Hourigan died in September 1995 aged 65.[272] Ten people made claims between 1993 and 2015 to the Diocese of Sale relating to allegations of sexual abuse by Father Hourigan between 1968 and 1989.[273] This included two people who made claims that they were abused between 1986 and 1989.[274]

Diocese of Bunbury

Father William Kevin Glover was ordained in 1940 and was a member of the Marist Fathers (Society of Mary) until 1959.[275] In September 1959, Father Glover was accepted into the Diocese of Bunbury in Western Australia on a trial basis, and in October 1960, was incardinated into the Diocese of Bunbury.[276]

CCI determined in 2008 that the Diocese of Bunbury had knowledge of Father Glover's propensity to offend in September 1959, based on letters from that time between the Provincial of the Marist Fathers and the Bishop of the Diocese of Bunbury, and between the provincial and the Superior General of the Marist Fathers in Rome.[277]

In 1954, Father Glover was appointed by the Marist Fathers as superior and parish priest of a parish in Victoria.[278] In 1993, the Vicar Provincial of the Marist Fathers told CCI that Father Glover 'was removed from his position as Parish Priest at [the parish in Victoria] … in June 1958 after evidence came to light of systematic sexual abuse of adolescent boys'.[279] A chronology from the Marist Fathers relating to Father Glover said that he was removed 'for immoral and criminal sexual behaviour with boys and male adolescents. When confronted, he eventually admitted the behaviour to the Provincial … Kevin Glover was given a formal canonical warning, and sent to do a 30 day penitential retreat at Armidale'.[280]

Between July 1958 and July 1959, Father Glover was appointed to an unknown position in a parish in Queensland.[281] The chronology relating to Father Glover said that, in July 1959, he was removed from the parish in Queensland after 'he ignored the ban on associating with young people in the parish', brought to Sydney, given a second canonical warning and 'specifically threatened with dismissal from the Society'.[282]

In September 1959, the Bishop of the Diocese of Bunbury, Bishop Launcelot Goody, wrote to the Marist Fathers Provincial, Father Harcombe, that he had received a letter from Father Glover asking to be accepted into his diocese.[283] Bishop Goody said:

> His letter was a very frank one, telling me of his troubles at [the parish in Victoria] and I was impressed by the whole tone of his letter. In any case although not personally acquainted, I had heard of him and his work in Victoria. I always feel the greatest of sympathy for a priest who has had a fall and I replied to Fr. Glover that I would be prepared to accept him on trial 'ad triennium' in this Diocese if all the Canonical requirements were observed. Bunbury is so distant from the Eastern States of Australia that I feel that here he would have the opportunity of a fresh start with a completely clean sheet.[284]

In September 1959, Father Harcombe, wrote to the Superior General of the Marist Fathers in Rome concerning Father Glover and said:

> The Bishop [Bishop Goody] knows the reason for [Father Glover] being at Richmond, and says he thinks that Father Glover will have a better chance away over there of rehabilitating himself than anywhere else in Australia. Father Glover is writing to you to seek a dispensation from his vows. We have had a Council meeting about it and unanimously we recommend with all our hearts that the dispensation be obtained for him, and that as quickly as possible.[285]

Father Harcombe also told the superior general:

> the Doctor says that he and the Priest who works with him admit complete failure in Father Glover's case. … [The Doctor] said to tell you from his experience of Father Glover at Richmond, that this is the only solution to what he considers would have been a catastrophe for the Society. He is convinced that [if] he remained in the Society, Father Glover would have done untold damage. In a Diocese however he will stand alone and will succeed or fail with a Bishop by the way he acts and speaks. He knows that this is his only chance and we feel that he will do anything to prove himself with the Bishop.[286]

As noted above, Father Glover was accepted into the Diocese of Bunbury on a trial basis in September 1959,[287] and he was then incardinated into the diocese in October 1960.[288] He was appointed to various parishes in the diocese until 1990.[289] Five people made claims between 1997 and 2014 to the Diocese of Bunbury that they were sexually abused by Father Glover between 1967 and 1986.[290] Father Glover was transferred to the Cook Islands in October 1990 and died there in 1998, aged 81.[291]

Diocese of Sandhurst

Father Kevin Howarth was ordained to the Diocese of Sandhurst in 1963.[292] Between 1964 and 1974, he was an assistant priest in various parishes across Victoria and was on loan to the Diocese of Darwin between 1974 and 1979.[293] He returned to the Diocese of Sandhurst in 1979 as a locum assistant priest and then parish priest in one parish, after which he was appointed parish priest in another parish between 1982 and 1984.[294] Between 1984 and 1989, Father Howarth was appointed assistant priest in a different parish.[295]

CCI determined in 2004 that the Diocese of Sandhurst had knowledge of Father Howarth's propensity to offend in early 1984. This was based on a complaint made by the parents of GJS and GJT to the bishop at the time, Bishop Noel Daly, and Bishop Daly's decision to send Father Howarth to a counsellor.[296]

In approximately 1984, the parents of GJS and GJT told Bishop Daly that their daughter had been sexually abused by Father Howarth.[297] Monsignor Frank Hickey, another priest of the diocese, told CCI's investigators in 2005 that the parents complained to Bishop Daly in early 1984. He said, 'probably around about April of that year [1984] … was when the Bishop came because of the parents had gone to him … They'd gone to the Bishop and the whole thing had blown up and the Police had been called in'.[298]

Bishop Daly completed a Special Issues Liability Insurance questionnaire in 1991 which referred to an allegation:

> of cleric fondling body of … girl ... Family deeply disturbed and resentful. Police at local level informed … I was able to interview the cleric … No further association occurs between the cleric and the family. He was changed to another parish. No further report or allegation regarding him has been brought to my notice. I think he suffered much from the ordeal and is now quite settled.[299]

In his 2005 interview, Monsignor Hickey told CCI's investigators that Bishop Daly confronted Father Howarth after he was made aware of the allegations: '[Bishop Daly] came and saw Kevin of course. Then he came to me too … we didn't hear any more about it. Kevin stayed on there'.[300] After receiving the complaint, Bishop Daly referred Father Howarth for counselling.[301]

Between January 1989 and January 1990, Father Howarth was appointed as an administrator of two parishes in the Diocese of Sandhurst and was then parish priest in two other parishes between January 1990 and April 1996.[302] One person made a claim in 2003 that she was sexually abused by Father Howarth between 1989 and 1991.[303]

In 2004, Mr Laurie Rolls, of CCI's Professional Standards Risk Management Service, said he had spoken to Father Gerry Gallagher, who was the Chairman of the Diocesan Professional Standards Committee at the time of Father Howarth's criminal proceedings in 1996, about notes Father Gallagher had written in 1996 that said, 'Bishop Daly believes now that he did

not realise the extent and nature of the sexual contact at the time [of the 1984 complaint]. He believed it to have been unnecessary and excessive showing of physical affection, too much and inappropriate touching'.[304]

Father Howarth was placed on administrative leave from April 1996.[305] In October 1996, he was convicted after pleading guilty to offences relating to the sexual abuse of GJS and GJT.[306] He was referred for non-residential treatment in 1996,[307] placed on restricted ministry in 1999 and died in 2000 aged 63.[308]

Diocese of Port Pirie

Father Charles Barnett was ordained into the Archdiocese of Adelaide in 1970. He then applied to become a member of the Congregation of the Mission (Vincentian Fathers) and was 'definitively incorporated to the Congregation' in 1975.[309] Between 1971 and 1977, Father Barnett taught at a school in New South Wales, undertook parish duties at parishes in Queensland and Victoria, studied overseas and was a staff member of a Catholic institution in South Australia.[310]

For periods between February 1978 and December 1983, Father Barnett was loaned to the Diocese of Port Pirie by the Vincentian Fathers. He was a priest in various parishes in the Diocese of Port Pirie from February 1978 to February 1979 and again from January 1980 to December 1983.[311]

CCI determined that the Diocese of Port Pirie had knowledge of Father Barnett's propensity to offend by 17 March 1983, based on a report made by a priest to Bishop Peter De Campo, the Bishop of Port Pirie from late 1980 to 1998.[312] CCI's determination that the Vincentian Fathers had knowledge of Father Barnett's propensity to offend is considered further below in Section 13.4.2.

In a police statement, GEF said that after he was abused by Father Barnett (in the late 1970s[313]) he told Bishop Bryan Gallagher (who was the Bishop of the Diocese of Port Pirie from 1952 until late 1980[314]):

> that he had a priest with a problem and would he look into it. I told him that it was [Father Barnett] and the response I got was something similar to 'Yes we have some problems with him' and he told me he would look into the matter but I don't know what was done if anything.[315]

In 2011, CCI's lawyers recorded that a priest in the Diocese of Port Pirie, Father GML, told them that in 'about March. Pretty close to St Patrick's Day, March 17', in 1981, 1982 or 1983,[316] he had reported a complaint made to him by a family, involving sexual abuse by Father Barnett, to Bishop De Campo. Father GML said:

> I went up to the [family's home] … They said that the night before … [Father Barnett] was going past their place and … [asked] could he stay the night … During the night, he went down to the boys' bedroom and apparently had interfered with them before and wanted to do so again, but they objected and went to tell mum and dad and so [the father, GMN] … expelled him from the property and then he said to me 'what should be done'. And I said 'I'll go to the Parish Priest and have a talk with him' and he suggested I go to the Bishop.[317]

CCI's lawyers said that Father GML told them he spoke to Bishop De Campo 'for about three hours' that night: 'I told him that [GMN and his wife] and [their sons], were upset with Charlie [Barnett] because of what he had tried to do and he had been doing it for a long time'.[318]

In correspondence dated 21 February 2017, the Diocese of Port Pirie informed us that it believes this complaint was received in 1983, based on a file note of a 2002 telephone call between Father Jim Monaghan (the Port Pirie Diocesan Representative on the Professional Standards Resource Group at the time) and the family of GMN's son which 'records that [GMN's] family reported a complaint about Fr Barnett to Bishop De Campo in 1983'.[319]

Father Barnett remained on loan to the Diocese of Port Pirie until December 1983.[320] Seven people, including GEF, made claims to the Diocese of Port Pirie between 1999 and 2014 that they were sexually abused by Father Barnett at various locations in the Diocese of Port Pirie between approximately 1978 and 1982.[321] Another person made a claim to the Diocese of Port Pirie in 2008 that he was sexually abused by Father Barnett in South Australia between 1980 and 1985.[322] Barnett was convicted in 2010 after pleading guilty to five offences relating to the sexual abuse of four victims, which occurred between 1977 and 1994. The offences included three counts of indecent assault and one count of unlawful sexual intercourse, which occurred between 1977 and 1982.[323]

13.4.2 Awareness of allegations of child sexual abuse in Catholic religious orders in Australia

There are around 180 religious institutes (religious orders or congregations) within the Catholic Church in Australia, each of which is substantially independent and autonomous.[324] We discuss the structure and governance of these religious orders in Section 13.1. The Catholic Church claims data indicated that of the 155 Catholic religious orders surveyed in Australia, 58 received one or more claims of child sexual abuse between 1 January 1980 and 28 February 2015.[325]

This section discusses the findings we have made in case studies concerning the awareness of senior figures in the Christian Brothers and the Marist Brothers of allegations that brothers had sexually abused children. Those senior figures include provincials, deputy provincials, provincial council members and community superiors. We also set out extracts from documents we considered in relation to CCI's determinations of prior knowledge in relation to five priests and eight brothers in the following orders:

- Christian Brothers
- Marist Brothers (Sydney Province)
- Salesians of Don Bosco
- Hospitaller Order of St John of God
- Missionaries of the Sacred Heart
- Dominican Friars
- Marist Fathers
- Congregation of the Mission (Vincentians).

In addition to cases considered in this section, records and evidence before us indicate that in Australia two religious orders have been disbanded following allegations of child sexual abuse. First, a biography of a former Archbishop of Adelaide, Archbishop Matthew Beovich, stated that in 1942 Archbishop Beovich took action regarding the Institute of St John the Baptist (the institute), after becoming aware of credible allegations that two brothers had sexually abused boys. Archbishop Beovich entrusted the institute to the Salesians of Don Bosco and obtained permission for many of the brothers to seek entry to other orders. The institute finally wound up in 1960 after Archbishop Beovich applied for its suppression on the grounds it had no surviving members.[326] Second, as discussed above, documents tendered in our *Institutional review of Catholic Church authorities* hearing indicate that the Society of St Gerard Majella was closed down ('suppressed') by the Vatican in 1996 at the request of Bishop of Parramatta, Bishop Heather.[327] This followed the substantiation by a special enquiry, established by Bishop Heather, of multiple complaints of sexual abuse, including child sexual abuse, by three senior members of the Society, beginning in the 1960s.[328] The Society is discussed in Appendix D.

Christian Brothers

The Christian Brothers is a religious order that was established primarily to provide academic education, vocational training and care for poor boys.[329] The Christian Brothers order is divided into areas known as provinces. Until 1953 there was one Australia-wide province. In 1953, this was divided into two provinces: St Patrick's Province (Victoria, Tasmania, South Australia, Western Australia); and St Mary's Province (New South Wales, Queensland, New Zealand, Papua New Guinea).[330] There was a further division into four provinces in 1957, which remained until 2007, when the four provinces were amalgamated to form the Province of Oceania.[331] The four provinces between 1957 and 2007 were:[332]

- Christian Brothers Province of Western and South Australia (Holy Spirit Province)
- Christian Brothers Province of Victoria and Tasmania (St Patrick's Province)

- Christian Brothers Province of New South Wales and Papua New Guinea (St Mary's Province)
- Christian Brothers Province of Queensland and the Northern Territory (St Francis Xavier's Province).

In a number of case studies we have considered what senior figures in the Christian Brothers knew of allegations that brothers had sexually abused children. We have focused on provincials, members of the provincial council (which generally consisted of four brothers and the provincial) and community superiors. Those case studies include:

- *Case Study 11*: *Congregation of Christian Brothers in Western Australia response to child sexual abuse at Castledare Junior Orphanage, St Vincent's Orphanage Clontarf, St Mary's Agricultural School Tardun and Bindoon Farm School (Christian Brothers).* These four children's homes were run by the Christian Brothers. They operated from the late 1920s and closed down between the 1960s and the 1980s. They housed boys who were wards of the state, private admissions or child migrants, sometimes before the age of 10 years.[333] This case study also considered allegations or concerns of child sexual abuse by Christian Brothers elsewhere in Australia that were found in the Christian Brothers' records.[334]
- *Case Study 28: Catholic Church authorities in Ballarat*, in which we examined the response of various institutions run by Catholic Church authorities in and around Ballarat, Victoria, to allegations of child sexual abuse by clergy and religious. The Christian Brothers operated or provided staff for six primary and secondary schools in Ballarat and Warrnambool during the period considered in this case study. We examined the knowledge of senior figures in the Christian Brothers (and the Diocese of Ballarat) about offending by, and their response to, five brothers who taught at one or more of these institutions.[335]

We have also considered documents relating to CCI's determinations of the Christian Brothers' prior knowledge of allegations of child sexual abuse with respect to four brothers in Australia, one of whom was in St Patrick's Province and three of whom were in St Mary's Province.

In the *Christian Brothers* case study, documents were tendered that recorded what successive provincials and members of the provincial councils knew about child sexual abuse allegations, including minutes of the provincial council meetings between 1923 and 1934.[336] We found that, in each of the decades from 1919 to the 1960s, the relevant Christian Brothers provincial council knew of allegations of sexual abuse against brothers in Christian Brothers institutions around Australia.[337]

By the 1960s, matters relating to child sexual abuse appeared less often in the minutes of the provincial council meetings. A summary prepared by lawyers for the Christian Brothers following a review of these minutes stated, 'This suggests that these cases are no longer reported in the Council minutes and there may well have been some decision made in the late 1950s not to record these matters'.[338]

Other inquiries, both domestic and overseas, have also considered what various Christian Brothers authorities knew of allegations of child sexual abuse by brothers. The Commission to Inquire into Child Abuse (Ryan Commission) in Ireland commented in 2009:

> It is difficult to understand why allegations of abuse should have come as such a shock to the [Christian Brothers] Congregation. The documentation made available to this Committee disclosed that allegations of child abuse, and particularly child sexual abuse, were a recurring and persistent problem for the Congregation.[339]

In 1997 the Wood Royal Commission considered two case studies on three Catholic Church perpetrators in New South Wales. It found that Christian Brother X11 had been confronted about and made admissions of child sexual abuse to a school principal in 1984 and to the Provincial of the Christian Brothers in August 1987.[340] He was threatened with dismissal, but a decision was made that treatment would be more appropriate.[341] The Australian Senate Standing Committee on Community Affairs, in its 2001 report *Lost Innocents: Righting the record – report on child migration*, and the 2004 *Forgotten Australians* Senate inquiry also made findings about the knowledge of Christian Brothers authorities of sexual abuse in a number of residential institutions – namely, Bindoon, Castledare, Clontarf and Tardun.[342] We considered these institutions in our *Christian Brothers* case study.

Early awareness of the Christian Brothers in Australia

The earliest recorded conviction of a religious for child sexual abuse offences in Australia was in 1919, when Brother Phillip Carmody – a teacher at Clontarf Orphanage in Western Australia – was arrested and charged for indecent dealings with minors. He pleaded guilty to the charges and received a jail sentence of three years. At that time, the Archbishop of Perth informed the government authorities that he had consulted with Brother Noonan – the superior of the Christian Brothers for Western Australia – and that it had been concluded that a new superior and new staff would be placed at Clontarf.[343]

In the *Christian Brothers* case study we found that, in each of the decades from 1919 to the 1960s, the relevant Christian Brothers provincial council knew of allegations of sexual abuse against brothers in Christian Brothers institutions around Australia:[344]

- In the 1920s, eight brothers were mentioned in the Christian Brothers' records in relation to 'immorality' with boys or were accused of 'impropriety' with boys or abuse of children. The conduct occurred in several places, including Geelong and Queensland.[345]
- In the 1930s, over a dozen brothers were mentioned in the records in relation to immoral dealing with boys or similar conduct. Of these, one brother was from Bindoon and one was from Tardun. Others were located in Geelong, Brisbane and Melbourne.[346]

- In the 1940s, 17 brothers were mentioned in the records in relation to immoral action with boys or similar conduct, including fondling and 'interfering' with boys. Responses to these brothers included a canonical warning, verbal advice and transfer to another institution. These brothers were located in New South Wales, Western Australia and Queensland.[347]
- In the 1950s, 24 brothers were reported for conduct such as, in one case, 'hands on private parts of boys'. Some brothers were given a censure, others a canonical warning, and some were recommended for dismissal. These brothers were located in Western Australia, New South Wales, South Australia, Tasmania and Victoria.[348]

In addition, in each decade from the 1930s to the 1950s, allegations of child sexual abuse were raised against brothers who had also faced earlier allegations.[349]

Correspondence between the office of the superior general (Ireland) and Australian provincials

The Australian Christian Brothers provincial council reports to the congregation leader, formerly known as the superior general. The congregation leader is the head of the Christian Brothers order worldwide.[350] In the *Christian Brothers* case study we considered correspondence from at least 1936, during the 1940s, and until the end of the 1950s, between Australian provincials and the office of the Superior General of the Christian Brothers, who was based in Dublin, Ireland.[351] In the early 1960s, the headquarters of the Christian Brothers congregation moved from Dublin to Rome.[352]

We found that this correspondence between the superior general in Ireland and the provincial in Australia reveals that, by the 1950s, there was an understanding:[353]

- that sexual abuse can have ongoing impacts on children
- that sexual abuse of children was viewed as and referred to as a 'moral lapse' or 'weakness'
- that those lapses had a tendency to reassert themselves
- that the administration of an institution may be at fault when a brother was an abuser.

In the 1950s, the superior general, Brother EF Clancy, had four assistants, one of whom was Brother Leo Duffy, an Australian.[354] In October 1953, Brother Duffy wrote to the provincial of St Patrick's Province about allegations that Brother Marcian Quaine had his 'hands on private parts of boys'. He wrote, 'I have good reason to believe that it happened, and that kind of weakness does not easily die'.[355] About a month later, Brother Duffy wrote to an Australian provincial about a brother:

> For anyone with the tendency there is always the danger of further outbreak, and we are bound to protect both the boys and the good name of the Institute. It could well mean that a boy who has been the victim of such a weakness on the part of his teacher would become a moral collapse … God has been extraordinarily good in protecting us from scandal in the past. I feel that we are bound to do all that we can to remove every possible danger of any recurrence of this sad weakness.[356]

In August 1957, the superior general wrote to the Provincial of St Patrick's Province, Brother Thomas Garvey, about Brother Lambert Wise: 'Perhaps you do not know that there was some reason in the past to believe that contact with boys constituted a danger to him.' The letter continued, 'If the weakness really was there, it is the kind of thing, unfortunately, that does not easily die, but has the habit of unexpectedly reasserting itself'.[357]

Just under two years later, Brother Duffy wrote again to Provincial Brother Garvey about 'trouble' he had with Brother B Smith at Castledare: 'Unfortunately that sort of trouble never seems to be very far away. And it does so much dreadful harm – especially to the boys concerned, and to others who may hear of it.' He continued, 'Please God we will be preserved from the scourge in the future. I am glad that you have given the C.W. [canonical warning]. I believe that there is no other course to follow but to impress upon transgressors the seriousness of the fault, and the scandal that accompanies it'.[358]

Correspondence between Australian provincials and Dublin also revealed that at least one brother was transferred to another Christian Brothers institution where he had contact with children after being the subject of an allegation that concerned children. However, in some cases, brothers were transferred to institutions where they would not have contact with children.[359] In May 1941, the provincial wrote to the superior general, Brother Noonan, that a Brother Keenan had admitted to making a 'suggestion to a boy to uncover'.[360] He wrote:

> we considered the matter in Council and by three to two it was decided to report it to you. An incident similar to the one I have just mentioned took place in 1929 in Bundaberg. The view the Council took was that there was no evidence that a wrong action would have occurred. I am giving this from memory as there is no record of any decision of the Council. He was changed and I am assuming that there was a warning given. Last year we regarded that as a first warning.[361]

In 1946, a further letter to the superior general reported that Brother Keenan was again in serious trouble for interfering with a boy at Lewisham, New South Wales.[362] We found that it could be concluded from this letter that Brother Keenan was not removed from contact with children despite his disclosure in 1941.[363]

St Patrick's Province (Victoria and Tasmania)

As set out above, in 1957 the Christian Brothers in Australia were divided into four provinces. From this time, St Patrick's Province comprised Victoria and Tasmania. The provincials of St Patrick's Province had all been members of the provincial council before their appointment as provincial. They were:[364]

- Brother Patrick Chanel Naughtin – provincial from 1972 until 1984 and member of the provincial council from 1966 until 1972
- Brother Francis Marius Chappell – provincial from 1984 until 1990 and member of the provincial council from 1978 until 1984
- Brother Bryan Paul de Noonan – provincial from 1990 until 1996 and member of the provincial council from 1984 until 1990.

In *Catholic Church authorities in Ballarat* we considered evidence of allegations of child sexual abuse that were made to Christian Brothers authorities, particularly provincials, provincial council members and community superiors, with respect to five brothers in St Patrick's Province. Those brothers were Brother BWX, Brother Peter Toomey, Brother Stephen Farrell, Brother Gerald Leo Fitzgerald and Brother Edward Dowlan.[365]

We found that during the 12 years he was provincial, Brother Naughtin received or was otherwise aware of the following:

- a complaint in mid-1973 that Brother BWX had engaged in sexual behaviour with two boarders at St Patrick's College in Ballarat – Brother BWX admitted that it was true and was moved[366]
- a report in July 1973 that Brother Toomey had committed 'an indiscretion with a boy'[367]
- a complaint in late 1974 that Brother Stephen Farrell had sexually abused a child[368]
- a complaint in 1975 that Brother Fitzgerald was kissing primary school students as they were leaving school each day[369]
- a report in around 1975 that Brother Toomey had 'on two or three occasions earlier in the year been very unwise in speaking freely of sex and asked too personal questions of boys and was too familiar in his touching of the boys'[370]
- a report in the late 1970s that Brother Toomey was organising sex education courses at a Christian Brothers college[371]
- a complaint in 1981 that Brother BWX had attempted to molest a boy at the Christian Brothers college where he had taught in the mid-1970s.[372]

At least two of these brothers (Brothers BWX and Fitzgerald) had previously been the subject of complaints that they had sexually abused children, which had been made known to the provincial of the time, as set out below.

We also considered documents relating to CCI's determination that the Christian Brothers had knowledge of Brother Rex Elmer's propensity to offend.

Brother BWX

Brother BWX entered the novitiate in January 1956. His first appointment was in Perth in early 1958. In our report on the *Catholic Church authorities in Ballarat* we found that allegations Brother BWX had sexually abused children were known at various times from the 1960s until the 1980s by Christian Brother authorities and clergy in the Diocese of Ballarat.[373]

In a letter dated 25 August 1960, a Christian Brother in Perth wrote to a 'Brother Consultor' about his meeting with the Auxiliary Bishop of Perth that day:

> After the completion of my business His Lordship said that he wanted to discuss a 'delicate' matter.
>
> One of his priests, Monsignor [REDACTED] of [REDACTED], reported to him that his nephew, a lad at C.B.C. here, had been ordered to the sacristy by one of the Brothers. He was then directed to undress fully. This the lad did, leaving on his scapular. This point was emphasised by the Bishop who thinks the scapular prevented further abuse on this occasion. The boy asked the Brother whether he should remove the scapular and was told to do so. As he removed it he spoke to the Brother about the scapular. The Brother then asked about immoral acts in general. It would seem that he did not ask the boy to allow any liberties. After a few minutes he peremptorily ordered the boy to dress and to clean some brass. The Brother concerned is [BWX].
>
> In questioning Br. [BWX] this evening he revealed that during last year and this he has taken boys to the Visitor's room in the Brothers' house, got them to undress, and then spoke to them of the functions of the genital organs, touching the organs during the process. This year he has acted in this way with one boy from the Junior class, about six from 2nd. Year, and one from Grade 7.[374]

We found that Brother BWX was moved to Victoria at a time which would conceal the true reason for his having left Perth and to protect the reputation of the Christian Brothers.[375]

In 1963, Brother BWX was sent to teach at Christian Brothers College in Warrnambool (located in the Diocese of Ballarat). The school principal, Brother HL Williams, spoke to Brother BWX on a least one occasion in around 1966. He warned Brother BWX that he should not 'go one to one with boys or touch their genitals'. At the beginning of the following year, Brother BWX was transferred from Warrnambool to another teaching position at North Melbourne. We found that, given the timing, at least one of the reasons for Brother BWX's transfer was the allegations made against him.[376]

Brother BWX was transferred to Ballarat in 1971. In mid-1973, one of the lay teachers at St Patrick's College in Ballarat told Brother Paul Nangle, then the community superior, that he saw Brother BWX on the bed in his room, which was attached to the dormitory, engaged in sexual activity with two boarders. Brother Nangle understood from this that 'although they were clothed, there was "rubbing" going on, and [the lay teacher] thought it was clearly sexual behaviour'. Brother Nangle spoke to Brother BWX, who admitted it was true. Brother Nangle informed the provincial, Brother Naughtin, and Bishop Mulkearns of what had happened.[377]

In July of that year, Brother Naughtin conducted a visitation of Ballarat. Brother BWX had been transferred from the community a week before this visitation to St Kevin's College in Toorak, Victoria. In relation to Brother BWX's transfer, the visitation report records:

> The change was necessitated because of the revelation of a serious act of indiscretion (even misconduct) of which he was guilty with respect to two of the senior boys separately …
>
> A close watch will have to be kept on him in the future, for he has now at least twice offended in his conduct with boys. Unfortunately he seems hardly to realize the seriousness of his conduct, although he says that he does. On the surface he has settled well at St Kevin's. But one doubts his power to stay. He is to resume almost immediately consultation with [Catholic psychiatrist] Dr Seal.[378]

In around 1981, Brother Naughtin received a second complaint about Brother BWX alleging that he had molested a boy, this time at St Kevin's College in Toorak in the late 1970s. Brother Naughtin later said that he sent Brother BWX to see a psychologist or psychiatrist. By 1981, Brother BWX was teaching at St Kilda, where, despite this complaint, he remained until 1984.[379]

Brother Naughtin later said that he verbally passed on information about complaints made against Brother BWX to Brother Chappell as incoming province leader. Brother BWX continued teaching at various schools until 1994, when he was sent to the St Luke's Institute in the United States for treatment for 'child abuse incidents'. Brother BWX has never been charged with an offence relating to the sexual abuse of children.[380] Catholic Church claims data showed that two people made a claim of child sexual abuse against Brother BWX related to alleged incidents occurring between 1961 and 1976.[381]

Brother Peter Toomey

Brother Toomey's first appointment was in 1971, at a school in Geelong. In 1973 he moved to Brunswick in Melbourne, where he taught at Trinity Regional College.[382]

In July 1973, Brother Ronald Stewart, a member of the provincial council, conducted a visitation of Brunswick community. Brother Stewart provided his visitation report to the provincial, Brother Naughtin. That report noted that Brother Toomey had found the first term very difficult and that:

> During this unsettled period there was an indiscretion with a boy of which he realises the seriousness, and it would seem that a repetition is unlikely … Brother Toomey is now better in his attitude, he has a good influence with his pupils.[383]

The evidence in *Catholic Church authorities in Ballarat* also indicated that sometime between 1973 and 1975 Brother Naughtin became aware of further concerns about Brother Toomey. These were that he had 'on two or three occasions earlier in the year been very unwise in speaking freely of sex and asked too personal questions of boys and was too familiar in his touching of the boys'. In the late 1970s, only a few years later, Brother Naughtin was aware that Brother Toomey was organising sex education courses at Cathedral College in Melbourne. There is no evidence suggesting Brother Naughtin took any steps to prevent Brother Toomey from continuing to organise sex education courses.[384]

Brother Toomey continued teaching in the St Patrick's and Holy Spirit provinces of the Christian Brothers, until the end of 2000. By 1994, concerns about Brother Toomey's conduct around boys had been reported to the Provincial of the Holy Spirit Province, Brother Gerald Faulkner. In August 2000, the Christian Brothers authorities in St Patrick's Province and in the Holy Spirit Province were aware of a complaint that Brother Toomey had sexually abused a former student in 1972.[385]

In November 2005 Brother Toomey was convicted of 10 charges of indecent assault against a number of students at Trinity College in Brunswick in the 1970s and was sentenced to 27 months' imprisonment, 21 of which were suspended.[386] The data produced to the Royal Commission showed that 17 people made a claim of child sexual abuse against Brother Toomey alleging incidents of child sexual abuse occurring in the period from 1971 to 1983 (inclusive).[387]

Brother Gerald Leo Fitzgerald

Brother Fitzgerald was admitted as a Christian Brother in September 1919 and made his final profession in 1927.[388]

In 1931, while working at St Augustine's Orphanage in Geelong, the visitor to the community described Brother Fitzgerald as a 'nerve case' who 'requires special handling'. The visitor's report suggested 'a change to a large community at Xmas and keep him away from branch schools'.[389]

In May 1950, the provincial wrote to Brother Fitzgerald censuring him 'as strongly as possible' for a number of matters that had been brought to his notice, which 'from the evidence I am fully satisfied of your guilt'. These included:

> In defiance of the command given you by the Br. Consultor, you continued to have dealings with the boys.
>
> You have allowed one or more boys to enter your room, and you have kissed a boy.[390]

Notwithstanding this, the provincial allowed Brother Fitzgerald to remain at St Vincent's Orphanage and to continue his role as probationary officer. We found that Brother Fitzgerald should have been removed immediately from St Vincent's and should not have been given any future role which gave him access to children.[391]

In 1975 a father complained to Brother Nangle, then superior of the Ballarat community, about Brother Fitzgerald kissing students from St Alipius Boys' Primary School as they were going home from school and said he wanted the conduct to stop. Brother Nangle reported the complaint to the Provincial, Brother Naughtin. Soon after, a member of the provincial council interviewed Brother Fitzgerald. In March 1975, Brother Naughtin wrote to Brother Fitzgerald that he had come to the conclusion that he should retire from teaching at the end of the term. Brother Naughtin referred to the 'complications that have arisen in recent times'.[392]

Despite these complaints, during his retirement Brother Fitzgerald continued to live in the brothers' residence on the grounds of St Patrick's College. Neither Brother Naughtin nor the provincial council took steps to impose any restrictions on Brother Fitzgerald's access to children, including in the dormitories.[393]

We also found that various priests in the Diocese of Ballarat had heard of Brother Fitzgerald's conduct around children. Father Lawrence O'Toole, then an assistant priest in Ballarat East parish, had heard about Brother Fitzgerald taking boys swimming in the nude. Father O'Toole did not inform the Christian Brothers authorities or the parish priest of what he had heard, or take it any further. [redacted] We found it was not unreasonable for diocesan priests to believe it was not for them to raise the conduct of Brother Fitzgerald with the Christian Brothers.[394]

Brother Fitzgerald was never charged with any child sexual abuse offences. He died in 1987 and has been posthumously the subject of allegations of sexual abuse.[395] Catholic Church claims data showed that 15 people made a claim of child sexual abuse against Brother Fitzgerald related to alleged incidents occurring in the period from 1950 to 1975.[396]

Brother Stephen Farrell

Brother Stephen Farrell entered the Juniorate in February 1968. In 1973 he was appointed to teach Grade 5 at St Alipius Boys' School – a Christian Brothers primary school in Ballarat.[397]

Father Lawrence O'Toole, who was an assistant priest in Ballarat East parish in the early 1970s, gave evidence that the parish priest of Ballarat East, Monsignor William McMahon, one day mentioned to him that parents had told him that Brother Stephen Farrell had exposed himself to their child. Father O'Toole told us he did not do anything with this information, and he thought it was the responsibility of the monsignor as the senior priest. He did not follow up with Monsignor McMahon as to what he had done.[398]

In our report on the *Catholic Church authorities in Ballarat,* we found that in 1974 Brother Paul Nangle – then Superior of St Patrick's Community in Ballarat – received a complaint about Brother Stephen Farrell. He confronted Brother Farrell about the complaint, and Brother Farrell admitted the conduct. Brother Nangle reported the complaint to the provincial, Brother Naughtin, shortly after receiving it. Brother Naughtin told Brother Nangle that Brother Farrell had not applied to renew his vows and would be leaving the congregation.[399]

In 1997, Brother Stephen Farrell was convicted of nine counts of indecent assault against two boys aged nine and 10 years at St Alipius Boys' School. He was sentenced to two years' imprisonment, wholly suspended. In 2013, he was convicted of a further charge of indecent assault on a 10-year-old boy at St Alipius Boys' School.[400] Catholic Church claims data showed that six people made a claim of child sexual abuse against Brother Stephen Farrell related to alleged incidents occurring in the period from 1971 to 1974.[401]

Brother Edward Dowlan

Brother Dowlan entered the Christian Brothers Novitiate in 1968. His first appointment was in 1971, teaching at St Alipius Boys' School in Ballarat. He taught there for a year before being transferred to St Thomas More College in Nunawading.[402]

Brother Dowlan returned to Ballarat in 1973, this time teaching at St Patrick's College, where he remained until 1975. In *Catholic Church authorities in Ballarat*, a number of witnesses gave evidence that they complained about the conduct of Brother Dowlan to Brother Nangle, who was the superior of St Patrick's community in Ballarat at the time.[403]

We found that Brother Nangle received multiple reports of, or complaints about, serious misconduct with boys by Brother Dowlan, including misconduct of a sexual kind, as set out below:[404]

- In 1973, a member of the student representative council who was in Form 3 at St Patrick's College moved a motion asking Brother Nangle to tell Brother Dowlan to 'stop putting his hands down kids' pants'. Brother Nangle subsequently told the school assembly that the council was to be disbanded as a result of certain students using it to tell lies about the brothers, and he asked one of these students to come forward and apologise to the school for spreading lies, which he did.
- In 1974 a lay teacher at St Patrick's College became aware of a report by a parent on behalf of two families about 'inappropriate behaviour' by Brother Dowlan with two boys in the junior school. The teacher spoke to Brother Dowlan, who denied he was doing anything inappropriate. The teacher spoke with the two boys separately, but they told him nothing significant. Brother Nangle and the teacher then met with Brother Dowlan, and Brother Nangle asked Brother Dowlan if he had put his hand down the pants of the boys, which Brother Dowlan denied.

- In mid-1974 a different student and his mother met with Brother Nangle at St Patrick's and told him that Brother Dowlan had touched him on the genitals. Brother Dowlan remained at St Patrick's College until 1975, despite Brother Nangle's knowledge of this and earlier complaints against Brother Dowlan.
- In late 1974, a different student's parents were called to St Patrick's College during the night. At some point after they arrived, this student said in the presence of Brother Nangle that the brothers 'were a heap of poofters and get me out of here'. We found that, if Brother Nangle did not already understand what the student meant by this comment or the reasons for his distress more generally, he did not ask any questions to find out.

We found that there was no effective response to any of those reports or complaints in order to manage the risk to children posed by Brother Dowlan. Brother Nangle consistently and unreasonably declined to obtain the details of such reports and complaints.[405]

We also found that, by July 1985, the provincial, Brother Chappell, and at least one member of the provincial council, Brother Paul Noonan, had been informed by the superior and principal of Cathedral College East Melbourne that Brother Dowlan was 'overtly affectionate in expression with his boys'. Despite this knowledge, Brother Dowlan was appointed to St Mary's Technical College in Geelong in 1987.[406]

By 1988, Brother Chappell and at least one member of the provincial council, Brother Peter Mark O'Loughlin, had been informed of an allegation that a Year 7 boy from St Augustine's had indicated during therapy that Brother Dowlan had related to him improperly in some way.[407]

Despite this knowledge, at the end of 1988 Brother Dowlan was appointed principal of St Vincent's Special School at South Melbourne. In that position, Brother Dowlan was the only adult in charge of the night-time care and supervision of boys living in an accommodation unit at the school. We found that the conduct of Brother Chappell and the provincial council in appointing Brother Dowlan not only to another school position but one in which he had access to the most vulnerable boys, with the knowledge of the risk he posed to children, was inexcusably wrong. For at least two years, Brother Dowlan was the only adult living in a unit with a group of boys. He was in charge of the night-time care of those boys and directly responsible for their supervision and wellbeing.[408]

In 1991, Brother Dowlan was appointed class teacher to the Catholic Regional College in Geelong. We found that, once again, Brother Dowlan was given another role within a school environment, with access to children, in circumstances where Brother Noonan and members of the provincial council knew of allegations about Brother Dowlan's sexual misconduct with children dating from 1985.[409]

Brother Dowlan remained a teacher until 1993, when he became the subject of police enquiries. Brother Dowlan was first interviewed by police on 17 August 1993. He was convicted in 1996 of 18 counts of child sexual offences committed between 1971 and 1982. He was sentenced to nine years and eight months' imprisonment. In 2015, Brother Dowlan (who had by that stage changed his name to Ted Bales) was convicted of a further 34 counts of child sexual offences against 20 boys between 1971 and 1985.[410] Catholic Church claims data showed that 28 people made a claim of child sexual abuse against Brother Dowlan related to alleged incidents occurring in the period from 1969 to 1984.[411]

Brother Rex Francis Elmer

Brother Elmer professed his initial vows as a member of the Christian Brothers in 1965 and his final vows in 1970.[412] He was appointed to an unknown position at a Christian Brothers school in a suburb of Melbourne, Victoria, between 1970 and 1971.[413]

Between January 1971 and September 1976, Brother Elmer was a dormitory master at a Christian Brothers residential facility and school for male wards of the state in Victoria.[414] He was appointed to a senior position at the school attached to the residential facility in 1971 and was still in this position in June 1976.[415]

CCI determined that the Christian Brothers had knowledge of Brother Elmer's propensity to offend on 13 June 1976. This was based on a June 1976 visitation report and a letter from the provincial at the time, Brother Patrick Naughtin, dated 20 June 1976.[416]

The visitation report of the Christian Brothers residential facility and school dated 13 June 1976 recorded:

> Whilst the Visitation was in progress, a child-welfare office[r] reported to [the Acting Superior of the residential facility and school] that Rex [Elmer] had been interfering with little boys; this was true and it has been attended to by the Provincial.[417]

Brother Naughtin told the acting superior in a letter dated 20 June 1976 that he had spoken to Brother Elmer. Brother Naughtin wrote:

> Thank you very much for the report on the situation which developed at [the residential facility and school] in connection with Brother Elmer. It is indeed a serious and most unfortunate state of affairs and I am grateful for your bringing it to my attention so promptly … It seems to be extremely unlikely that there will be any recurrence of what has happened, for I have great confidence in Brothers' sincerity and he has assured me that he will take the necessary precautions … It would seem to me best at this stage not to transfer Brother … immediately, though I would propose to announce his change next August …[418]

Brother Elmer left the residential facility and school in September 1976,[419] and was placed in an administrative position in Parkville, Victoria, until January 1977.[420]

In 1977, Brother Elmer was appointed to an unknown position at a Christian Brothers school in regional Victoria until 1982.[421] He then worked in various positions, including in a senior position at the same school attached to the residential facility in Victoria and as a teacher at a school in Tanzania.[422] One person made a claim in 1998 that he was sexually abused by Brother Elmer at the residential facility and school in Victoria in 1985.[423]

In 1993, after anonymous complaints were made about Brother Elmer's conduct at the residential facility and school in Victoria, he was recalled to Australia. In 1994, he was 'removed from ministry with boys'.[424]

In 1998, Brother Elmer pleaded guilty to the indecent assault of 12 males under the age of 16 at the residential facility and school in Victoria which occurred between 1973 and 1975. He was sentenced to five years imprisonment.[425]

St Mary's Province (New South Wales)

We also considered documents relevant to CCI's determinations that the Christian Brothers had prior knowledge of the propensity to offend of three Christian Brothers from St Mary's Province:

- Brother GLX
- Brother David Johnson
- Brother William John Obbens.

Brother James Athanasius McGlade was provincial of St Mary's Province from 1966 until 1978. CCI determined that he was aware of the propensity of these brothers to offend during the 1970s.

Brother GLX

Brother GLX professed his initial vows as a member of the Christian Brothers in 1945 and his final vows in 1951.[426] He taught at various Christian Brothers schools, including in New South Wales and Queensland, between the mid-1940s and 1970s.[427]

CCI determined that the Christian Brothers had knowledge of Brother GLX's propensity to offend in August 1970, based on a discussion between Brother GLX and Brother McGlade.[428]

Brother GLX told the Christian Brothers' lawyers that, in August 1970, he told Brother McGlade that:

> I felt myself seriously attracted to the children and I [pleaded] to be relieved from the classroom duties, if possible be given some kind of outside work. As he consoled me he said – Just keep up your prayers and everything will be alright. I knew in my own heart that I needed more than prayers, because I did keep up my prayers.[429]

In a statement obtained by CCI, Brother McGlade said he was 'prepared to accept that what [Brother GLX] recalls most likely occurred … I do have a recollection of [Brother GLX] raising with me in the course of a visitation some disruption or difficulty he was experiencing when in close contact with primary school students'.[430]

In January 1971, Brother GLX commenced teaching at a Christian Brothers school in Sydney, New South Wales.[431] Brother McGlade said in an interview that in this position Brother GLX would be with children one or two years older than those at his previous school: '[The subject Brother GLX was] teaching was only taught to secondary students. The students would be at least 13 in first year, second year, third year … I took him out of the younger children, where usually the failures take place'.[432]

Two people made claims in 1999 and 2000 respectively that they were sexually abused by Brother GLX at this Christian Brothers school in Sydney between 1971 and 1975.[433]

Brother GLX continued teaching at Christian Brothers schools in New South Wales through the 1970s until at least 1984.[434] One person made a claim in 2004 that he was sexually abused by Brother GLX at one of these schools between 1979 and 1984.[435] In 1986, Brother GLX was semi-retired, and in January 1994 he retired.[436]

Brother David Johnson

Brother Johnson professed his initial vows as a member of the Christian Brothers in 1973.[437] As a trainee brother, he was appointed as a junior school teacher at a Christian Brothers school in Sydney, New South Wales, in January 1975.[438]

CCI determined that the Christian Brothers had knowledge of Brother Johnson's propensity to offend in March 1975, based on a complaint made by the father of a student to Brother McGlade. Following this complaint, Brother McGlade moved Brother Johnson to another school.[439]

In a statement obtained by CCI, GDJ said that in early 1975 his son GDK, then a student at the Christian Brothers school in Sydney, 'complained to my [GDJ's] wife about being fondled by Br. David Johnson, who was a teacher in the junior school. [GDK] also brought home a note from Br. Johnson stating [that] he now trusted the boys to do what ever he asked them to do, and they could trust him'.[440]

GDJ said he went to see the junior school principal and told him what had happened to his son. GDJ was not satisfied with the junior school principal's response and told him he was going to see Brother McGlade. GDJ said:

> We went around straight away, and Br McGlade was on the phone to [the Junior School Principal]. He subsequently saw my wife and I, and I told him [about] Br Johnson … After explaining the situation, Br McGlade told me that Br Johnson was packing his belongings as we spoke, and that he would be gone from the school within 12 hours for counselling. We were satisfied with his response, and the meeting concluded and we left.[441]

Brother McGlade said in interviews and a statement obtained by CCI that he accepted that GDJ made a complaint to him about Brother Johnson in 1975 but that he was not given details of the complaint.[442] In his statement, Brother McGlade said that he recalled GDJ indicated that Brother Johnson:

> had been involved in some type of episode with one of [GDJ]'s sons … My best recollection had been that he merely said words to the effect that he required Brother Johnson to be out of the school immediately or he would be removing his sons … I did not seek from him nor did he provide any detail of the nature of the incident and knowing him as well as I did I accepted his word that there had been a difficulty of a serious type with the young trainee brother … the detail of the complaint was not revealed to [me] by [GDJ] but rather I accepted from the forcefulness of his brief statements that there was some incident of an unsatisfactory nature.[443]

In an interview with CCI's lawyers and the Christian Brothers' lawyers in 2004, Brother McGlade also said:

> This was the first compl[ai]nt that was made against him [Brother Johnson] and I believed that he was worthy of continuing and not of dismissal for his single failure … I had sufficient trust in them [GDJ and his wife] to believe that David Johnson had been guilty of a moral offence and that therefore, it was reprehensible.[444]

Brother McGlade said in his statement that, following the complaint, he told Brother Johnson he would be transferred to another school 'and that this was unacceptable behaviour'. Brother McGlade said, 'My experience dealing with others led me to believe that Brother Johnson was sincere in his repentance and very unlikely to offend again and thus worthy of a second chance … Frankly, I was quite confident that there would be no further problem'.[445]

Brother Johnson was appointed as a teacher at a second Christian Brothers school in Sydney from March 1975 until October 1977.[446] Six people made claims to the Christian Brothers in about the late 1990s or 2000s that they were sexually abused by Brother Johnson at this second school.[447]

In approximately October 1977, some parents made complaints about Brother Johnson to GMV, the principal of the school at the time.[448] GMV told CCI's investigators:

> There were complaints made by the fathers of [some] boys … if my memory was correct, it was exposure by David rather than physical abuse of the boys. I remember no specific details were mentioned at the meeting with the fathers. I sent for David and he admitted to the fathers that the incident(s) had occurred. I immediately withdrew David from teaching and told the Provincial through a Provincial council member that he could not be at [the school].[449]

Brother Barney Garvan, a member of the provincial council at the time, told CCI's investigators that he spoke to Brother Johnson in 1977 about these allegations and told him 'that what he has been accused of could be very serious, and he could be in trouble with the law over it'.[450]

Brother McGlade said in his statement:

> It was around the end of the time that I was Provincial in 1977 that I learnt that further complaints had been made at the new school. Discussions then ensued in which the young Brother was not permitted to continue on with his training to become a Christian Brother … I was not involved in this decision to remove Brother Johnson from the second school. When I heard that there were further complaints against him I was shocked and saddened.[451]

In October 1977, Brother Johnson was transferred to the Christian Brothers Community in Gosford, New South Wales, and, in December 1977, he was refused admission to profess his sixth vows and left the Congregation.[452] Brother Garvan told CCI's investigators that Brother Johnson was not admitted to vows 'because of what had happened'.[453]

From 1978 until 1996, Johnson worked as a lay teacher, and later acting principal and principal, in various locations within the Diocese of Wollongong and New South Wales.[454]

On 12 June 1998, Johnson was sentenced in Wollongong District Court after pleading guilty to offences involving the abuse of children.[455] According to a June 1998 newspaper article, he was convicted of offences including indecent assault and acts of indecency against two boys which occurred in 1976 and 1979 respectively.[456] The sentencing judge also took into account additional charges admitted by Johnson relating to indecent assault of another boy in 1976 and acts of indecency against two other boys in 1979.[457]

Brother William Obbens

Brother Obbens professed his initial vows as a member of the Christian Brothers in 1965 and his final vows in 1970.[458] He taught at various schools from 1967 to 1975.[459] In January 1975, he was appointed as a junior secondary teacher and was also a religious education coordinator and bursar at a Christian Brothers school in Sydney, New South Wales.[460]

CCI determined that the Christian Brothers had knowledge of Brother Obbens' propensity to offend in 1976. This was based on a complaint made by the family of a student at the Christian Brothers school in Sydney, which Brother Obbens said he admitted to Provincial Brother McGlade. Following this, Brother Obbens was sent for counselling and his transfer was discussed with the provincial council.[461]

One person, GCX, made a claim in 2002 that he was sexually abused by Brother Obbens at the Christian Brothers school in Sydney between 1976 and 1977.[462] In 2003, Brother Obbens told CCI's investigators, 'I certainly touched him [GCX], I touched him through the pants on perhaps two occasions'.[463] Brother Obbens also said that a complaint was made about him at the time to the principal of the school:

> [The principal] called me for an interview and told me that the [family of GCX] had made a complaint and that Brother McGlade, the Provincial, wanted to see me about this, and so the next day ... I admitted the truth of the matter to Brother McGlade. He arranged for me to have counselling … and he also proposed to transfer me …[464]

Brother Obbens told CCI's investigators that a senior Christian Brother in the community at the time, GMD, 'told Brother McGlade that he felt it was inappropriate to just relocate the problem, that I should attend the counselling locally and be supervised locally, and that's the way it was'.[465] Brother Obbens said that the transfer did not go ahead and he stayed at the school until 1981.[466]

In a 2003 statement and interview obtained by CCI, GMD said that in 1975 or 1976 the principal had asked him to attend an interview with the parents of a student regarding Brother Obbens 'and allegations of inappropriate behaviour'.[467] GMD said that following the interview Brother Obbens attended counselling.[468]

The principal told CCI's investigators he had no recollection of any complaints about Brother Obbens or of speaking to Brother McGlade about him.[469] Brother McGlade also told CCI's investigators he had no recollection of a complaint about Brother Obbens at the school, of interviewing him or of arranging counselling for him.[470]

Minutes of provincial council meetings held in July and August 1976 recorded that Brother McGlade discussed the possible transfer of Brother Obbens with the provincial council and that Brother McGlade said, 'further developments suggested there was no need of transfer'.[471]

Brother Obbens remained at this school until 1981. He continued to teach at various Christian Brothers schools until 1989.[472] Four people made claims in the late 1990s and 2000s that they were sexually abused by Brother Obbens at one of these schools in regional New South Wales in approximately the late 1980s.[473]

The principal of the school in regional New South Wales said in a police statement that in 1989 he received a complaint about Brother Obbens from a student.[474] A 1994 Special Issues Incident Report said, 'The allegation was reported to the Provincial, Br. Kevin McDonnell … Br. Obbens was interviewed by Frs. Brian Lucas and John Usher … Br. Obbens admitted the essential truth of the allegations'.[475]

Brother Obbens was stood aside from his position at the school and transferred to the Provincial House in Strathfield to undertake 'routine administrative duties'.[476] In 1989, he was charged with one count of indecent assault of a student under his care. In June 1989, Obbens pleaded guilty to the charge and entered into a recognizance in the sum of $100 to be of good behavior for two years.[477]

Marist Brothers (Sydney Province)

The Marist Brothers, a religious order founded in France in 1817, came to Australia in 1872 and has principally been involved in the establishment and operation of various primary and secondary schools around the country.[478] Until December 2012, the Australian arm of the Marist Brothers was divided into two provinces – the Sydney Province and the Melbourne Province. Our focus has been on the Sydney Province, which covered New South Wales, Queensland and the Australian Capital Territory.[479]

The Provincial of the Sydney Province had direct authority over the Marist Brothers in that province.[480] The following brothers served as provincials of the Sydney Province of the Marist Brothers between 1964 and 2001:

- Brother Othmar Weldon (provincial 1964–72)
- Brother Charles Howard (provincial 1972–76)
- Brother Kieran Geaney (provincial 1976–83)
- Brother Alman Dwyer (provincial 1983–89)[481]
- Brother Alexis Turton (provincial 1989–95; vice provincial 1983–89)[482]
- Brother Michael Hill (provincial 1995–2001; vice provincial 1993–95).[483]

We have considered the awareness of each of these provincials – as well as their deputy provincials and provincial councils – of allegations that brothers had sexually abused children, in three of our case studies:

- *Case Study 4: The experiences of four survivors with the Towards Healing process (The Towards Healing process)*, which focused on the experiences of four survivors with Towards Healing. In this context it examined allegations of child sexual abuse against Marist Brothers Ross Murrin and Raymond (Celestine) Foster

- *Case Study 13*: *The response of the Marist Brothers to allegations of child sexual abuse against Brothers Kostka Chute and Gregory Sutton (Marist Brothers)*
- *Case Study 43: The response of Catholic Church authorities in the Maitland-Newcastle region to allegations of child sexual abuse by clergy and religous,* which examined the Marist Brothers' response to allegations of child sexual abuse against several brothers.

In addition to these case studies, we considered documents relating to CCI's determinations that the Marist Brothers had prior knowledge of complaints or allegations relating to sexual abuse of children by Brother Keith Farrell and Brother GLW.

In the *Marist Brothers* case study we received evidence that before the 1992 Protocol (which set out policies and procedures on handling complaints of child sexual abuse, and is discussed further in Section 13.7) there was nothing kept in writing concerning the transfer of Brothers. From this case study, it was clear that accusations or admissions of sexual misconduct by Marist brothers were treated as highly confidential.[484] Before 1983, there was no evidence that provincials had a practice of keeping written records of allegations against brothers or admissions by them of child sexual abuse.[485] Information concerning child sexual abuse was usually held by the provincial and perhaps one or two others. From the late 1950s to about the early 1990s the Marist Brothers had a practice of restricting information about allegations or admissions of child sexual abuse to the provincial of the day. Further, the provincial had a practice of not keeping records of complaints of sexual abuse against brothers. Successive provincials seem not to have passed on such information, including to their successors and the provincial council.[486]

We also noted instances in *The Towards Healing process* and *Catholic Church authorities in Maitland-Newcastle* case studies where the Marist Brothers used a code in complaint records to refer to a brother who was an alleged perpetrator.[487]

We have found that between 1964 and 1995 successive Marist Brother provincials were aware of complaints of child sexual abuse against Marist Brothers where the brother involved went on to offend again after the provincial had become aware of such complaints. In the case of one brother, Brother Gregory Sutton, knowledge of complaints about him spanned around 14 years and three provincials.

In the *Marist Brothers* we examined responses to complaints of inappropriate behaviour made against Brother Sutton over an extended period.[488] We also heard evidence in relation to Brother Turton's awareness of, and responses to, complaints against Brother John (Kostka) Chute in 1993. We discuss our findings regarding the Marist Brothers' response to these complaints in Section 13.5.

Brother John (Kostka) Chute

Brother Chute entered the Juniorate of the Marist Brothers at Mittagong in New South Wales at the age of 11. After high school, he entered the novitiate of the Marist Brothers and spent 18 months at Mittagong before taking his final vows. Between 1952 and 1993 Brother Chute held a number of positions at schools in New South Wales, the Australian Capital Territory and Queensland.[489] The actions taken by the Marist Brothers in response to complaints concerning Brother Chute are discussed through Sections 13.5, 13.6, 13.8, 13.9 and 13.10.

In the *Marist Brothers* we found that in 1962 a teacher at St Anne's School in Bondi, Brother Walter Cranney, and the community superior, Brother Des Phillips, knew that Brother Chute had admitted to sexually abusing a child at St Anne's Primary School. Brother Phillips did not inform the provincial that Brother Chute had admitted to sexually abusing a child as required by the Marist Brothers policy on reporting at the time. No note was made of the complaint and there was no follow-up with Brother Chute. We found that this response was 'grossly inadequate'. Brother Chute left the school at the end of 1962.[490]

In 1967, Brother Chute was appointed principal of St Joseph's School (later known as St Carthage's) in Lismore. Provincial Brother Weldon and provincial council member Brother Dwyer knew that Brother Chute had admitted to touching a child at Lismore. In 1969 the provincial council, comprising Brother Weldon and Brother Dwyer (who later became provincial), determined to give Brother Chute a canonical warning for the touching of a child at Lismore. With that knowledge, the provincial transferred Brother Chute to a position of responsibility as principal of Marist College Penshurst.[491]

Brother Weldon and Brother Dwyer did not make subsequent provincials aware of the knowledge they had of Brother Chute's admission or of the decision that this conduct warranted a canonical warning.[492]

In 1976, Brother Chute started teaching at Marist College Canberra. He taught at this school for about 17 years until provincial Brother Turton transferred him to New South Wales in December 1993.[493] We found that in 1986 the headmaster of Marist College Canberra told Brother Dwyer about a complaint he received that Brother Chute had touched a boy's penis during a film night. Brother Dywer had been a member of the provincial council in 1969 and knew of Brother Chute's admission of touching a child in Lismore at that time and that it had warranted a canonical warning.[494]

With that knowledge, Brother Dwyer did nothing about this new complaint. He did not advise the headmaster of the previous canonical warning. He placed Brother Chute in a position of authority as assistant religious education coordinator at Marist College Canberra. He continued in this position until 1989. We found that this inaction was woefully inadequate.[495]

We found that in late 1993, the provincial, Brother Turton received an allegation which conveyed conduct of a sexual nature towards a child by Brother Chute. In December 1993, Brother Turton received a second complaint of a similar nature. We found that the Marist Brothers kept no written records of these accumulated allegations of Brother Chute's repeated offending conduct.[496]

Between January 1994 and January 1997, Brother Chute was on general duties at the Champagnat Centre in New South Wales. In January 1997, Brother Chute became an Assistant Community Leader at the Marist Brothers Farmhouse in Mittagong.[497]

In 2008, Brother Chute was convicted of 19 sexual offences involving six children he taught at Marist College Canberra.[498] In total, the Marist Brothers have received 48 claims with respect to allegations of child sexual abuse by Brother Chute. Forty of these were from former students of Marist College Canberra.[499]

Brother Gregory Sutton

Brother Sutton entered the Juniorate of the Marist Brothers at Mittagong in 1967 at the age of 16. He took final vows in 1970. His first teaching appointment was at a Marist Brothers school in North Queensland in 1973. After that, he taught continuously for the Marist Brothers in Queensland, the Australian Capital Territory and New South Wales until April 1987, when he was removed from teaching by the then provincial, Brother Dwyer.[500]

In 1985, Brother Sutton was appointed teacher at St Carthage's Primary School, Lismore (a school operated by the Presentation Sisters). In mid-1985 Sister Julia O'Sullivan (Sister Julia), the principal of St Carthage's, raised concerns with Brother Turton about Brother Sutton 'being alone with students and showing favouritism to some students'. Brother Turton spoke with Brother Sutton, who denied any improper behaviour, and then briefed Brother Dwyer on the matter. He told him there was 'no specific incident or behaviour, no suggestion of impropriety or misconduct and [Sister Julia] had not asked for any action by the order'.[501]

In December 1985, members of the school executive team – including Sister Julia – gave Brother Sutton directions about how to behave around students, including that no physical contact was to be used as a way of social interaction with students, particularly female students.[502] In early March 1986, Sister Julia wrote to Brother Sutton about his having breached one of these directions, and she indicated a copy of her letter would be given to his superior.[503]

In March 1986, Brother Turton returned to Lismore at the request of Brother Dwyer to deal with a report of inappropriate behaviour by Brother Sutton at St Carthage's. Sister Julia then showed Brother Turton her March 1986 letter to Brother Sutton.[504] Brother Turton gave evidence that he advised Brother Dwyer of the concerns raised by Sister Julia. He told Brother Dwyer that Sister Julia was not asking for Brother Sutton to be removed. He said he took no further action to monitor or supervise Brother Sutton's compliance with the directions because he understood that Sister Julia and her staff would perform this role as they were 'the people who were on the spot'.[505]

In November and December 1986, Brother Sutton went to New Zealand to participate in a 'personal renewal course'. There is conflicting evidence as to whether Brother Sutton did so to address concerns relating to child sexual abuse.[506]

Sometime after Easter 1987, Brother Dwyer was informed by the Lismore Catholic Education Office that a lay teacher had reported a history of concerns about Brother Sutton after she read Brother Sutton's diary. She was particularly concerned about his inappropriate relationship with a student.[507] Brother Dwyer removed Brother Sutton from the school and placed him in an administrative role at Provincial House in New South Wales.[508]

Brother Turton (who in 1987 was vice provincial) gave evidence that Brother Dwyer told him that the decision to remove Brother Sutton from St Carthage's was due to Brother Sutton's 'inappropriate behaviour'. At Brother Dwyer's direction, Brother Turton had several conversations with Brother Sutton about the possibility of his seeing a therapist. Brother Turton recalled Brother Dwyer indicating that the reason he was seeking therapy for Brother Sutton was due to 'concern[s] about Brother Sutton's inability to relate to the other teachers at Lismore and to other people, and about some kind of inappropriate behaviour with students'.[509]

In around mid-1989, after Brother Turton had become provincial, he was informed that Brother Sutton had admitted to sexual misconduct with a specific boy who had attended a Marist Brothers school in North Queensland in the 1970s. In a meeting with Brother Turton, Brother Sutton 'acknowledged that he had been guilty of sexual misconduct with the boy' and agreed he required professional help. One or two weeks later, Brother Sutton left Australia for Canada, where he undertook therapy at the Southdown Institute in Ontario.[510]

On 15 August 1995 Brother Sutton was arrested in the United States with respect to 24 alleged sexual offences against seven of his former students in Australia. He was extradited to Australia on 29 April 1996, where a further 39 charges of sexual abuse of children were brought against him. Brother Sutton was subsequently convicted of 67 child sex offences in relation to 15 students at schools in New South Wales.[511]

Brother Ross Murrin

In *The Towards Healing process* case study, witness DK gave evidence that he was sexually abused by Brother Murrin while he was a boarder at the Marist Brothers St Augustine's College in Cairns in late 1980 or early 1981.[512]

We found that in 1981 provincial Brother Geaney was informed by the principal of St Augustine's College, Brother Gerald Burns, that two male students had complained that Brother Murrin had inappropriately touched them. Brother Burns gave evidence that they did not take any protective measures against Brother Murrin 'beyond getting an assurance from him that it wasn't going to happen again, and speaking to him fairly regularly to see how things were going for him, but again taking his word for it'. The two boys were not removed from Brother Murrin's dormitory.[513]

We found that, after Brother Murrin admitted the complaint to Brother Burns, he was allowed to remain at the school as dormitory master. Brother Burns gave evidence that a decision had already been made that Brother Murrin would leave St Augustine's College at the end of the year.[514]

Brother Murrin was convicted in 2008 and 2010 after pleading guilty to charges relating to child sexual abuse at two other schools.[515]

Brother Keith Farrell

Brother Keith Farrell professed his initial vows as a member of the Marist Brothers in 1942 and his final vows in 1947.[516] From 1942 to 1975, Brother Keith Farrell taught at various Marist Brothers schools across New South Wales.[517] Between January and May 1975, he was a teacher, boarding housemaster and in vocations ministry at a Marist Brothers school in Queensland.[518]

CCI determined that the Marist Brothers had knowledge of Brother Keith Farrell's propensity to offend in April 1975, based on a 1993 Special Issues Allegation Report provided by the Marist Brothers that set out a complaint made about Brother Keith Farrell at the Marist Brothers school in Queensland.[519]

Brother Turton told CCI's lawyers in 2007 that, when he was the principal of this school in April 1975, he received a complaint about Brother Keith Farrell: 'one morning a group of senior boys came to see me and said he'd [Brother Keith Farrell] attempted to get them to go to bed with him'.[520] Brother Turton said that when the students said they were serious he removed Brother Keith Farrell from his position in charge of the dormitory and contacted the provincial at the time, Brother Charles Howard.[521]

Brother Turton said that Brother Keith Farrell denied the allegations.[522] He also said that he 'took this man out to see the Provincial' and the result was that Brother Keith Farrell 'was immediately moved from [the Marist Brothers school in Queensland]'.[523]

In May 1975, Brother Keith Farrell was appointed to teach at another Marist Brothers school in northern Queensland.[524] Between January 1976 and December 1978, he was appointed to a senior position and also taught at a Marist Brothers school in a different state.[525] Two people made claims in 2008 and 2010 respectively that they were sexually abused by Brother Keith Farrell at this school between 1976 and 1978.[526]

The principal of this school at the time, GLJ, said in a statement provided to CCI's lawyers that in 1978 he received a complaint from two parents about Brother Keith Farrell and told the provincial, Brother Geaney. GLJ said:

> They told me that Br Farrell had been 'touching their boy' … I immediately confronted [Brother Keith Farrell] with these allegations. He did not admit them. I did not hold him or his honesty in particular high regard. I immediately informed the Provincial … and arranged for him to come down to see us …[527]

GLJ said, 'I took the complaint from [this] family very seriously. I was told that [Brother Keith Farrell] had been touching his penis in the car … I believed them. I never interviewed their son'.[528] GLJ also said that he and Brother Keith Farrell were interviewed by the provincial:

> At those meetings, Br Farrell tried to rationalise things in a very curious way, with reference to a general suggestion that he had been 'holding boys too close to him' or something similar … The outcome of all of this was that Br Farrell was moved quickly and promptly from the school to another Marist facility, without any explanation being provided to other members of the Marist Community or staff.[529]

Between January and June 1979, Brother Keith Farrell was a secondary teacher at a Marist Brothers school in Sydney, New South Wales.[530] He then undertook studies overseas[531] before returning to teach secondary at the same Marist Brothers school in Sydney between January 1981 and December 1986.[532] GLJ said that Brother Turton had made enquiries regarding Brother Keith Farrell's appointments and that, when Brother Keith Farrell returned to this school in 1981, he was 'probably not in a teaching role. He was never returned to a teaching role'.[533]

Brother GLW

Brother GLW professed his initial vows as a member of the Marist Brothers in 1974 and his final vows in 1980.[534] He taught at various Marist Brothers schools in New South Wales and Queensland between 1974 and 1986.[535]

CCI determined that the Marist Brothers had knowledge of Brother GLW's propensity to offend in 1988.[536] This was based on a 1994 Special Issues Allegation Report which said that in 1988 an allegation regarding Brother GLW was reported to the provincial, following which Brother GLW attended the Southdown Institute (a treatment centre in Canada) for residential therapy.[537]

The 1994 Special Issues Allegation Report by the Marist Brothers said that an allegation was reported to the provincial that Brother GLW had engaged in 'inappropriate sexual contact' with a student in November 1988.[538] The report said:

> Discussions were held with the lad, the parents and legal representatives. AB4 [Brother GLW[539]] was withdrawn from all contact subject to counselling and further investigation. Because this seemed to be an isolated incident AB4 was directed towards Southdown in Canada for residential therapy. AB4 was unable to maintain the intensity of the therapy and proceeded to study in New York and take up with a therapist. Therapist's advice was that there was no sexual dysfunction, that the alcohol had been significant and there was no paedophilia.[540]

After returning to Australia, Brother GLW taught at a school in regional New South Wales from 1988 until December 1989.[541] The 1994 Special Issues Allegation Report said:

> AB4 [Brother GLW[542]] returned to Australia, taught for twelve months, but moved back into isolated and anti-social behaviour. This behaviour included some times of heavy drinking. AB4 then requested a second opportunity for residential therapy.[543]

Brother GLW went to the Southdown Institute again in January 1990 for five or six months.[544] The 1994 Special Issues Allegation Report said, 'The result was again confirmation that problems were not in any sexual area or such things as paedophilia … Again there was a full clearance to teach, but a strong recommendation for a supportive community with ongoing therapy and spiritual direction'.[545]

Brother GLW was a teacher at a Marist Brothers school in Queensland in June 1990 for approximately three months[546] and then at a high school in Sydney, New South Wales, until October 1992.[547] Two people made claims to the Marist Brothers in 1993 and 2013 respectively that they were sexually abused by Brother GLW at this school in 1992.[548]

The 1994 Special Issues Allegation Report said that allegations were made against Brother GLW by two students at the high school in 1992.[549] In correspondence dated 21 February 2017, the Marist Brothers informed us that the principal of the high school said he notified the police and the Marist Brothers provincial. Brother GLW was removed from the high school and did not return.[550]

Between October and December 1992, Brother GLW undertook a period of 'rest' at the Marist Brothers Provincial House in New South Wales.[551] He was:

> admitted to John of God Centre in a state of severe depression. He entered into ongoing therapy. As a result of the revelations, the police interviews, AB4 [Brother GLW[552]] has been totally withdrawn from contact with young people ... AB4 will never be put in a position of teaching non-adults. The intention is to minimise the face-to-face teaching at any level and to work in remote correspondence situation.[553]

Brother GLW retired in October 2011.[554] In correspondence dated 21 February 2017, the Marist Brothers informed us that Brother GLW was charged by police in 2014 in relation to child sexual abuse offences.[555] In January 2016, police said that he was found unfit to stand trial due to medical and cognitive impairment.[556]

Salesians of Don Bosco

The Salesians of Don Bosco (Salesians) is a male religious order that was founded in 1859. It is led internationally by a rector major.[557] CCI determined that the Salesians had prior knowledge in 1986 and 1988 respectively of the propensity of Salesian Fathers Francis Klep and David Rapson to offend.[558]

Father Frank Bertagnolli was provincial of the Salesians between 1982 and 1987.[559] Father Julian Fox was provincial of the Salesians from January 1988 until the end of 1993.[560] Media reports indicate that Father Fox was convicted in 2015 of child sexual offences committed during the 1970s and 1980s.[561]

The Salesian order was also considered by the 2011 Commission of Inquiry into Child Sexual Abuse of Minors in the Roman Catholic Church (Deetman inquiry) in the Netherlands. That inquiry found that the international leadership of the Salesians had knowledge of priests offending against boys as early as the 1950s. It found that, in 1954, the then rector major visited the Netherlands and in a speech to the Dutch superiors said:

> Should relationships that are not proper exist between confreres and boys, then one must be implacable. Immediate transfer, possibly. Should terrible things have happened, then one must say without hesitation that they are to remove themselves.[562]

The Deetman inquiry noted that later that same year the rector major sent a circular to all provincial superiors, 'which suggests, at the very least, that the problem was an international one'.[563]

Father Francis Klep

Father Klep took his first temporary profession of vows as a member of the Salesians in 1963 and professed his perpetual vows in 1969. He was ordained in 1972.[564] Between 1973 and 1979, Father Klep was a religious education coordinator and infirmarian at a Salesian school in Victoria.[565] Twenty people, including GHD, made claims between the mid-1990s and 2014 that they were sexually abused by Father Klep at the Salesian school in Victoria between 1973 and 1982.[566] In 1980 and 1981, Father Klep was rector at Brooklyn Park, Adelaide, South Australia,[567] before being again appointed to the same Salesian school in Victoria as rector from 1982 to 1986.[568]

CCI determined that the Salesians had knowledge of Father Klep's propensity to offend by 31 May 1986. This was based on Provincial Father Bertagnolli's knowledge of complaints about Father Klep that were reported by some families through their parish priest, following which Father Bertagnolli travelled to the area to meet with the families and investigate the allegations.[569]

CCI's lawyers noted that Father Bertagnolli prepared a July 2004 report for them 'recording his best recollections of his visit to the Riverina families in 1986 to investigate the allegation against Frank Klep'. The report said that 'Sometime around the middle of 1986, I had a visit from the Priest of the Wagga Diocese, to advise me that there had been reports made to him … about allegations of sexual abuse going on at [the Salesian school in Victoria] (concerning Klep)'.[570]

CCI's lawyers also said that Father Bertagnolli provided information that there were:

> two main sources on which the allegations were supposedly based – [GKW] (concerning her son [GHD]) and [another parent] (concerning her son …). Fr Bertagnolli traveled [sic] to the Wagga Diocese and spent 4 or 5 days in the Riverina and visited several families … Fr Bertagnolli found 'a few parents supporting the position of [GKW], but most of the parents did not believe her allegations …'
>
> … He asked [GHD] directly whether he had any complaints about any of the Salesians at [the Salesian school in Victoria] but [GHD] did not offer any information at all and did not want to talk about it
>
> … Fr Bertagnolli returned to [the Salesian school in Victoria] and spoke with Fr Klep and other Salesians … Fr Bertagnolli decided in any event to remove Fr Klep from [the Salesian school in Victoria] at the end of the year and asked him to go to the USA to do a course in Spirituality and Counselling 'and to address any issues he may have had regarding the allegations'.[571]

In a letter to CCI in 1992, Father Bertagnolli's successor as provincial, Father Fox, also said that he spoke to Father Bertagnolli about the 1986 complaint and that Father Bertagnolli told him:

> The allegation was of a general kind, alleging some physical abuse which also included sexual abuse … As a result of seeing parents and speaking with Fr. Klep he concluded that there was not sufficient basis in these allegations, and that, in fact, they were based on some quite unacceptable speculation.[572]

CCI's lawyers said that Father Bertagnolli told them the provincial council minutes for 1986 did not refer to this matter:

> He is not surprised by that because … Frank Klep was a member of the Provincial Council at the time. Fr Frank Bertagnolli believes that he would therefore have discussed this issue informally with certain other Provincial Council members at the time to get their input and guidance, but that he never raised it formally at the Provincial Council.[573]

Four people made claims between 2004 and 2013 that they were sexually abused by Father Klep at the Salesian school in Victoria between 1982 and 1986.[574]

Father Klep studied overseas in 1987 and 1988.[575] Between 1989 and 1994, he was appointed rector of two Salesian institutions in Victoria, one of which also included a facility for young people.[576] Father Klep was convicted in December 1994, and again in December 2005, of offences relating to the sexual abuse of children.[577]

Father David Rapson

Father Rapson professed his temporary vows as a member of the Salesians in 1974 and his perpetual vows in 1981.[578] Between 1976 and 1985, he taught at Salesian schools in Victoria and New South Wales and was a religious education coordinator at a school in another state.[579] He was ordained in 1982.[580] From 1986 to 1987, Father Rapson was appointed religious education coordinator at the same Salesian school in Victoria where he had been appointed in the 1970s.[581]

Father Fox became provincial of the Salesians in January 1988.[582] CCI determined that the Salesians had knowledge of Father Rapson's propensity to offend in January 1988. This was based on Father Fox's knowledge, at the time he became provincial, of a complaint made by a student, GFE, at the Salesian school in Victoria in late 1987 (when Father Fox was the principal there).[583]

GFE told a psychiatrist in 2003 that in late 1987 he told Father Gregory Chambers, the (then) deputy principal of the Salesian school in Victoria, and Father Fox, the (then) principal, that he had been sexually abused by Father Rapson.[584] In 1995, Father Rapson admitted to CCI's investigators that he abused GFE.[585] Father Chambers told CCI's lawyers:

> I still remember him telling me that Fr Rapson put his hands down his pants at the back and touched his backside and immediately I told Fr Fox as Rector/Principal about this and told the young person to go and see Fr Fox about it immediately.[586]

Father Fox told CCI that GFE 'made some sort of allegation of improper conduct'. He said:

> I did discuss it briefly with Fr. Chambers. I did not feel there was very much to it … There had been nothing in Fr. Rapson's observable behaviour to indicate anything untoward of this nature. I wondered about the veracity of the boy concerned.[587]

Father Fox also said:

> One thing that did seem fairly obvious to me was that whatever had happened, it was a once off thing and it did not make a lot of sense to me … I did not take up the matter with Father Rapson at that time as I wondered about the veracity of [GFE].[588]

As noted above, Father Fox became provincial of the Salesians in January 1988.[589] From 1988 until 1992, Father Rapson was deputy principal at the Salesian school in Victoria.[590] Father Fox told CCI:

> I had had no other complaint in the meantime [since the complaint in 1987]. Indeed, Fr. Rapson's general competence had induced me to offer him the deputy's job in place of the REC [Religious Education Coordinator].[591]

In a statement provided to CCI's investigators, Father Fox said that in 1989 GFE made another complaint to him about Father Rapson. Father Fox said:

> In 1989 I was Provincial and [GFE] and his parents came to see me … the nature of the allegation at this time was far more specific [than the 1987 complaint] … specifically it was an allegation of oral sex … The approach I took was first of all to confront Father Rapson and I got a lot of confusion from him, a lot of denial but at the same time in the middle of this, some sort of admission in as much as he said it may have happened.[592]

Father Fox said he suggested to Father Rapson that he attend counselling.[593] In a file note made in 1992, Father Fox wrote, 'At that time, I saw no need to take the matter further; was not clear about an appropriate process, either, and felt that the issue had been responded to in terms of the family at that time, and my own assurances that there was not an ongoing problem'.[594]

Father Fox's file notes made in 1992 said that another Salesian priest received a complaint from the family of another student at the Salesian school in Victoria, GFD, and told Father Fox of the complaint on 15 April 1992.[595] Father Fox met with this family on 15 April 1992.[596] He wrote that:

> [GFD], in that interview, provided details of the alleged offences which, if correct, are indeed serious in nature. He claims that these took place [over] a long period of time 'perhaps several times a week', over the two year period indicated above ['1986-87'] … This most recent allegation corroborates the first [from GFE] … It points to the existence of a serious situation which I believe now must be acted upon in an appropriate manner.[597]

On 16 April 1992, Father Fox also wrote that he confronted Father Rapson, who 'denied the allegation categorically. I indicated that he might be asked to stand aside … I also asked him to arrange an appointment with a priest trained in psychology'.[598]

On 17–19 April 1992, Father Fox wrote that he had informed the provincial council of the situation and told them that he 'felt that David [Rapson] had to be stood down as there was every indication that the boy, either now, or within a short period of time might want the matter to be dealt with by police'.[599]

Father Rapson was removed from his position at the Salesian school in Victoria in April 1992.[600] Father Fox told CCI he had not removed Father Rapson previously, as 'I had not been fully convinced that something had happened which warranted his removal. The moment at which I became certain of this was in April of this year [1992]. At that point I removed him immediately'.[601]

As set out earlier, media reports indicate that in 2015 Father Fox was convicted of child sexual offences committed during the 1970s and 1980s.[602]

Rapson was convicted of multiple child sexual abuse offences in November 1992, June 1993 and 2015.[603] The 2015 convictions related to offending that occurred between 1975 and 1990, including five counts of rape and one count of indecent assault in relation to two complainants, between 1988 and 1990.[604]

In 2003, Rapson was the subject of a canonical application for dismissal from the priesthood, which was granted in 2004.[605]

St John of God Brothers

The Hospitaller Order of St John of God, more commonly known as the St John of God Brothers, is an order devoted to care of the sick and undertakes a wide range of health and social services activities.[606] The order opened a residential special school for boys with learning difficulties in 1948[607] and opened other facilities for children with mild to severe disabilities in Victoria and Christchurch, New Zealand.[608]

Brother John Joseph Donnellan (religious name Brother Bede) professed his initial vows as a member of the St John of God Brothers in 1959 and his final vows in 1965.[609] Through the 1960s and 1970s, he was a member of the religious community at various St John of God Brothers institutions and schools, including in New South Wales, Victoria and New Zealand. He was appointed to a senior position in the community at a St John of God Brothers institution in Queensland in July 1979.[610]

CCI determined that the St John of God Brothers had knowledge of allegations against Brother Donnellan in approximately June 1981.[611] In 2001, CCI's lawyers told CCI that in a statement, Brother Donnellan had confirmed that he was:

> spoken to by Br Matthew [Brother Matthew O'Donnell, the Provincial at the time] following allegations made in relation to his [Brother Donnellan's] behaviour at [the institution in Queensland] between 1979 and 1981. Apparently allegations were made which required a visit by the police and an investigation although apparently no charges were laid. The Provincial at the time knew of the allegations and moved Br Bede following completion of the police investigation.[612]

CCI told the St John of God Brothers' lawyers in 2013:

> On review of our historical records the St John of God Brothers were aware of Br Donnellan when they responded to a complaint of officers of the Archdiocese of Brisbane regarding his activity at [the institution in Queensland] in May 1981. In responding to this complaint the Provincial of the Brothers was advised. As a result of this complaint it is apparent that Br Donnellan was transferred.[613]

A 1981 report prepared for Bishop John Gerry, the Auxiliary Bishop and Vicar for Social Welfare for the Archdiocese of Brisbane at the time, by the Archdiocese's Social Welfare Secretariat (the 1981 report) set out information regarding an allegation of sexual abuse made against Brother Donnellan in 1981 by GMY – an adult resident of the institution in Queensland with a mental age 'of about ten years' as a result of intellectual disability.[614]

The 1981 report said that in May 1981 GMY and another resident of the institution reported to police 'that a sexual offence had been performed on [GMY] … and that the offending person was Bro. Bede Donnellan'.[615] The 1981 report stated that GMY's employer said he was contacted by a Sergeant from the Juvenile Aid Bureau on 28 May 1981, who told him that 'Police advised that the parents were not pressing charges' and that 'After investigation, the police had insufficient evidence for charges to be laid. However, because of the seriousness of the allegations they felt Church authorities should be aware of the investigation'.[616]

GMY's employer said he contacted the archdiocesan secretary for the Archdiocese of Brisbane 'and told him police were investigating an accusation of a homosexual nature at [the institution in Queensland]'.[617] On 28 May 1981, the Social Welfare Secretariat was requested to 'undertake documentation' of GMY's allegation for information of Bishop Gerry.[618]

Brother Donnellan told the St John of God Brothers' investigators in 1994 that, when the police became involved following GMY's allegation, he was interviewed but did not have to give a signed statement.[619] Brother Donnellan said that the police 'felt there was no substance to the allegations'.[620] Brother Donnellan denied that he had abused residents at this institution.[621] He said that allegations were made against him by residents at the institution but that 'it wasn't specific, it was just that the kids didn't like the supervision there, they felt they lacked privacy, and they wanted to have their showers on their own'.[622]

The 1981 report also stated that another brother appointed to the institution in Queensland said, 'He had contacted the Provincial, Bro. Brian O'Donnell, and requested an instruction as to what further action he should take'.[623] The 1981 report recommended to Bishop Gerry that Brother Donnellan be transferred from the institution in Queensland.[624]

Brother Donnellan told the St John of God Brothers' investigators in 1994 that he was spoken to by the provincial about allegations made against him by residents at the institution in Queensland and that the outcome of this was: 'I just moved'.[625]

Brother Donnellan was moved to a St John of God Brothers school in New South Wales in June 1981, and then to another school in Victoria, between September 1981 and July 1989.[626] One person made a claim in the 1990s that he was sexually abused by Brother Donnellan at various locations in Victoria and New South Wales between 1986 and the early 1990s.[627]

Between 1989 and 1995, Brother Donnellan was a member of the religious community at a St John of God Brothers institution in New South Wales and then at St John of God Hospital, Richmond, New South Wales.[628] He died in 1995 aged 58.[629]

Missionaries of the Sacred Heart

The Missionaries of the Sacred Heart (MSC) is an order of priests and brothers that was founded in France in 1854 by Jules Chevalier, a parish priest, together with a small group of priests.[630] Chevalier founded the order with one aim: 'to harness the compassionate and merciful love of God, and to use it to make a positive difference in the turbulent society of the time.'[631]

Brother Edward Mamo professed his initial vows as a member of MSC in 1967 and his final vows in 1974.[632] Between 1971 and 1973, Brother Mamo was a boarding housemaster and driver at an MSC school in New South Wales.[633] He then worked at an MSC school in Victoria between 1974 and 1980, including as boarding house master and sports coach.[634]

CCI determined that the MSC had knowledge of Brother Mamo's propensity to offend by at least 31 October 1977. This was based on complaints about Brother Mamo that were reported to the principal of the MSC school in Victoria, Father GLN, in approximately September or October 1977, following which Father GLN sent Brother Mamo to Croydon Monastery and informed the provincial superior at the time, Father Dennis Murphy.[635]

A file note of a 2014 telephone conversation between CCI's lawyers and Father GLN said that Father GLN recalled that 'in September/October 1977' he was approached by staff members who told him that Brother Mamo:

> had taken junior students down to the basement and had administered discipline to them by having them take down their pants and strapping them on their bare buttocks. The staff members objected to this behaviour and wanted [Father GLN] to take action. [Father GLN] thought it was weird behaviour, greatly exceeding any authority Mamo had with regard to discipline, but this being something of a 'final straw' in Mamo's generally unsatisfactory behaviour, he decided to send Mamo away forthwith. He thought the behaviour could have had sexual overtones.[636]

The file note said that, 'Following the staff complaint, [Father GLN] spoke to Mamo'[637] and that:

> [Father GLN] got rid of him the same evening. [Father GLN] rang Croydon which in those days was a monastery and a training centre for priests, not a school. He spoke to the Superior of Croydon Monastery … and told him he was sending Mamo over to him. He got one of the brothers to drive Mamo to Croydon.[638]

Father GLN said he then rang the provincial, Father Murphy, and told him that he sent Brother Mamo to Croydon and also 'about the nature of the complaint by staff … and that he considered this behaviour so intolerable, with possible sexual overtones that he had got rid of him'.[639]

In a memorandum from approximately 2013, Father Murphy said that, when Father GLN was the headmaster of the MSC school in Victoria, he had asked Father Murphy to speak to Brother Mamo about having 'misbehaved sexually with some students'. Father Murphy said:

> I have no memory of [Father GLN] giving any details about this ... When I questioned Eddie [Brother Mamo] about the sex abuse, he replied that the matter had been exaggerated. If I remember rightly, I did not ask details from him, but told him whatever he was doing would definitely have to stop. At that stage I knew nothing about the recidivist nature of sex abuse with minors nor about the trauma it could cause. However, I also knew that if there was no improvement, [Father GLN] would definitely take action.[640]

Father GNB took over from Father GLN as principal of the MSC school in Victoria in 1978. According to a 2014 memorandum of a telephone conversation between Father GNB and CCI's lawyers, Father GNB said that, when he arrived in about mid-January 1978, Brother Mamo was at the school.[641] CCI said:

> There were subsequently a number of incidents of indecent assaults inflicted on students by Br. Mamo at [the MSC school in Victoria] since 1978, which involved the same inappropriate disciplinary behaviour and sexual abuse that had initially been complained of by [GLN] to Fr. Murphy during his tenure as Rector of [the school] in September/ October 1977.[642]

In a 2013 email to Father GNB, another former staff member, Brother GLM, who was at the MSC school in Victoria between 1973 and 1985, said that he had received complaints from boys at the school that they were 'disciplined by E Mamo in a way that was embarrassing and humiliating. They had to remove their underpants and bend over the tea chest to receive the strap'.[643] Brother GLM told CCI's lawyers that he told the senior discipline master:

> what the boys had told him and that he had made a recording of it … [Brother GLM] believes [the discipline master] told him to send the tape to Fr Edmiston who was the Secretary to the Provincial or the Deputy Provincial at the time. [Brother GLM] says he is 'pretty certain' that he sent it … He addressed it to the Provincial House and probably to the Provincial or Fr Edmiston … He does not recall but he thinks he probably also sent a note with the tape explaining what it was, but he didn't hear anything more about it.[644]

In 2014, Father GNB told CCI's lawyers that 'he did find out that Mamo was strapping students and he recalls speaking to the Discipline Master … [and told him] that had to be stopped'.[645]

Father Murphy was the Provincial Superior of the MSC until 1980. In an undated report on Brother Mamo, Father Murphy said:

> At the end of my time as Provincial in Australia, Brother Mamo had to be moved from a college run by the Province. The reason for this was not conflicts he was having with staff members, but his conduct with the boys. This was not a matter of blatant immorality, but of actions and words that definitely gave scandal to some of the boys and which did not help either the image of a religious in particular or of a Catholic college in general.[646]

Between 1981 and 1982, Brother Mamo undertook farm work at St Mary's Towers, Douglas Park, New South Wales.[647] The provincial superior in 2014 told the Victorian Professional Standards Office that Brother Mamo 'removed himself from the Missionaries of the Sacred Heart in 1983 and later applied for "Leave of Absence"'.[648] The superior general and General Council issued a decree dismissing Brother Mamo from the Congregation in 1994.[649]

Thirteen people made claims to the MSC between 2003 and 2014, involving alleged abuse by Mamo at the MSC school in Victoria.[650] In 2013, Mamo was convicted of indecent assault of seven victims at this school, which occurred between 1976 and 1980.[651]

Dominican Friars

The Order of Preachers, also known as the Dominicans, was founded in 1216 by St Dominic (1170–1221) 'To defend the Church against her enemies and to preach the Gospel'.[652] Father Brian Davis professed his final vows as a member of the Dominican Friars in 1949 and was ordained in 1951.[653] He was appointed to a Dominican Friars school in South Australia from about the mid-1950s.[654]

CCI determined that the Dominican Friars had knowledge of Father Davis's propensity to offend in approximately December 1960 based on allegations reported by students of the Dominican Friars school at that time. Following this, the Dominican Friars provincial, Father Jerome O'Rorke, moved Father Davis to St Dominic's Priory with restricted duties.[655]

Two people said in police statements that in approximately 1960, when they were students at the Dominican Friars school, they told the principal at the time, Father GLH, about their experience of abuse.[656] Another former student said in his police statement that he told his parents in late 1960 about his abuse and that they reported this to Father GLH.[657]

In a Special Issues Incident Report dated 1994, Father Mark O'Brien (the provincial from 1992 to 2000) said that, although he had 'no written record', he had been told that an allegation had been made against Father Davis in relation to a 'male school pupil' in the early 1960s and that Father O'Rorke (the provincial from 1956 to 1972) was advised.[658]

In 2011, Father Kevin Saunders (the provincial from 2008 to 2016) told CCI's lawyers, 'From what I have heard, I presume Fr Jerome went to [the Dominican Friars school] and, together with [Father GLH] and I think another deceased Dominican … as I understand it, those three undertook an investigation'.[659] Father Saunders said that 'any comments he made … about how the matters concerning Fr Davis unfolded in 1960, and who had access to information about Fr Davis, were not based on any evidence he then had but were matters which he presumed to be the case'.[660]

Father O'Rorke transferred Father Davis to St Dominic's Priory, Camberwell, Victoria, in late 1960.[661] On 10 December 1960, Father O'Rorke wrote a letter to the prior of St Dominic's Priory that said he had assigned Father Davis to assist another priest at the priory in his 'Provincial Work'. Father O'Rorke noted some restrictions he had placed on Father Davis and wrote, 'What I have said above about my arrangements for Fr Davis is strictly confidential and is not to be communicated to anyone'.[662]

In 2011, Father Saunders told CCI's lawyers that he accepted that 'the fact that Fr Davis was taken out of the school at the end of the year and moved on to Melbourne under restricted duties indicates that Fr Davis probably did acknowledge some inappropriate behaviour to Fr Jerome'.[663] Father Saunders said he also accepted that 'every strong indication is that the Provincial knew during late 1960 about the sexual problems relating to Fr Davis'.[664]

Father Davis was assigned to Melbourne until 1971, where he held various positions. From the early to mid-1970s, he was Dean of Mannix College, Victoria, and was then assigned to St Dominic's Priory in Melbourne. During this period, he acted as a parish priest in Newcastle.[665] Between 1975 and 1978, he was appointed to Blackfriars, Canberra, ACT.[666] One person made a claim in 2010 that he was sexually abused by Father Davis in approximately 1977.[667]

Father Davis continued in ministry until the mid-1980s, including as a priest in charge and parish priest of two parishes and chaplain to the Australian National University between 1983 and approximately 1986.[668] In approximately 1986, Father Davis withdrew himself from all active ministry. No official statement was made other than that he was retired.[669] In 2004, the Dominican Friars officially placed Father Davis on restricted ministry and, from 2004, he was retired.[670]

In 2007, a letter from a claimant's lawyers said, 'Father Davis had been charged with various criminal offences. We understand that the majority of the criminal charges made against Father Davis relate to his conduct … at [the Dominican Friars school in South Australia] in the late 1950s'.[671] Father Davis died in 2007 aged 80.[672]

Marist Fathers

The Society of Mary or Marist Fathers is a religious congregation of priests that was established in France in 1824.[673] Father GMG professed his initial vows as a member of the Marist Fathers in 1956 and his final vows in 1959. He was ordained in 1961.[674] Father GMG was appointed in 1962 to classroom teaching and dormitory positions at a Marist Fathers school in northern New South Wales and then taught at a Marist Fathers school in Tasmania between 1966 and 1968.[675]

CCI determined that the Marist Fathers had knowledge of Father GMG's propensity to offend in 1967. This was based on correspondence between Father GMG and the (then) provincial, Father Glynn, in which Father GMG said that he was having 'serious temptations' and did not want to remain at a boarding school, and correspondence between Father Glynn and the rector of the Marist Fathers school in northern New South Wales regarding Father GMG's appointment to the school again in late 1967. Following this, Father GMG's appointment was changed and he was referred for treatment.[676]

A chronology relating to Father GMG from his personnel file recorded that, on 8 October 1967, Father GMG told Father Glynn, 'I am sending a registered letter to you within a few days ... it will contain matter relating to the personal difficulty which I mentioned to you earlier in the year. Circumstances have become grave, and so I have decided to inform you about them'.[677] The chronology also recorded that, on 11 October 1967, Father GMG told Father Glynn:

> I have had some serious temptations, and I have decided I cannot in conscience allow myself to remain in circumstances which seem to produce these temptations – I mean of course, a boarding school, and especially care of a dormitory.[678]

A further entry on 26 October 1967 recorded that Father Glynn told Father GMG, 'I am well aware of the difficulty you refer to as we have discussed it in detail previously. I can assure you I will give you the assistance you are asking for at the end of the year'.[679]

In November 1967, Father GMG was again appointed to the same Marist Fathers school in northern New South Wales.[680] The rector of this school wrote to Father Glynn on 21 November 1967 regarding the appointment:

> We respectfully suggest that if [Father GMG] remains in school work, [an appointment to a different Marist Fathers school in southern New South Wales] is the only reasonable place for him. At least boys cannot get to his room there [and] there are no dormitories [and] day teachers have so little time with the boys.[681]

The rector's letter included references to 'in a dormitory he can be a menace'; 'One cannot police them'; 'some boys here would know of [Father GMG]'s problems. So we beg of you please do not send him here'; 'He is one of those [who should] be got out of schools soon. His case is … priority than that of many others'; and 'we are appalled to think one is such a bad risk, who has been here already'.[682]

On 27 November 1967, Father Glynn replied to the rector, thanking him for his letter:

> with further details of the problems involved in the appointment of [Father GMG] to [the Marist Fathers school in northern New South Wales] … [Another priest] has also supplied further information on these two problems … Under these circumstances, you can take it for granted [Father GMG] will not go to [the Marist Fathers school in northern New South Wales]. At our meeting on Sunday next, everything possible will be done to propose some alternate appointment ...[683]

In December 1967, Father GMG was appointed a teacher and sports master at a Marist Fathers school in southern New South Wales, where he remained until 1972.[684] A letter dated 28 December 1967, addressed to a priest, said:

> [Father GMG] has now been appointed to [the Marist Fathers school in southern New South Wales] ... [Father GMG] is having serious problems of conscience in his dealings with boys, and because of these difficulties he has stated that he could not in conscience accept an appointment to a boarding college where he could quite easily be assigned to the care of a dormitory.[685]

Father GMG saw a psychiatrist in May 1968.[686] On 6 May 1968, the psychiatrist wrote to the rector of St Peter Chanel's Seminary (a Marist Fathers seminary in Toongabbie, New South Wales):

> the essence of the problem is that this person had a homosexual problem which over recent years has diminished considerably to the extent now that he is fairly well heterosexually orientated … I suggest that I see him several times more to give him some little psychotherapy to help him sort out some of his difficulties.[687]

Between 1972 and 1981, Father GMG returned to the same Marist Fathers school in northern New South Wales, where he was appointed a classroom teacher and dormitory discipline master and also to a senior position at the school.[688] One person made a claim in 2014 that he was sexually abused by Father GMG at this school in the 1970s.[689]

In the 1980s and early 1990s, Father GMG was appointed to various positions, including to a senior position at the school in Tasmania, working in a parish in Victoria, and again as a teacher and dormitory master at the same Marist Fathers school in northern New South Wales in 1988 and in 1992. Between 1993 and 1994, he was appointed chaplain of a Marist Brothers school in Sydney.[690]

Following an anonymous phone call to the Marist Fathers in 1993 in relation to allegations of sexual abuse, Father GMG 'acknowledged that there may be grounds for the laying of criminal charges against him … relating to an incident at [the Marist Fathers school in northern New South Wales] in 1976'.[691] Father GMG was withdrawn from his position at the Marist Brothers school and was placed on restricted ministry in 1993.[692]

Congregation of the Mission (Vincentian Fathers)

The Congregation of the Mission (Vincentian Fathers) is a society of apostolic life founded by St Vincent de Paul in Paris in 1625 for the evangelisation of the poor and the formation of the clergy.[693] Father Charles Alfred Barnett was ordained into the Archdiocese of Adelaide in 1970. He then applied to become a member of Vincentian Fathers and was 'definitively incorporated to the Congregation' in 1975 after professing his initial vows as a member of the Vincentian Fathers in 1971 and his final vows in 1975.[694] Between 1971 and 1977, Father Barnett taught at St Stanislaus College in Bathurst, New South Wales, undertook parish duties at parishes in Queensland and Victoria, studied overseas and was a staff member of a Catholic institution in South Australia.[695]

For periods between February 1978 and December 1983, Father Barnett was loaned to the Diocese of Port Pirie by the Vincentian Fathers. He was a priest in various parishes in the Diocese of Port Pirie from February 1978 to February 1979 and again from January 1980 to December 1983.[696] CCI's determination that the Diocese of Port Pirie had knowledge of Father Barnett's propensity to offend is considered above.

Father Gerald Scott was provincial of the Vincentian Fathers from 1982 until 1990.[697] CCI determined that the Vincentian Fathers had knowledge in late 1983 of Father Barnett's propensity to offend on the basis of Father Scott's '"prior knowledge" of seriously inappropriate sexual behaviour by Father Barnett with young boys in the Diocese of Port Pirie during late 1983'.[698]

Father Scott told the Vincentian Fathers' lawyers in 2011 that he received a telephone call from Bishop De Campo (the Bishop of Port Pirie from late 1980 until 1998)[699] while Father Barnett was in the Diocese of Port Pirie. Father Scott said:

> it was an unexpected call and I knew the Bishop, somewhat well. So I recognised he was very concerned and his concern was in reference to Charlie Barnett who was serving in the Diocese at the time; that he had been with a catholic family and staying overnight … the father of the family heard a lot of noise coming from his boys' bedroom or bedrooms … and on investigation there was Charlie Barnett jumping around … having fun with the boy or boys whereupon the father of course ordered him out of the house straight away … The upshot was that the Bishop would deal with Charlie and the situation as he saw fit … Because he knew the family. I did not.[700]

CCI's lawyers told CCI that Father Scott:

> was obviously given significant detail about the episode … Bishop De Campo obviously must have directed Barnett to leave the Diocese ... Given the timing of events, it seems certain that Fr Scott [was] talking about the episode relating to [the family of an alleged victim GEH], and that this input would seem to confirm that the complaint by [GEH's father] to Bishop De Campo must have been in late 1983, towards the very end of Barnett's time in Port Pirie.[701]

In correspondence dated 21 February 2017, the Diocese of Port Pirie informed us that it believes 'it is unclear whether the report of a complaint made by Bishop De Campo (who is deceased) to Fr Scott related to [GEH]'s complaint':

> The Diocese notes that CCI also considered that it was not clear that the report related to [GEH]'s complaint, nor when the report was conveyed to Fr Scott. The Diocese considers, particularly since the abuse of [GEH] continued over a number of years, that the report of the abuse may have occurred after Charles Barnett left the Diocese at the end of 1983, during a visit back to the Diocese … This timing is more consistent with the account of his departing the Diocese by bus, and avoiding any meeting with the Bishop.[702]

From January 1984 to January 1986, Father Barnett was a chaplain in the Royal Australian Navy.[703] During this period he was on loan to the Catholic Military Ordinariate of Australia.[704] Father Scott told the Vincentian Fathers' lawyers that when Father Barnett left the Diocese of Port Pirie:

> I did not take him on specifically with the issue of homosexual behaviour with children … my realisation at the time was that when he was with other official bodies, then he was under their jurisdiction, especially in the armed services and that they would be taking their own steps in order to deal with the problem ... Now he would have had approval of course to go into the army or whatever armed service it was. …. He would not have been accepted without the Provincial's approval. So somewhere along the line I would presume that I must have given approval to join the armed services and once you did that, especially the armed services, I left his behaviour or whatever in their hands.[705]

Father Barnett continued in ministry between 1986 and 1992, including as a priest in the Diocese of Parramatta while on loan to the diocese, as a manager at a Catholic institution in New South Wales, as a chaplain in the Australian Army, and undertaking supply work at a parish in Queensland.[706] One person made a claim to the Vincentian Fathers in 2001 that he was sexually abused by Father Barnett between 1989 and 1993, and another person made a claim to the Vincentian Fathers in 2010 that he was sexually abused by Father Barnett in 1993 and 1994.[707]

In April 1994, Father Anthony Mannix, the (then) provincial of the Vincentian Fathers, wrote to CCI:

> Notification was received today of allegations made to an assistant priest by three young men of the parish … against the subject of this case 3 [Father Barnett] concerning sexual talk and comments accompanying such behaviour as intruding on privacy, exposing one of the victims, touching another, and reportedly appearing exposed before … These incidents began about eight years ago and finished about four years ago when the priest was transferred.[708]

Later, Father Mannix wrote, 'in line with the Protocol, the priest [Father Barnett] resigned from his office of parish priest, formally requesting leave from the Congregation and the ministry'.[709] Father Greg Cooney, the provincial in 2008, told the Vincentian Fathers' lawyers that in 1995 Father Barnett undertook counselling at Centacare at Father Mannix's request. A Centacare counsellor informed Father Mannix that Father Barnett had admitted 'to sexual abuse of boys in the past by suggestions to actual sexual activity on maybe fifty occasions'.[710]

From October 1995, Father Barnett was in Indonesia.[711] In 1997, a canonical application was made for his dismissal, which was granted in 2001.[712] Following a successful extradition request, Barnett was returned to Australia in 2009.[713] He was convicted in 2010 after pleading guilty to five offences relating to the sexual abuse of four victims between 1977 and 1994. The offences included three counts of indecent assault and two counts of unlawful sexual intercourse.[714]

13.4.3 Broader awareness of allegations of child sexual abuse in the Catholic Church in Australia

We have no doubt that, in at least some cases, knowledge of offending by clergy and religious was much broader than the cases set out above suggest. In some cases, Catholic Church leaders were told about or otherwise became aware of allegations of child sexual abuse concerning priests and religious who did not fall within their authority. As set out below, in a few cases, priests or religious were told or heard about child sexual abuse alleged to have been committed by other priests or religious. In some cases, allegations or suspicions of child sexual abuse were the subject of more general community discussion.

Awareness of child sexual abuse in other Catholic Church authorities

Although in many cases we have heard that Catholic Church authorities were concerned with keeping allegations of child sexual abuse secret, we have heard that from time to time senior figures in different Catholic Church authorities discussed allegations made against a particular priest or religious.

An early example of a senior figure in one Catholic Church authority discussing allegations concerning a priest or religious from a different diocese or order comes from documents considered in our *Christian Brothers* case study. In particular, we considered a letter from the Archbishop of Perth dated March 1919 in relation to a Christian Brother teacher at Clontarf Orphanage in Western Australia who had pleaded guilty to indecent dealings with minors and received a jail sentence of three years. In this letter, the archbishop informed the government authorities that he had consulted with Brother Noonan – the superior of the Christian Brothers for Western Australia – and that it had been concluded that a new superior and new staff would be placed at Clontarf.[715]

Some years later, a 1936 letter to the superior general of the Christian Brothers in Ireland referred to a Brother Traynor and his 'immoral dealings with boys in Clifton Hills'.[716] The letter stated:

> It is a big blow to our status in the eyes of the Bishops – Dr Mannix and Prendiville. Both spoke to the Provincial concerning the matter in Adelaide and nothing was done until the Provincial reached Perth about three weeks afterwards … I saw the Archbishop before I left Perth and he told me that Br Traynor's fall was the severest blow he had received since he became Archbishop.[717]

Documents relevant to CCI's determination that there was prior knowledge with respect to Marist Father Glover and Vincentian Father Barnett also provide examples of allegations being discussed across different Catholic Church authorities. As set out above, in the case of Father Glover, in a September 1959 letter to the Provincial of the Marist Fathers, the Bishop of Bunbury referred to Father Glover 'telling me of his troubles [at the parish in Victoria]'.[718] The provincial told the superior general in Rome that, 'The Bishop [Bishop Goody] knows the reason for [Father Glover] being at Richmond, and says he thinks that Father Glover will have a better chance away over there of rehabilitating himself'.[719]

Vincentian Father Barnett was on loan to the Diocese of Port Pirie in the early 1980s.[720] Father Gerald Scott, the Provincial of the Vincentian Fathers from 1982 to 1990, told the Vincentian Fathers' lawyers in 2011 that while Father Barnett was in the Diocese of Port Pirie Father Scott received a telephone call from Bishop De Campo.[721] He said:

> [Bishop De Campo] was very concerned and his concern was in reference to Charlie Barnett … on investigation there was Charlie Barnett jumping around … having fun with the boy or boys whereupon the father of course ordered him out of the house … The upshot was that the Bishop would deal with Charlie and the situation as he saw fit.[722]

In *Catholic Church authorities in Ballarat* we heard that some priests in the Diocese of Ballarat heard reports in the 1970s of concerns about the conduct of one or more Christian Brothers in Ballarat in relation to children.[723]

We also found that in 1960 the auxiliary bishop of Perth told a member of the Christian Brothers about a complaint that Brother BWX told a boy to undress in the sacristy and then 'asked about immoral acts in general'.[724] We also found that over a decade later, in 1973, the superior of the Christian Brothers community in Ballarat told the Bishop of Ballarat, Bishop Mulkearns, that a complaint had been made that Brother BWX had sexually abused two male students at a school in Ballarat. He told Bishop Mulkearns that the brother had been moved from Ballarat.[725]

In the same case study, we received evidence that in 1983, when Cardinal Clancy became Archbishop of Sydney, Bishop Mulkearns took him aside during the bishops' conference in 1983 and explained that Father Ridsdale had 'certain sexual problems, was under professional treatment' and had come to Sydney to get away from the problems in Victoria.[726] As discussed in more detail earlier in this section, these sexual problems were in relation to children. Father Ridsdale was at that time working at the Catholic Enquiry Centre in Sydney.[727]

Similarly, the Special Commission of Inquiry considered letters indicating that the Archbishop of Sydney and the Bishop of Geraldton were aware of allegations against a priest of the Diocese of Maitland-Newcastle.

With respect to a letter dated 11 June 1981 from the Bishop of Maitland-Newcastle, Leo Clarke, to the Bishop of the Diocese of Geraldton, Francis Thomas, the Special Commission of Inquiry observed:

> [Bishop] Clarke referred to his earlier discussion with [Bishop] Thomas 'about Father Denis McAlinden who had applied in 1976 to work in your Diocese'. Clarke then stated, 'At that time there were some problems that I mentioned to you but as I said in Sydney, I think that these problems are now over'. That letter clearly shows that in 1976 Clarke had knowledge of 'problems' at the time in connection with McAlinden, and the Commission finds this statement to be a reference to the accusations and related matters …[728]

In October 1981, Father McAlinden travelled to Western Australia and was appointed parish priest at Wickham.[729] Father McAlinden was later charged with sexually abusing a child in Geraldton diocese.[730]

The Special Commission of Inquiry also considered a letter dated May 1987 from an independent member of the New South Wales Legislative Assembly to the Archbishop of Sydney, Cardinal Clancy, in relation to Father McAlinden.[731] The letter stated:

> It concerns allegations of sexual misbehaviour by Father D. McAlinden of the Catholic Church, Adamstown. I have been told that a complaint was made in 1976 and as a result of an investigation of that complaint Father McAlinden was transferred out of the Maitland Diocese.[732]

The letter raised concerns that there had been several complaints about Father McAlinden's behaviour with young children and that there was 'a great deal of concern at his continuing access to young people'.[733] The Special Commission of Inquiry observed 'It is apparent that a copy of the letter was forwarded to the Diocese [Maitland-Newcastle] since the Diocese produced a copy of it to the Commission'.[734] The Special Commission of Inquiry dealt with the Diocese of Maitland-Newcastle's response to the concerns raised in this letter in a confidential volume of the report to avoid compromising potential future criminal proceedings.[735]

Clerical gossip and rumours

We have also found that suspected, reported and known offending in relation to the sexual abuse of children by clergy was periodically the subject of gossip, discussion or rumours among priests, including parish priests, vicars general and auxiliary bishops.

In August 1972, an article appeared in a Melbourne newspaper which set out allegations that an unnamed priest in the Diocese of Ballarat had sexually abused children. The article was undoubtedly about Monsignor Day. In *Catholic Church authorities in Ballarat* we found that serious allegations about a Catholic priest published in a metropolitan newspaper would be the subject of widespread gossip and discussion, and the content of the article was widely known in the diocesan community – in particular, among the clergy. It was a 'great scandal'.[736]

As discussed earlier in this section, we also received evidence that some priests in the Diocese of Ballarat heard gossip and rumour, and in some instances received specific allegations, about priests and Christian Brothers engaging in sexual misconduct with students.[737] As noted in our report on *Catholic Church authorities in Ballarat*, in our experience, it is part of the ordinary human condition that groups of individuals engaged in similar work talk about happenings in their workplace, including about their colleagues. It is also common human experience that allegations, suspicions of wrongdoing and potential scandal will be the topic of discussion. Where that talk is about matters which could affect the reputation of the institution in which they all work, the expectation is that such talk will intensify. In our report on *Catholic Church authorities in Ballarat* we said that we had been told on many occasions that priests gossip, have a clerical grapevine and the like. In particular, Father Ridsdale and Monsignor Day's conduct was the source of gossip among priests.[738]

In *Catholic Archdiocese of Melbourne* we found that in 1978 Archbishop Little was told by Sister Marie Therese Harold of rumours and concerns about Father Pickering sexually abusing young boys.[739] Sister Harold made a statement in which she said she had been told of concerns and rumours by the superior of the Star of the Sea College at Gardenvale, Sister McMahon, and the Gardenvale Parish Curate, Father Les Harper.[740]

Similarly, in the *Catholic Diocese of Wollongong* case study we heard that in the early 1990s there were rumours about Father Nestor, then a priest in the Diocese of Wollongong. These rumours were that Father Nestor ran camps for boys, during which boys were skinny dipping and showering in the open and that Father Nestor had conversations with boys about the size of their genitalia.[741] At about this time, some priests in other parishes had decided not to advertise the camps because they had also heard rumours about Nestor's conduct at them.[742]

Community awareness of child sexual abuse in the Catholic Church

> We all sort of knew who the creeps were in the school as far as the Brothers and Fathers go … so we sort of knew that these priests were a bit dodgy.[743]
>
> **Private session, 'Kelsey'**

In case studies and private sessions we have been told of instances where there was discussion about the sexual behaviour of particular priests or brothers towards children in the broader Catholic lay community, including by students in schools. In the case of students, we were told that often they were told to 'steer clear' of a particular brother or there was innuendo that something not right was going on between brothers and some of the boys.[744]

In the *Catholic Church authorities in Ballarat* case study, Cardinal Pell, who was an assistant priest at Swan Hill in 1972, gave evidence that he probably heard gossip that Monsignor Day was accused of some sort of 'paedophilia behaviour'. He could not remember exactly what he heard or when. He said 'There was discussion in the Catholic community and more widely around Mildura'.[745]

We also heard that Father Ridsdale, who has since been convicted of a large number of child sexual abuse offences, left a number of parishes in which there was discussion, gossip or rumours about his sexual behaviour towards children. Father Ridsdale was appointed to Apollo Bay parish in the Diocese of Ballarat in 1974. He was there only for one year. He requested a transfer out of the parish when it came to his attention that there was gossip about his conduct. Ridsdale told CCI investigators in a 1993 interview that a man, who was drunk, told him, 'They are saying things down at the pub about you and kids', and he thought it was time to get out.[746]

Father Ridsdale moved to Inglewood parish in 1975. We found that, not surprisingly, there was gossip in the Inglewood community about the allegations against Father Ridsdale. A retired Inglewood policeman said many years later that after detectives came up from Bendigo 'everyone around the town knew what was going on after it hit the fan'. Another man was quoted in an article as saying that his fellow students at the Catholic secondary college in Bendigo risked the wrath of their teachers by enquiring of 'the poofter priest from Inglewood'.[747]

Survivors and others also told us in case studies and private sessions that, in some cases, offending by individual clergy and religious was 'common knowledge' among students and, in some cases, teaching staff. One survivor told us in a private session about his experience in a Catholic boarding school in regional Victoria in 1970:

> The abuse was on many levels, not just the sexual abuse, the physical abuse, the emotional abuse but when you're there, that's normal … We knew priests there that you didn't go near … because he'll want to grab you or something.[748]

Another survivor told us in a private session that she was sexually abused by a priest at her local Catholic school when she was six years old.[749] She said:

> My take was that the Church was responsible as well, I never had the view that it was just a bad apple. Never. Because there were rumours around. We knew that this happened … It felt like you were surrounded by people you couldn't trust.[750]

In our *Marist Brothers* case study, we were told that one Marist Brother teacher used to touch children in view of the class.[751] We heard evidence that one survivor told his psychiatrist that Brother Chute's sexual abuse of students at Marist College was widely known by staff at the school at the time: 'everyone knew – the teachers – he'd do it in front of a class of thirty.'[752]

In the *Catholic Church authorities in Ballarat* case study we heard from a number of former students of St Alipius Boys' Primary School and St Patrick's College that the sexual misconduct of Christian Brothers towards students was common knowledge around the schools. One former student gave evidence that in 1973 there were rumours that the brothers were sexually abusing some of the kids and were touching boys in the St Patrick's College dormitories. He said it was 'common knowledge' and a 'topic of routine conversation among the students'.[753]

Catholic Church authorities' responses to sexual abuse in Catholic schools are considered in more detail in Section 13.10.

13.4.4 Conclusions about awareness of allegations of child sexual abuse in the Catholic Church

The only reasonable conclusion from the above cases is that senior officials of Catholic Church authorities in Australia knew of allegations of child sexual abuse in Catholic Church institutions around Australia. It is also evident that other priests, religious and lay members of the Catholic community were aware either of specific complaints of abuse or of rumours or gossip about certain priests or religious. While this knowledge and the understanding of child sexual abuse may have developed and deepened in the last two decades of the 20th century, it is clear that Catholic Church leaders were aware of the problem well before that time.

How those leaders responded, both to the alleged perpetrators of child sexual abuse and to their victims, is the subject of the remainder of this chapter.

Endnotes

1 The Dublin Archdiocese Commission of Investigation, *The Commission of Investigation report into the Catholic Archdiocese of Dublin*, Minister for Justice and Equality, Dublin, 2009, p 5.

2 MX Compton & JB Polding, *The letters of John Bede Polding OSB*: *1844–1860*, vol 2, Sisters of the Good Samaritan, Sydney, 1996, pp 132–3. In a letter to LB Barber [OSB] dated 22 May 1849 Polding said of Brother Bernard Caldwell, 'It is not for me to advise D.F.P [Dear Father Procurator] but really if a flaw can be discovered in Caldwell's Profession, it would be well to let him go his own way. What children can be safe under the same Roof with him?'.

3 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 16: The Melbourne Response*, Sydney, 2015, p 128.

4 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, pp 7, 8.

5 The number of claimants in the data report published in February 2017 (4,445 claimants) was reduced to 4,444 claimants in the revised data report published in June 2017. See Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 13.

6 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 15. Additionally, 530 unknown people were identified as alleged perpetrators. It cannot be determined whether any of those people whose identities are unknown were identified by another claimant in a separate claim.

7 *Letters Patent* (Cth), 11 January 2013, (k).

8 This applied in respect of case study reports for *Case Study 28: Catholic Church authorities in Ballarat*, *Case Study 35: Catholic Archdiocese of Melbourne* and *Case Study 42: The responses of the Anglican Diocese of Newcastle to instances and allegations of child sexual abuse.*

9 This applied in respect of case study reports for *Case Study 43: The response of Catholic Church authorities in the Maitland-Newcastle region to allegations of child sexual abuse by clergy and religious* and *Case Study 44: The response of the Catholic Dioceses of Armidale and Parramatta to allegations of child sexual abuse against a priest.*

10 For example, see Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 11: Congregation of Christian Brothers in Western Australia response to child sexual abuse at Castledare Junior Orphanage, St Vincent's Orphanage Clontarf, St Mary's Agricultural School Tardun and Bindoon Farm School*, Sydney, 2014, p 36; Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 13: The response of the Marist Brothers to allegations of child sexual abuse against Brothers Kostka Chute and Gregory Sutton*, Sydney, 2015, pp 16–7; Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 14: The response of the Catholic Diocese of Wollongong to allegations of child sexual abuse, and related criminal proceedings, against John Gerard Nestor, a priest of the Diocese*, Sydney, 2014, pp 11–2; Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 28: Catholic Church authorities in Ballarat*, Sydney, 2017, s 3.4, s 4.2, s 4.6; Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 35: Catholic Archdiocese of Melbourne*, Sydney, 2017, s 4.3.

11 For example, see Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 13: The response of the Marist Brothers to allegations of child sexual abuse against Brothers Kostka Chute and Gregory Sutton*, Sydney, 2015, pp 45, 52, 58–9; Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 11: Congregation of Christian Brothers in Western Australia response to child sexual abuse at Castledare Junior Orphanage, St Vincent's Orphanage Clontarf, St Mary's Agricultural School Tardun and Bindoon Farm School*, Sydney, 2014, p 37; Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 28: Catholic Church authorities in Ballarat*, Sydney, 2017, s 4.2, s 4.6; Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 35: Catholic Archdiocese of Melbourne*, Sydney, 2017, s 4.2.

12 M Cunneen, *Special Commission of Inquiry into Matters Relating to the Police Investigation of Certain Child Sexual Abuse Allegations in the Catholic Diocese of Maitland-Newcastle: Report – Volume 1*, State of NSW, Sydney, 2014, pp 14–21; JRT Wood, *Royal Commission into the New South Wales Police Service final report volume V: The paedophile inquiry*, NSW Government, Sydney, 1997, pp 1002–5. See also Family and Community Development Committee, *Betrayal of trust: Inquiry into the Handling of Child Abuse by Religious and other Non-government Organisations*, Parliament of Victoria, Melbourne, 2013; Senate Standing Committee on Community Affairs, *Lost Innocents: Righting the record – report on child migration*, Commonwealth of Australia, Canberra, 2001; Senate Community Affairs References Committee, *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children*, Commonwealth of Australia, Canberra, ACT, 2004.

13 The Dublin Archdiocese Commission of Investigation, *The Commission of Investigation report into the Catholic Archdiocese of Dublin*, Minister for Justice and Equality, Dublin, 2009, p 5.

14 The Commission to Inquire into Child Abuse, *Final report of the Commission to Inquire into Child Abuse*, Commission to Inquire, Dublin, 2009, vol IV, p 454, [para 6.23].

15 The Commission to Inquire into Child Abuse, *Final report of the Commission to Inquire into Child Abuse*, Commission to Inquire, Dublin, 2009, vol IV, p 454, [para 6.21].

16 See Chapter 3 for a discussion of the work of previous overseas inquiries into the Catholic Church. See also The Commonwealth of Massachusetts Office of the Attorney General, *The sexual abuse of children in the Roman Catholic Archdiocese of Boston: A report by the Attorney General*, Office of the Attorney General, Boston, 2003, p 25; The National Review Board for the Protection of Children and Young People, *A report on the crisis in the Catholic Church in the United States*, United States Conference of Catholic Bishops, Washington DC, 2004, pp 39–40; Commission of Inquiry into Sexual Abuse of Minors in the Roman Catholic Church, *Sexual abuse of minors in the Roman Catholic Church: Extended version*, Commission of Inquiry, Amsterdam, 2011, s 3.6, which states 'the conclusion is that the seriousness of sexual abuse of minors in the Roman Catholic Church cannot be denied, and that it is not an isolated phenomenon'; Special Archdiocesan Commission of Enquiry into Sexual Abuse of Children by Members of the Clergy, *The report of the Archdiocesan Commission of Enquiry into the Sexual Abuse of Children by Members of the Clergy*, Archdiocese of St John's, Newfoundland, 1990, p 138.

17 As outlined in Chapter 1 of this volume, we held 15 dedicated case studies that examined responses of Catholic Church authorities and institutions to child sexual abuse. We also examined responses of Catholic institutions during our case studies on schools and disability care providers. Issues of knowledge were not considered in all of these case studies. Where issues of knowledge did arise in a case study, the extent to which these issues were investigated and findings made differed, depending upon the scope and purpose of the case study, among other considerations. In case studies we considered issues of knowledge in relation to five dioceses and three religious orders. Dioceses: Archdiocese of Melbourne (case studies 16 and 35), Diocese of Ballarat (Case Study 28), Archdiocese of Sydney (case studies 8 and 44), Diocese of Maitland-Newcastle (Case Study 43), and Diocese of Wollongong (Case Study 14). Religious orders: Marist Brothers (case studies 4, 13 and 43), Christian Brothers (case studies 11 and 28), and Sisters of Mercy (Case Study 26).

18 *R v Lovegrove* (1983) 33 SASR 332, 336. For further details about *R v Lovegrove*, and discussion of the crime of misprision of felony, see Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal justice*: Parts III–VI, Sydney, 2017, p 152.

19 *Royal Commissions Act 1902* (Cth) s 6P.

20 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 18.

21 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 28: Catholic Church authorities in Ballarat*, Sydney, 2017, s 4.3.

22 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 28: Catholic Church authorities in Ballarat*, Sydney, 2017, s 4.2, s 4.3.

23 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 35: Catholic Archdiocese of Melbourne*, Sydney, 2017, s 3.1; Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 16: The Melbourne Response*, Sydney, 2015, pp 127–9.

24 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 28: Catholic Church authorities in Ballarat*, Sydney, 2017, s 4.3.

25 Exhibit 50-0012, 'Letter from CCI to Bishop of Port Pirie', 11 September 2011, Case Study 50, CCI.004.0002.0110_R. The Diocese of Port Pirie informed us that it believes this complaint was received in 1983, based on a file note made in 2002 which 'records that the … family reported a complaint about Fr Barnett to Bishop De Campo in 1983'; see further Exhibit 50-0012, 'Further information provided by the Diocese of Port Pirie to the Royal Commission', 21 February 2017, Case Study 50, CORR.0647.001.0003_R; 'Handwritten file note', 2002, Case Study 50, CTJH.069.02003.0001_R at 0004_R.

26 In their 1987 letter to Bishop D'Arcy the parents said they first made an official complaint about Father Hourigan in January 1986: see further Exhibit 50-0012, 'Letter from CCI to Bishop Coffey', 3 July 1996, Case Study 50, CCI.0001.00698.0025_R; 'Letter from CCI's lawyers to CCI', 22 September 1995, Case Study 50, CCI.0001.00697.0053_R; 'Letter from GIB and GIA to Bishop D'Arcy', 1 May 1987, Case Study 50, CCI.0001.00697.0181_R at 0181_R; 'Special Issues Incident Report', 27 April 1992, Case Study 50, CCI.0001.00691.0002_R.

27 Exhibit 50-0012, 'Letter from Bishop O'Regan to the Royal Commission', 29 November 2016, Case Study 50, CORR.0359.001.0004_R.

28 Exhibit 50-0012, 'Letter from CCI to the Diocese of Sandhurst', 28 July 2004, Case Study 50, CCI.0001.00804.0307_R.

29 M Cunneen, *Special Commission of Inquiry into Matters Relating to the Police Investigation of Certain Child Sexual Abuse Allegations in the Catholic Diocese of Maitland-Newcastle: Report – Volume 2*, State of NSW, Sydney, 2014, pp 30–1.

30 JRT Wood, *Royal Commission into the New South Wales Police Service final report volume V: The paedophile inquiry*, NSW Government, Sydney, 1997, p 1003.

31 *Letters Patent* (Cth), 11 January 2013, (k).

32 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 35: Catholic Archdiocese of Melbourne*, Sydney, 2017, s 1.2, s 1.3.

33 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 35: Catholic Archdiocese of Melbourne*, Sydney, 2017, s 3.1.

34 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 16: The Melbourne Response*, Sydney, 2015, pp 127–8.

35 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 35: Catholic Archdiocese of Melbourne*, Sydney, 2017, s 4.1.

36 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 35: Catholic Archdiocese of Melbourne*, Sydney, 2017, s 4.2.

37 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 35: Catholic Archdiocese of Melbourne*, Sydney, 2017, s 6.1.

38 Father Searson, Father Daniel, Father Kevin O'Donnell, Father Baker, Father Pickering and Father Gannon; Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 35: Catholic Archdiocese of Melbourne*, Sydney, 2017, s 2.5, s 3.2, s 4.3, s 6.1, s 7.2, s 8.1; Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 16: The Melbourne Response*, Sydney, 2015, pp 131– 3.

39 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 35: Catholic Archdiocese of Melbourne*, Sydney, 2017, s 2.1, s 3.1, s 4.2, s 6.1.

[redacted]

41 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 35: Catholic Archdiocese of Melbourne*, Sydney, 2017, s 3; Exhibit 35-0008, 'Personal Information Form – Wilfred Baker', Case Study 35, CTJH.221.06008.0254 at 0254.

42 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 35: Catholic Archdiocese of Melbourne*, Sydney, 2017, s 3.1.

43 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 35: Catholic Archdiocese of Melbourne*, Sydney, 2017, s 3.1.

44 Exhibit 35-0009, 'Statement of Bryan Cosgriff', Case Study 35, STAT.0781.001.0001_R at 0007_R.

45 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 35: Catholic Archdiocese of Melbourne*, Sydney, 2017, s 3.1.

46 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 35: Catholic Archdiocese of Melbourne*, Sydney, 2017, s 3.1; Exhibit 35-0051, 'Revised Data Report: Data Analysis of claims and substantiated complaints in relation to the Archdiocese of Melbourne', Case Study 35, REPT.0008.003.0001 at 0020.

47 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 35: Catholic Archdiocese of Melbourne*, Sydney, 2017, s 3.3.

48 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 35: Catholic Archdiocese of Melbourne*, Sydney, 2017, s 3.3.

49 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 35: Catholic Archdiocese of Melbourne*, Sydney, 2017, s 3.3.

50 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 35: Catholic Archdiocese of Melbourne*, Sydney, 2017, s 3.5, s 3.6.

51 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 35: Catholic Archdiocese of Melbourne*, Sydney, 2017, appendix C.

52 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 35: Catholic Archdiocese of Melbourne*, Sydney, 2017, s 4.

53 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 35: Catholic Archdiocese of Melbourne*, Sydney, 2017, s 4.3.

54 Exhibit 35-0027, 'Statement of BTU', Case Study 35, STAT.0785.001.0002_R at 0010_R.

55 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 35: Catholic Archdiocese of Melbourne*, Sydney, 2017, s 4.3.

56 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 35: Catholic Archdiocese of Melbourne*, Sydney, 2017, s 4.

57 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 35: Catholic Archdiocese of Melbourne*, Sydney, 2017, s 4.1.

58 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 35: Catholic Archdiocese of Melbourne*, Sydney, 2017, s 4.3.

59 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 35: Catholic Archdiocese of Melbourne*, Sydney, 2017, s 4.2, s 4.3.

60 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 35: Catholic Archdiocese of Melbourne*, Sydney, 2017, Appendix C.

61 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 35: Catholic Archdiocese of Melbourne*, Sydney, 2017, s 4.3.

62 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 35: Catholic Archdiocese of Melbourne*, Sydney, 2017, s 4.4.

63 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 35: Catholic Archdiocese of Melbourne*, Sydney, 2017, s 5; Exhibit 35-0042, 'Personal Information Form – Nazareno Fasciale', Case Study 35, CTJH.221.06050.0094 at 0094.

64 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 35: Catholic Archdiocese of Melbourne*, Sydney, 2017, s 5.1.

65 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 35: Catholic Archdiocese of Melbourne*, Sydney, 2017, s 5.1.

66 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 35: Catholic Archdiocese of Melbourne*, Sydney, 2017, s 5.2.

67 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 35: Catholic Archdiocese of Melbourne*, Sydney, 2017, s 5.3, s 5.4.

68 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 35: Catholic Archdiocese of Melbourne*, Sydney, 2017, s 5.6.

69 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 35: Catholic Archdiocese of Melbourne*, Sydney, 2017, s 10.2.
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71 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 35: Catholic Archdiocese of Melbourne*, Sydney, 2017, s 6; Exhibit 35-0045, 'Clergy Personal Information Form', Case Study 35, CTJH.221.06030.0112.
72 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 16: The Melbourne Response*, Sydney, 2015, pp 95–6.
73 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 16: The Melbourne Response*, Sydney, 2015, p 95.
74 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 35: Catholic Archdiocese of Melbourne*, Sydney, 2017, s 6.1, s 6.2.
75 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 16: The Melbourne Response*, Sydney, 2015, p 66.
76 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 16: The Melbourne Response*, Sydney, 2015, p 66.
77 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 16: The Melbourne Response*, Sydney, 2015, pp 28–29, 76–77.
78 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 16: The Melbourne Response*, Sydney, 2015, p 130.
79 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 16: The Melbourne Response*, Sydney, 2015, p 130.
80 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 16: The Melbourne Response*, Sydney, 2015, p 131.
81 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 35: Catholic Archdiocese of Melbourne*, Sydney, 2017, Appendix C.
82 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 16: The Melbourne Response*, Sydney, 2015, p 24.
83 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 35: Catholic Archdiocese of Melbourne*, Sydney, 2017, s 7; Exhibit 35-0044, 'Clergy Personal Information Form', Case Study 35, CTJH.221.06046.0280.
84 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 35: Catholic Archdiocese of Melbourne*, Sydney, 2017, s 7.1.
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86 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 35: Catholic Archdiocese of Melbourne*, Sydney, 2017, s 7.3.
87 Exhibit 35-0044, 'LEAP court outcomes report for Desmond Gannon', 14 August 2015, Case Study 35, VPOL.3043.006.0012 at 0013.
88 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 35: Catholic Archdiocese of Melbourne*, Sydney, 2017, s 7.5.
89 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 35: Catholic Archdiocese of Melbourne*, Sydney, 2017, appendix C.
90 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 35: Catholic Archdiocese of Melbourne*, Sydney, 2017, s 2.
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95 Exhibit 35-0028, 'Statement of Archbishop Denis Hart', 19 November 2015, Case Study 35, STAT.0782.001.0001_R at 0015_R; Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 35: Catholic Archdiocese of Melbourne*, Sydney, 2017, s 2.3–s 2.6.
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99 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 35: Catholic Archdiocese of Melbourne*, Sydney, 2017, s 2.5.
100 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 35: Catholic Archdiocese of Melbourne*, Sydney, 2017, s 2.5.
101 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 35: Catholic Archdiocese of Melbourne*, Sydney, 2017, s 2.3, s 2.4, s 2.5.
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105 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 28: Catholic Church authorities in Ballarat*, Sydney, 2017, s 4.2, s 4.3.
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113 Submissions of Counsel Assisting the Royal Commission, Case Study 28, [paras 1534–56]; Submissions of the Truth, Justice and Healing Council, Case Study 28, SUBM.1028.022.0001 [para 129].
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119 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 28: Catholic Church authorities in Ballarat*, Sydney, 2017, s 4.2.
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192 In relation to Robinson's conviction see Exhibit 50-0013, 'Police Statement of HBD', 25 November 1994, CCI.0018.00006.0452_R at 0452_R; and Exhibit 50-0013, 'Regina v Robinson [1999] NSWCCA 172', 2 July 1999, Case Study 50, WEB.0183.001.0001_R at 0002_R [4], 0005_R [27–28], 0007_R [44] (referred to as the 'fourth trial'). In relation to Pritchard's conviction see Exhibit 50-0013, 'Regina v Peter Harold Pritchard Sentencing Transcript', 12 November 1997, Case Study 50, CTJH.280.01077.0225_R at 0225_R, 0228_R–0229_R (referred to as 'the third charge'); Exhibit 50-0013, 'Charge Sheet for Peter Harold Pritchard', Case Study 50, CTJH.280.01134.0104_R at 0107_R. See also Exhibit 50-0013, 'Police Statement of HBE', 11 January 1995, Case Study 50, CCI.0352.00031.0009_R at 0009_R-0014_R.

193 M Cunneen, *Special Commission of Inquiry into Matters Relating to the Police Investigation of Certain Child Sexual Abuse Allegations in the Catholic Diocese of Maitland-Newcastle: Report – Volume 2*, State of NSW, Sydney, 2014, p 4.

194 M Cunneen, *Special Commission of Inquiry into Matters Relating to the Police Investigation of Certain Child Sexual Abuse Allegations in the Catholic Diocese of Maitland-Newcastle: Report – Volume 2*, State of NSW, Sydney, 2014, pp 30–1; M Cunneen, *Special Commission of Inquiry into Matters Relating to the Police Investigation of Certain Child Sexual Abuse Allegations in the Catholic Diocese of Maitland-Newcastle: Report – Volume 3*, State of NSW, Sydney, 2014, p 198.

195 M Cunneen, *Special Commission of Inquiry into Matters Relating to the Police Investigation of Certain Child Sexual Abuse Allegations in the Catholic Diocese of Maitland-Newcastle: Report – Volume 1*, State of NSW, Sydney, 2014, pp 17–9. The Special Commission found that further complaints were received in 1987 and 1993. There were also criminal charges of three counts of indecent dealing (of which he was ultimately acquitted) in 1992.

196 M Cunneen, *Special Commission of Inquiry into Matters Relating to the Police Investigation of Certain Child Sexual Abuse Allegations in the Catholic Diocese of Maitland-Newcastle: Report – Volume 2*, State of NSW, Sydney, 2014, p 34.

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211 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 14: The response of the Catholic Diocese of Wollongong to allegations of child sexual abuse, and related criminal proceedings, against John Gerard Nestor, a priest of the Diocese*, Sydney, 2014, p 9.
212 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 14: The response of the Catholic Diocese of Wollongong to allegations of child sexual abuse, and related criminal proceedings, against John Gerard Nestor, a priest of the Diocese*, Sydney, 2014, p 12.
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222 Exhibit 50-0013, 'Report to Bishop B Heather on the Special Enquiry into the Society of St Gerard Majella', 31 August 1993, Case Study 50, CTJH.280.01001.0002_R at Appendices 11 (0095_R), 14 (0124_R), 18 (0139_R).
223 Exhibit 50-0013, 'Bishop Bede Heather Transcript of Interview with Police', 13 April 1995, Case Study 50, STAT.1188.001.0034_R at 0036_R.
224 Exhibit 50-0013, 'Decree: Special Enquiry into the Society of St. Gerard Majella', 4 May 1993, Case Study 50, CTJH.280.01123.0025; 'Circular Letter to All Members of the Society of St. Gerard Majella from Bishop Bede Heather', 4 May 1993, Case Study 50, CTJH.280.01123.0027.
225 Exhibit 50-0013, 'Report to Bishop Heather on Society of St Gerard Majella', 28 July 1993, Case Study 50, CCI.0631.00012.0315_R at 0317_R.
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243 Exhibit 50-0012, 'Appointment history', Case Study 50, CTJH.297.91001.0001_R; 'Appointment history', 20 September 1996, Case Study 50, CCI.0001.00708.0283_R.
244 Exhibit 50-0012, 'Letter from Father Hourigan to Bishop D'Arcy', 10 August 1987, Case Study 50, CCI.0001.00697.0189_R; 'Transcript of interview with Bishop Coffey', 24 April 1995, Case Study 50, CCI.0001.00699.0100_R at 0100_R.
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516 Exhibit 50-0012, 'Appointment history', Case Study 50, CTJH.053.91001.0001_R; 'Data survey summary', 12 February 2017, Case Study 50, CARC.0050.014.0003_R.
517 Exhibit 50-0012, 'Document titled 'Brother Keith Boyd Farrell – Ministry'', 26 February 2008, Case Study 50, CCI.0600.00006.0423_R; 'Appointment history', Case Study 50, CTJH.053.91001.0001_R.
518 Exhibit 50-0012, 'Document titled 'Brother Keith Boyd Farrell – Ministry'', 26 February 2008, Case Study 50, CCI.0600.00006.0423_R; 'Appointment history', Case Study 50, CTJH.053.91001.0001_R.
519 Exhibit 50-0012, 'Special Issues Allegation Report', 14 January 1993, Case Study 50, CCI.0046.00038.0026_R; 'Letter from CCI to Marist Brothers' lawyers', 29 July 1996, Case Study 50, CCI.0046.00038.0033_R.
520 Exhibit 50-0012, 'Transcript of interview with Brother Turton', 30 March 2007, Case Study 50, CCI.0019.00006.0081_R at 0088_R; 'Special Issues Allegation Report', 14 January 1993, Case Study 50, CCI.0046.00038.0026_R; see further Exhibit 50-0012, 'Letter from CCI to Marist Brothers' lawyers', 29 July 1996, Case Study 50, CCI.0046.00038.0033_R: 'We note that the alleged offender in this case is Brother Stephen Farrell code named AB-1 in our records'.
521 Exhibit 50-0012, 'Transcript of interview with Brother Turton', 30 March 2007, Case Study 50, CCI.0019.00006.0081_R at 0088–0092_R, 0094_R.
522 Exhibit 50-0012, 'Special Issues Allegation Report', 14 January 1993, Case Study 50, CCI.0046.00038.0026_R.
523 Exhibit 50-0012, 'Transcript of interview with Brother Turton', 30 March 2007, Case Study 50, CCI.0019.00006.0081_R at 0092_R.
524 Exhibit 50-0012, 'Document titled 'Brother Keith Boyd Farrell – Ministry'', 26 February 2008, Case Study 50, CCI.0600.00006.0423_R; 'Appointment history', Case Study 50, CTJH.053.91001.0001_R.
525 Exhibit 50-0012, 'Document titled 'Brother Keith Boyd Farrell – Ministry'', 26 February 2008, Case Study 50, CCI.0600.00006.0423_R; 'Appointment history', Case Study 50, CTJH.053.91001.0001_R; 'Letter from Brother Farrell', 24 June 1978, Case Study 50, CCI.0097.00025.0253_R at 0257_R.
526 Exhibit 50-0012, 'Data survey summary', 12 February 2017, Case Study 50, CARC.0050.014.0003_R.
527 Exhibit 50-0012, 'Statement of GLJ', 9 October 2008, Case Study 50, CCI.0600.00003.0260_R at 0261_R.
528 Exhibit 50-0012, 'Statement of GLJ', 9 October 2008, Case Study 50, CCI.0600.00003.0260_R at 0264_R.
529 Exhibit 50-0012, 'Statement of GLJ', 9 October 2008, Case Study 50, CCI.0600.00003.0260_R at 0262_R.
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531 Exhibit 50-0012, 'Document titled 'Brother Keith Boyd Farrell – Ministry'', 26 February 2008, Case Study 50, CCI.0600.00006.0423_R at 0424_R.
532 Exhibit 50-0012, 'Appointment history', Case Study 50, CTJH.053.91001.0001_R; 'Document titled 'Brother Keith Boyd Farrell – Ministry'', 26 February 2008, Case Study 50, CCI.0600.00006.0423_R at 0424_R.
533 Exhibit 50-0012, 'Statement of GLJ', 9 October 2008, Case Study 50, CCI.0600.00003.0260_R at 0264_R.
534 Exhibit 50-0012, 'GLW Appointment History', Case Study 50, CTJH.053.91001.0003_R; 'Data survey summary', 18 January 2017, Case Study 50, CARC.0050.016.0001_R.
535 Exhibit 50-0012, 'GLW Appointment History', Case Study 50, CTJH.053.91001.0003_R; 'Summary of GLW's Ministry', 5 February 2013, Case Study 50, CCI.0027.00013.0054_R at 0056_R; 'Letter to the Provincial', 27 August 2007, Case Study 50, CCI.0064.00011.0010_R.
536 Exhibit 50-0012, 'Email from CCI to Marist Brothers and Attachment', 14 July 2013, Case Study 50, CCI.0027.00013.0051_R, CCI.0027.00013.0052_R.
537 Exhibit 50-0012, 'Special Issues Allegation Report', 14 January 1994, Case Study 50, CCI.0043.00035.0099_R. Note that Brother GLW attended the Southdown Institute on two occasions: the first occasion for residential therapy, recorded in an appointment history as 'Studies', in 1986 or 1988; and the second occasion for residential therapy, recorded in an appointment history as 'Personal Renewal', in 1990. According to Brother GLW's appointment history, he first attended Southdown in December 1986 for two months, before attending university in the US, in 1987. He then undertook his second novitiate in Italy from January until July 1988, before returning to Australia in August 1988. See further Exhibit 50-0012, 'Marist Brothers' response to Royal Commission Letter of Request dated 20 December 2013', 2014, Case Study 50, CTJH.053.23001.0004_E_R; 'Data survey summary', 18 January 2017, Case Study 50, CARC.0050.016.0001_R; 'GLW Appointment History', Case Study 50, CTJH.053.91001.0003_R; 'Summary of GLW's Ministry', 5 February 2013, Case Study 50, CCI.0027.00013.0054_R at 0056_R.
538 Exhibit 50-0012, 'Special Issues Allegation Report', 14 January 1994, Case Study 50, CCI.0043.00035.0099_R.
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540 Exhibit 50-0012, 'Special Issues Allegation Report', 14 January 1994, Case Study 50, CCI.0043.00035.0099_R.
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543 Exhibit 50-0012, 'Special Issues Allegation Report', 14 January 1994, Case Study 50, CCI.0043.00035.0099_R.

544 Exhibit 50-0012, 'GLW Appointment History', Case Study 50, CTJH.053.91001.0003_R; 'Special Issues Allegation Report', 14 January 1994, Case Study 50, CCI.0043.00035.0099_R; 'Summary of GLW's Ministry', 5 February 2013, Case Study 50, CCI.0027.00013.0054_R at 0057_R; 'Marist Brothers' response to Royal Commission Letter of Request dated 20 December 2013', 2014, Case Study 50, CTJH.053.23001.0004_E_R.
545 Exhibit 50-0012, 'Special Issues Allegation Report', 14 January 1994, Case Study 50, CCI.0043.00035.0099_R.
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547 Exhibit 50-0012, 'Summary of GLW's Ministry', 5 February 2013, Case Study 50, CCI.0027.00013.0054_R at 0057_R.
548 Exhibit 50-0012, 'Data survey summary', 18 January 2017, Case Study 50, CARC.0050.016.0001_R.
549 Exhibit 50-0012, 'Special Issues Allegation Report', 14 January 1994, Case Study 50, CCI.0043.00035.0099_R.
550 Exhibit 50-0012, 'Further information provided by the Marist Brothers to the Royal Commission', 21 February 2017, Case Study 50, CORR.0647.001.0002_R; 'Special Issues Allegation Report', 14 January 1994, Case Study 50, CCI.0043.00035.0099_R.
551 Exhibit 50-0012, 'Summary of GLW's Ministry', 5 February 2013, Case Study 50, CCI.0027.00013.0054_R at 0057_R; 'GLW Appointment History', Case Study 50, CTJH.053.91001.0003_R.
552 Exhibit 50-0012, 'Email from CCI to Marist Brothers and Attachment', 14 July 2013, Case Study 50, CCI.0027.00013.0051_R, CCI.0027.00013.0052_R.
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555 Exhibit 50-0012, 'Further information provided by the Marist Brothers to the Royal Commission', 21 February 2017, Case Study 50, CORR.0647.001.0002_R.
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558 Exhibit 50-0012, 'Letter from CCI to Provincial Chambers', 18 November 2015, Case Study 50, CCI.0092.00019.0328_R at 0330_R; Exhibit 50-0012, 'Letter from CCI to Father Chambers', 5 April 2013, Case Study 50, CCI.0005.00011.0033_R at 0034_R, 0035_R.
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565 Exhibit 50-0012, 'Salesians appointment history for Klep', Case Study 50, CTJH.057.91001.0003_R; 'Police vs Klep Summary', Case Study 50, CCI.0001.00840.0065_R; 'Summary of information held on Klep', 11 August 2006, Case Study 50, CCI.0092.00019.0123_R at 0123_R.
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568 Exhibit 50-0012, 'Salesians appointment history for Klep', Case Study 50, CTJH.057.91001.0003_R; 'Summary of information held on Klep', 11 August 2006, Case Study 50, CCI.0092.00019.0123_R at 0129_R.
569 Exhibit 50-0012, 'Letter from CCI to Provincial Chambers', 18 November 2015, Case Study 50, CCI.0092.00019.0328_R at 0330_R.
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573 Exhibit 50-0012, 'File note from CCI's lawyers', 24 September 2014, Case Study 50, CCI.0092.00019.0117_R at 0121_R.
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579 Exhibit 50-0012, 'CCI's investigators' interview with Rapson', 22 February 1993, Case Study 50, CCI.0001.00836.0151_R at 0151_R; 'Salesians appointment history for Rapson', Case Study 50, CTJH.057.91001.0001_R; 'Letter from Father Moloney to CCI', 12 June 2008, Case Study 50, CCI.0034.00008.0170_R; 'Data survey summary', 18 January 2017, Case Study 50, CARC.0050.006.0001_R at 0003_R.
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582 Exhibit 50-0012, 'Letter from CCI to Father Chambers', 5 April 2013, Case Study 50, CCI.0005.00011.0033_R at 0035_R.
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586 Exhibit 50-0012, 'Transcript of telephone interview with Father Chambers by CCI's lawyers', 11 April 2012, Case Study 50, CCI.0001.00874.0041_R at 0051_R.
587 Exhibit 50-0012, 'Letter from Father Fox to CCI', 2 December 1992, Case Study 50, CCI.0001.00836.0185_R at 0185_R.
588 Exhibit 50-0012, 'Statement of Father Fox', Case Study 50, CCI.0083.00001.0182_R at 0182–0184_R; CCI has informed the Royal Commission that it confirms that the statement of Father Fox was obtained by CCI's investigators at an interview in 1992 or 1993: Exhibit 50-0012, 'Correspondence on behalf of CCI to the Royal Commission', 10 October 2016, Case Study 50, CORR.0327.001.0001_A_R at 0003_A_R.
589 Exhibit 50-0012, 'Letter from CCI to Father Chambers', 5 April 2013, Case Study 50, CCI.0005.00011.0033_R at 0035_R.
590 Exhibit 50-0012, 'Letter from Father Moloney to CCI', 12 June 2008, Case Study 50, CCI.0034.00008.0170_R; 'Salesians appointment history for Rapson', Case Study 50, CTJH.057.91001.0001_R.
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592 Exhibit 50-0012, 'Statement of Father Fox', Case Study 50, CCI.0083.00001.0182_R at 0185_R, 0186_R; CCI has informed the Royal Commission that it confirms that the statement of Father Fox was obtained by CCI's investigators at an interview in 1992 or 1993: Exhibit 50-0012, 'Correspondence on behalf of CCI to the Royal Commission', 10 October 2016, Case Study 50, CORR.0327.001.0001_A_R at 0003_A_R.
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677 Exhibit 50-0012, 'GMG Chronology', Case Study 50, CCI.0202.00005.0372_R at 0372_R; 'Letter from CCI to Marist Fathers' lawyers', 2 June 2014, Case Study 50, CCI.0202.00005.0336_R at 0337_R.
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698 Exhibit 50-0012, 'Letter from CCI's lawyers to the Vincentian Fathers' lawyers', 13 April 2011, Case Study 50, CCI.0500.00008.0002_R.
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736 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 28: Catholic Church authorities in Ballarat*, Sydney, 2017, s 4.2.
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743 Name changed, private session, 'Kelsey'.
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13.5 Catholic Church responses to alleged perpetrators before the development of national procedures

> We cannot deny the unpalatable truths that have been revealed … vulnerable young people were sexually abused … criminal activity took place, our response was entirely inadequate … [and] leaders failed to take strong, decisive action … Our responses were naïve, uninformed, even callous at times …
>
> What happened in the past should not have occurred. Children should not have been abused by those into whose trust they were willingly placed.[1]
>
> **Brother Peter Carroll, Provincial, Marist Brothers in Australia**

As Chapter 3, 'Child sexual abuse in the global Catholic Church: early history and previous inquiries', and Section 13.4 of this volume demonstrate, leaders of the Catholic Church in Australia as well as in other parts of the world were aware throughout the 20th century of allegations of child sexual abuse by clergy and religious. In our case studies we received considerable evidence about the actions taken by some Catholic Church authorities in responding to the alleged perpetrators of this abuse. Documents we received from Catholic Church Insurance Limited (CCI) relating to their determinations of prior knowledge also provide an indication of the responses taken by Catholic Church authorities in relation to an additional 22 alleged perpetrators.

This section discusses the actions of Catholic Church authorities prior to the development and implementation of national procedures in the 1990s that encouraged greater uniformity in responding to child sexual abuse. The responses of Catholic Church authorities to alleged perpetrators of child sexual abuse during and after the development of national procedures in the 1990s are discussed in further detail in Section 13.8. In Sections 13.6 and 13.9, we consider the responses of Catholic Church authorities to the victims and survivors of child sexual abuse.

Under canon law, dioceses, archdioceses and religious orders are largely autonomous. In addition, prior to the 1990s there were no national and few, if any, internal policies in place that set out the action to be taken by a Catholic Church authority in Australia following receipt of allegations of child sexual abuse or after the relevant bishop or religious superior was satisfied that there had been sexual abuse of a child or children by a particular priest or religious. The combination of these factors resulted in bishops and religious superiors operating independently and in an ad hoc manner in responding to alleged perpetrators of child sexual abuse within their Catholic Church authorities.

It is apparent that there was little collaboration between bishops and religious superiors about the approaches they were taking to alleged perpetrators of child sexual abuse in their own dioceses and religious congregations. During *Case Study 31: The evidence of retired Bishop Geoffrey Robinson regarding the history and development of the Catholic Church's response to child sexual abuse prior to the introduction of Towards Healing (Retired Catholic Bishop Geoffrey Robinson)*, former Auxiliary Bishop of the Archdiocese of Sydney, Bishop Geoffrey Robinson, was asked whether there were discussions between bishops from Victoria and bishops from New South Wales, or relevant archbishops, about how they handled matters of offending priests during the 1980s. He said:

> So different bishops were finding different solutions and probably none of them very good … There could have been discussions, but it could also have been that they just didn't share information, they kept to themselves how they were handling them, and that that [sic] could have reflected a realisation that they were not handling them well.[2]

Reflecting on the nature of the responses adopted by individual Catholic Church authorities, Archbishop Anthony Fisher OP, Archbishop of Sydney, gave evidence during *Case Study 50: Institutional review of Catholic Church authorities (Institutional review of Catholic Church authorities)* that in some cases it was:

> a kind of criminal negligence to deal with some of the problems that were staring us in the face. In other cases, I think there were people that were just like rabbits in the headlights. They just had no idea what to do, and their performance was appalling.[3]

Similarly, Bishop Emeritus of Ballarat, Bishop Peter Connors, said in a written statement that during his time as Vicar General of the Archdiocese of Melbourne (between 1976 and 1987) he did not understand paedophilia and did not have any training to deal with such issues. He acknowledged, however, that 'Neither these factors, nor the absence of guidelines or procedures about how to respond, excuse the failure to take strong and immediate action against abusers'.[4]

Despite the absence of protocols or guidelines requiring a unified approach, in the case studies in which we examined the Catholic Church in Australia we found remarkable similarity in the responses of bishops and religious superiors to alleged perpetrators of child sexual abuse in the decades before the development of national procedures in the 1990s. As well as discussing these responses in this section, we note observations and findings made by other domestic and overseas inquiries about responses to alleged perpetrators in the period before the 1990s which are consistent with our own conclusions.

As noted in Section 13.4, in relation to some case studies, criminal proceedings commenced before, during or after the completion of our evidence and before the finalisation of our case study report. Consequently, in this section we do not refer to our evidence or findings with respect to some alleged perpetrators in some of our case studies. We have also applied redactions to material that might prejudice relevant criminal proceedings.

13.5.1 Common influences on responses to alleged perpetrators

> I think that [the way abusers were managed within the Church] is related to a very misguided idea in the Catholic Church that somehow or other these problems are spiritual in nature and that, if they said their prayers, said their offers and did all the other things that priests are supposed to do, it would all go away. It doesn't … I don't think it was a malicious denial. I think it was a gross ignorance and almost psychological illiteracy.[5]
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> **Dr Peter Evans, psychiatrist and former Franciscan priest**

The actions taken by Catholic Church authorities in responding to the alleged perpetrators we examined in our case studies appear to have been influenced by theological ideas about the priesthood and religious life and about forgiveness, as well as canonical principles and/or cultural attitudes and practices entrenched in the Catholic Church for centuries. These are discussed in further detail in Section 13.11.

Rather than being viewed as criminal offences that should be reported to the police, sexual offences against minors were viewed by some leaders of Catholic Church authorities as isolated moral lapses in behaviour which the perpetrator could confess and then do penance and seek forgiveness. This meant they were viewed as matters which the Catholic Church would deal with 'in-house'. During *Case Study 43: The response of Catholic Church authorities in the Maitland-Newcastle region to allegations of child sexual abuse by clergy and religious*, Bishop Michael Malone of the Diocese of Maitland-Newcastle told us that:

> In the past, as in years ago, I think if a priest offended with regard to anybody, it was regarded as a moral problem, and if he went to confession he'd be forgiven of his sins, he'd do his penance and he would be able to continue on. That's how the moral problem was understood.[6]

In *Case Study 44: The response of the Catholic Dioceses of Armidale and Parramatta to allegations of child sexual abuse against a priest,* Bishop Bede Heather said that in the 1980s, during his time as the Bishop of Parramatta, he knew that child sexual abuse was wrong.[7] However, due to the 'mentality of the time', he did not recognise paedophilia 'as having the gross consequences' that it has.[8] He said further:

> I don't think I understood at the time that paedophilia is a condition that is probably going to be compulsive and repetitive and addictive. I didn't understand the nature of the condition at the time. I guess I was inclined to see it as a moral failing in which this person had been involved and from which this person could, with proper guidance, recover … and the goal of the church's mission would be to help that person, your Honour, to recover from that moral failure.[9]

Bishop Heather was questioned further about his civil law responsibilities to report alleged perpetrators to the police. The following exchange took place between him and the Chair:

> Q. What I think we're getting to is that you only thought in a space which involved the relationship between the priest and God but didn't see the priest's action in terms of the civil law. Is that what it amounts to?
>
> A. Largely I would agree, yes, that I had no formation in the civil law and didn't assess the actions of the clergy or, indeed, of others mainly in relation to the civil law or at all in relation to the civil law. I didn't see that as my role … I didn't have such a clear perception of where the civil law and moral responsibility intersected.
>
> Q. You'll forgive me for saying, Bishop, that what that means is you, in your intellectual framework, left out an understanding of civil society. Do you understand?
>
> A. I understand what you're saying, yes.[10]

There was also a commitment within the Catholic Church to adopting a 'pastoral approach' in dealing with priests and religious accused of child sexual offences, underpinned by provisions in canon law. As discussed in Section 13.11.6, 'Canon law', this was based, in part, on the conception of the relationship between a bishop and his priest, and a religious superior and a religious brother under his authority, as involving a protective bond, akin to the relationship of a father to his son. Bishop Robinson told us that there was 'always this loyalty to priest question that was there'.[11] It appears to us that this framed the responses taken by some Catholic Church authorities to alleged perpetrators of child sexual abuse.

In some cases, this manifested in a fierce loyalty to priests and religious after allegations of child sexual abuse had been made against them. It also meant that the word of alleged perpetrators was accepted over that of children who made complaints against them. In *Case Study 35: Catholic Archdiocese of Melbourne* (*Catholic Archdiocese of Melbourne)*, Bishop Connors, told us that the former Archbishop of Melbourne, Archbishop Thomas Francis Little was 'very slow to accept the fact that a priest was offending'.[12] Similarly Monsignor Thomas Doyle, former director of the Catholic education office in the Archdiocese of Melbourne, when asked his view on why Archbishop Little chose not to act on complaints, said he thought the archbishop had an 'exaggerated respect for the priesthood'[13] and 'found it hard to believe that a priest would do these sorts of things'.[14] When asked whether Archbishop Little's loyalty to priests in the archdiocese blinded him to reality, Monsignor Doyle said, 'I think that's partly the reason'.[15]

Archbishop Little's support for alleged perpetrators does not appear to have been unique. Some bishops and religious leaders within the Catholic Church in Australia were unable to conceive of the possibility that a priest or religious was capable of the sexual abuse of a child. Bishop Malone said in a statement to the faith community in the Diocese of Maitland-Newcastle in 2007, 'Back then the possibility of an adult priest abusing a child sexually was considered too abhorrent for words'.[16] Similarly, Bishop Robinson said:

> I would have to say that large numbers of priests did not respond well to the whole phenomenon of abuse. They tended to be pro-priest and to that extent, at least, anti-victim, but they did tend to be pro-priest and to stick together and to support – and to disbelieve a lot of the accusations. Certainly to believe a priest who said, 'I'm innocent', that I found was quite strong.[17]

Bishop Robinson attributed this partly to wanting to protect what they considered to be the good name and reputation of the Catholic Church, but added that 'it was a more specific thing; it was protecting their brother priests and hence protecting themselves'.[18]

This reluctance to believe that clergy or religious could or would sexually abuse a child was not limited to Catholic Church leaders. In *Case Study 28: Catholic Church authorities in Ballarat (Catholic Church authorities in Ballarat)*, we heard from Associate Conjoint Professor Carolyn Quadrio, Associate Conjoint Professor in Psychiatry, University of New South Wales, and consulting forensic and child and family psychiatrist.[19] Associate Conjoint Professor Quadrio described the period prior to 1991 as 'the dark ages for psychiatry'.[20] She stated that, in her opinion, 'psychiatry was just as much in the dark as the general community, assuming that it [child sexual abuse] did not happen in religious organisations and so forth'.[21] Psychiatrist and former Franciscan priest, Dr Peter Evans, agreed with this characterisation, though he believed that the timing of the shift in this view would have been closer to the mid-1980s.[22]

In some cases, responses to alleged perpetrators were motivated by a desire to protect the reputation of the Catholic Church, and were characterised by a preoccupation with minimising or managing the risk of public scandal. As discussed in Section 13.2, 'Canon law provisions relevant to responding to child sexual abuse', the Catholic Church's internal system of law, has historically contained references to the importance of preventing or repairing 'scandal', including in relation to the actions taken by bishops and religious superiors in responding to priests and religious within their dioceses, archdioceses or religious congregations.

During *Case Study 8: Mr John Ellis's experience of the Towards Healing process and civil litigation (Mr John Ellis, Towards Healing and civil litigation)*, Monsignor John Usher, chancellor of the Catholic Archdiocese of Sydney, said:

> I suspect you've seen this in many institutions, that the need to protect the good name of the institution is a very strong motivation for people who are in charge of large institutions, or even small institutions, and when one of their number commits a crime that is going to bring the reputation of that institution into disrepute, I don't know, it's almost predictable that people will try to defend the institution before they give care to a victim. I don't know why. I can't tell you why that happens. I just see it happen.[23]

A common approach by Catholic Church authorities was to attempt to keep matters involving offending priests and religious out of the public gaze. The following exchange took place between Senior Counsel Assisting and Bishop Connors during the *Catholic Archdiocese of Melbourne* public hearing:

> Q. You shared the culture of keeping things in-house and private as one could when there were allegations of sexual misconduct against children; is that what you're saying?
>
> A. I would accept that was almost certainly the way that I was approaching those kind of accusations.[24]

Bishop Connors could not recall any priests of the Roman Curia or other advisory bodies expressing a contrary view prior to the developments nationally in the late 1980s. He accepted that the priority of the Catholic Church was to do whatever it could to avoid scandal.[25]

Archbishop Denis Hart of the Archdiocese of Melbourne, told us that the mentality within the Catholic Church in the past was to keep matters in-house but that it was no longer the mentality today.[26]

Similarly, in a radio interview in 1996, Bishop Malone said, 'There was, I think, in the mind of the Church then a sense where it's best to cover-up the scandal and the risk of scandal, rather than just publicise everything'.[27] In relation to this interview, Bishop Malone told us that there was a sense that 'we needed to come to the defence of the Church' but that, as his time in the diocese progressed, he had an epiphany whereby he chose to serve the needs of survivors rather than protect the Catholic Church. Asked why that was ever a choice, he said 'loyalty to the Church goes very deeply'.[28]

In discussing the context of concealment of abuse within the Catholic Church, Archbishop Fisher told us:

> I think there was a lack of empathy, too, often. People didn't – it is not just that they didn't understand intellectually; they didn't feel the pain that was being caused and the long-term pain. And part of both of those was a self-protectiveness on the part of the institution, that you didn't want scandal, you didn't want causes for people to think less of the clergy or the bishops or religious, of the institution. And so you might say things were staring us in the face, but it seemed to me people wouldn't see it because they just wanted to protect the name or the institution very often …
>
> when I say there is ignorance, I don't mean that people didn't know it was evil, that it was a terrible sin and a crime – they knew that full well and that's part of, as you say, why they covered it up when it happened.[29]

13.5.2 Reporting to police

> Oftentimes we hear the phrase, 'Don't do this, don't report it for the good of the Church', or the policeman who arrests a priest says, 'I'm going to take him back to the rectory for the good of the Church', or victims are told, 'Don't say anything about this for the good of the Church', or the excuse, 'We have kept it under, we have hidden it, we've shuffled men around for the good of the Church' – who is 'the Church'? That is heresy, because 'the Church', according to the official teaching of the Second Vatican Council, is the people of God, all of the people of God, including the victims and their mothers and fathers … [30]
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> **Dr Thomas P Doyle OP, American Dominican priest, canon lawyer and survivor advocate**

We received no evidence in our case studies that Catholic Church authorities reported allegations of child sexual abuse to the police in the period before the development of national procedures. This is consistent with the attitude discussed above that such matters should be dealt with internally to avoid scandal. The potential influence of canon law on reporting to police is discussed further in Section 13.11.6.

Bishop Robinson told us that he understood that during the 1960s and 1970s a senior priest in the Archdiocese of Sydney named Monsignor Tom Wallace worked with the police to 'get rid of the problem' of priests and religious against whom allegations of physical, and possibly sexual, abuse had been made.[31] When asked by Senior Counsel Assisting what the 'policy purpose' behind such an arrangement might have been, Bishop Robinson said that:

> It was all part of, you know, what one hears was the policy at the time, that it was not good for the community that so-called pillars of the community should be held up as morally corrupt, and my understanding was always that this applied not solely to Catholic priests; it applied to members of clergy of all denominations; it applied to judges, magistrates, senior politicians, senior public servants, such people, senior police; and that it was – such cases were handled quietly. The people weren't publicly arrested. They were threatened and they were somehow removed. You know, sometimes one hears of cases where people weren't removed, but it seemed to be a general policy in Australian society. How far back it goes, I couldn't tell you.[32]

We saw evidence of the failure to report allegations to police and its disastrous consequences in *Case Study 13: The response of the Marist Brothers to allegations of child sexual abuse against Brothers Kostka Chute and Gregory Sutton (Marist Brothers)*, in which we found that the Marist Brothers did not report any allegations of child sexual abuse concerning Brother John (Kostka) Chute to the police in the period between 1962 and 1993.[33] As discussed in Section 13.4, in 1962 the community superior of the Marist Brothers community in Bondi, Brother Des Phillips, knew that Brother Chute had admitted to sexually abusing victim AAI but did not report it to the

provincial or to the police.[34] In 1969, Brother Othmar Weldon, provincial from 1964 to 1972, and provincial council member Brother Alman Dwyer knew that Brother Chute had admitted to touching a child at St Joseph's School, Lismore, but did not report this to the police.[35] In 1986 the headmaster of Marist College Canberra, Brother Terrence Heinrich, received an allegation that Brother Chute had touched victim ACK's penis in the dark during a film night at the school. Brother Heinrich did not report the incident to the police. In March 2009 he told lawyers and representatives from CCI that he had explained to ACK's parents at the time that it was their right to do whatever they saw fit and that 'one of the options would be to take it directly to the police'. At this interview he said he regretted the fact that his attempts to manage and deal with the complaint 'came at a cost of acting self-protectively' even though that was not his intention.[36]

In the same interview, Brother Heinrich said that he did not consider reporting the matter to the police because 'in those days it wasn't the way we went about dealing with these sorts of things'. He said that such matters were managed 'privately, internally … and [he] would rarely have ventured into talking to the police about something as intimate as concerning a brother'. During the public hearing, Brother Heinrich said that at the time, he did not regard indecent touching as the sort of matter that he would have taken to the police; rather, it was something he would (and did) report to the provincial. He said that even if the allegation had amounted to compelling evidence of rape or buggery he would have taken it first to the provincial with a request for him to take it to the police.[37]

In 2008, Brother Chute was convicted of 19 sexual offences involving six children he taught at Marist College Canberra. After his removal from teaching in 1993, the Marist Brothers received complaints from 48 of Brother Chute's former students alleging that Brother Chute had sexually abused them when they were children.[38] Of those, 43 alleged sexual abuse by Brother Chute in the years after the Marist Brothers first had knowledge of Brother Chute admitting to sexually abusing a child in 1962 (as discussed above).[39] During the public hearing, the Marist Brothers acknowledged that 'It is today a source of great regret … that Brother Chute's conduct was not reported to the police much earlier' so that later instances of abuse would not have occurred.[40] The response of the Marist Brothers to allegations of abuse involving Brother Chute in the early 1990s is discussed further in Section 13.8.

During the *Catholic Archdiocese of Melbourne* hearing, Bishop Peter Connors was asked about the approach of the archdiocese to complaints of child sexual abuse in the mid-1980s. He said that he 'almost certainly' approached complaints with a view of keeping them 'in house' and 'private', and accepted that this was the mentality in the Catholic Church at the time.[41] Similarly, Bishop Hilton Deakin, Bishop Emeritus and former Vicar General and Auxiliary Bishop of the Archdiocese of Melbourne, was asked whether he could have gone to the police with his concerns about Father Peter Searson in the early 1990s. He responded in the following way:

A. No. I mean, I could have, I could have done lots of, thousands of things, but I wouldn't have gone to the police.

Q. That's a different answer to the question; you could have, whether you did or not and whether you thought you should, is a different question.

A. I see.

Q. You accept that?

A. I accept the difference, but I wouldn't have gone to the police, I'm leaving it at that.

He later said that reporting to police was 'not part of the agenda'. We were satisfied that there was a prevailing culture within the Archdiocese of Melbourne, led by Archbishop Frank Little, of dealing with complaints internally and confidentially to avoid scandal to the Catholic Church.[42]

This practice within the Catholic Church of not reporting allegations of child sexual abuse to the police, and the preference for dealing with these allegations 'in-house', has also been observed by other inquiries, both overseas and in Australia.

In Canada, the Special Commission of Enquiry into Sexual Abuse of Children by Members of the Clergy established by the Archdiocese of St John's examined the cases of seven priests accused of child sexual abuse within the archdiocese. The Commission concluded in its 1990 report (*The report of the Archdiocesan Commission of Enquiry into the Sexual Abuse of Children by Members of the Clergy* (the Winter report)) that the archdiocese was aware of allegations of child sexual abuse by members of the clergy as early as 1975. Among other things, it found that:

> The Church administration in the Archdiocese chose to deny the abuses and discount the victims' disclosures of criminal activity. Rather than reporting the allegations to civil authorities, the Archdiocese administration chose to accept repeated denials of the allegations and allowed the abuses to continue.[43]

Similarly, in the United States in 2003, a public inquiry established by the Attorney General of Massachusetts to investigate allegations of child sexual abuse by priests of the Archdiocese of Boston stated in its report (*The sexual abuse of children in the Roman Catholic Archdiocese of Boston: A report by the Attorney General* (the Massachusetts report)) that:

> Throughout the decades that the Archdiocese was dealing with a large and growing problem of clergy sexual abuse of children, it steadfastly maintained a practice of not reporting allegations of sexual abuse of children to law enforcement or child protection authorities. This practice continued even … when the Archdiocese was dealing with priests who continued to abuse children after unsuccessful intervention by the Archdiocese.[44]

The report by the attorney general set out a number of reasons provided by personnel of the archdiocese during the course of the inquiry to explain the lack of reporting to civil authorities. This included a belief that canon law prohibited reporting in most instances, a concern about the impact of reporting on the reputation and wellbeing of the alleged perpetrator, and a belief that reporting child sexual abuse by members of the clergy would cause scandal and that the resulting publicity would harm the reputation of the Catholic Church.[45]

In 2004 the National Review Board for the Protection of Children and Young People established by the United States Conference of Catholic Bishops (USCCB) reported that over the preceding 50 years:

> time and again Church leaders failed to report incidents of possible criminal activity to the civil authorities … But it is clear in hindsight that the Church could have prevented numerous acts of sexual abuse had its leaders reported all allegations of sexual abuse by priests to the civil authorities. Where the evidence warranted, offenders could have been prosecuted and punished before they were able to perpetuate their misconduct; and by their example, other priests could have been deterred from engaging in similar misconduct.[46]

An inquiry into the Diocese of Ferns in Ireland was established by the Irish Minister of Health and Children in 2002 to investigate the response of Catholic Church authorities within the diocese to over 100 allegations of child sexual abuse involving 21 priests between 1962 and 2002. Its report (the Ferns report), published in 2005, stated that before 1990 the Bishop of Ferns did not report any allegations of child sexual abuse to the police or other civil authorities.[47]

Another inquiry was established by the Irish Government in 2000 to investigate the abuse of children in institutions run by religious organisations for the state between 1940 and 1999. Its report (*Final report of the Commission into Child Abuse* (the Ryan report)), published in 2009, made the following comment about sexual abuse in institutions run by a number of Catholic religious orders:

> Cases of sexual abuse were managed with a view to minimising the risk of public disclosure and consequent damage to the institution and the Congregation. This policy resulted in the protection of the perpetrator … When a member of a Congregation was found to be abusing, it was dealt with internally and was not reported to the Gardaí [police]. The damage to the children affected and the danger to others were disregarded …
>
> The desire to protect the reputation of the Congregation and institution was paramount. Congregations asserted that knowledge of sexual abuse was not available in society at the time and that it was seen as a moral failing on the part of the Brother or priest. This assertion, however, ignores the fact that sexual abuse of children was a criminal offence.[48]

A third inquiry, the Commission of Investigation into the Catholic Archdiocese of Dublin, was established by the Irish Government in 2006 to investigate the handling of allegations and suspicions of child sexual abuse against diocesan clergy by the Catholic Church and state authorities from 1975 to 2004. In its report (*The Commission of Investigation report into the Catholic Archdiocese of Dublin* (the Murphy report)), published in 2009, the commission found that none of the four archbishops of Dublin who held office during this period reported their knowledge of child sexual abuse to the police throughout the 1960s, 1970s and 1980s.[49] The commission concluded that:

> The Dublin Archdiocese's pre-occupations in dealing with cases of child sexual abuse, at least until the mid 1990s, were the maintenance of secrecy, the avoidance of scandal, the protection of the reputation of the Church, and the preservation of its assets. All other considerations, including the welfare of children and justice for victims, were subordinated to these priorities. The Archdiocese did not implement its own canon law rules and did its best to avoid any application of the law of the State.[50]

In the Netherlands, the Commission of Inquiry into Sexual Abuse of Minors in the Roman Catholic Church (the Deetman inquiry), set up by the Catholic Church to investigate the sexual abuse of children, examined a number of cases involving child sexual abuse in the Catholic Church from 1945 to 2010. It reported in 2011 that within the Dioceses of Haarlem and Rotterdam:

> It is a fact that, once abuse had been discovered, bishops did not go to the police but instead tried to resolve the matter internally … The attitude of the earlier bishops in particular was no doubt due partly to the role laid down for them historically and under canon law, in which they watched over the fortunes of their priests like a father or shepherd.[51]

It made similar observations about the Society of Jesus, and reported that 'There is no known case in which the order itself reported (suspected) sexual abuse to the police or judicial authorities. Not until 2002 did the leadership even consider the legal requirement to do so'.[52] It concluded that across Catholic Church authorities in the Netherlands:

> Reporting cases to the police was not part of the administrative repertoire of either the bishops or the higher superiors. This was left to the victims and their parents, and – we should make it clear – they were certainly not encouraged to do so … Any steps taken against perpetrators primarily took the form of internal measures: they were transferred, given early retirement or (temporarily) suspended from duty.[53]

These attitudes are also reflected in the findings of previous inquiries into the Catholic Church in Australia. In 1997 the Royal Commission into the New South Wales Police Service (the Wood Royal Commission) investigated the actions of a number of different Christian churches in New South Wales. It found that 'On the whole, Churches have been reluctant to report allegations of sexual abuse to the police, or to refer them into the criminal justice system. The preferred approach has been to deal with the issue within the Church'.[54] It further noted that, prior to the early 1990s:

> almost universally, allegations of abuse of this kind had been dealt with in-house, sometimes by quiet transfer of the offender interstate, overseas or to a position away from the public, and in other cases by disbelief, denial or exhortation to forget the incident, for the greater good of the Church.[55]

In 2012 the Special Commission of Inquiry into Matters Relating to the Police Investigation of Certain Child Sexual Abuse Allegations in the Catholic Diocese of Maitland-Newcastle (the Special Commission of Inquiry) was established by the New South Wales government to report on, among other things, whether the Catholic Church had facilitated or hindered investigations into child sexual abuse by clergy. It focused on the response of Catholic Church officials to allegations of child sexual abuse involving two priests of the Diocese of Maitland-Newcastle, Father Denis McAlinden and Father James Fletcher. In its 2014 report, the Special Commission of Inquiry stated:

> A substantial body of evidence before the Commission confirmed that senior Diocesan officials were aware at various times of reports or complaints that McAlinden had sexually abused children, the first instance of reported abuse occurring in 1954 and involving victim AE. It took more than 40 years, however, for the Diocese to report to police any aspect of McAlinden's offending history (such reporting ultimately occurring through [Bishop] Malone in August 1999). The evidence reveals a disturbing story of repeated inaction and failure on the part of church officials to report McAlinden to police.[56]

The Special Commission of Inquiry also reported on the response of the former Bishop of Maitland-Newcastle, Bishop Leo Clarke. It found that, throughout his 20 years as bishop, 'Clarke failed to report McAlinden to the police or to any church outsiders. A motivating factor in this failure was concern that such reporting would bring scandal to the Church'.[57]

The Catholic Church in Australia has acknowledged that children could have been protected from abuse had it taken action, including reporting to the police. In a joint commitment statement issued in September 2013, Catholic Church leaders said:

> The Church is also ashamed to acknowledge that, in some cases, those in positions of authority concealed or covered up what they knew of the facts, moved perpetrators to another place, thereby enabling them to offend again, or failed to report matters to the police when they should have. That behaviour too is indefensible.[58]

13.5.3 Continued ministry with access to children

> I still remain absolutely unable to understand how a bishop knowing about child sexual abuse could not immediately do whatever had to be done to protect children. We can talk about forgiveness and balancing it with retribution and all those things. What we are talking about with clerical child sexual abuse is an abuser on the loose, who is able to in fact abuse children anywhere.[59]
>
> **Mr Peter Johnstone OAM, President, Catholics for Renewal**

In many of our case studies, we found that alleged perpetrators of child sexual abuse continued in active ministry with access to children after Catholic Church authorities knew that allegations of child sexual abuse had been made against them. This occurred in situations where bishops and religious superiors took no action against alleged perpetrators in response to allegations of child sexual abuse, as well as in cases where alleged perpetrators were transferred to positions in ministry in other locations. In some cases alleged perpetrators were given a canonical warning following allegations of child sexual abuse.

Continued ministry in the same place

It is apparent that some bishops and superiors of religious congregations in Australia allowed alleged perpetrators to remain in the same positions and locations for an extended period of time after concerns of child sexual abuse had been raised.

In the *Marist Brothers* case study, we heard that successive provincials of the Marist Brothers permitted Brother Chute to continue teaching children at Marist College Canberra between 1976 and 1993. This was after Brother Chute had admitted to child sexual abuse in 1962 and had been given a canonical warning in 1969, and after the provincial at the time, Brother Alman Dwyer, received allegations about Brother Chute in 1986.[60] Brother Chute was eventually removed from the school in December 1993, after the provincial at the time, Brother Alexis Turton, received two complaints alleging child sexual abuse.[61]

In the *Catholic Archdiocese of Melbourne* case study, we considered the case of Father Peter Searson, who was the parish priest of Doveton parish in Melbourne for more than 13 years. Father Searson was the subject of many complaints over the years, mostly in relation to his conduct in the parishes of Doveton and Sunbury. In addition to complaints of child sexual abuse, other complaints were made about his unpleasant, strange, aggressive and violent conduct.[62] The complaints about Father Searson continued into the 1990s, after the development of national procedures. The response to the later complaints is discussed further in Section 13.8.

In 1986 the complaints against Father Searson at Doveton were collated in a note prepared by or for Archbishop Little. The note included reference to an allegation that Father Searson had pointed a handgun at a child, and that 'many [will] not allow children to be alone with parish priest'. Bishop Deakin described the document as 'a first class document for putting the bloke out the back door'.[63]

We found that the information that was contained in the document was sufficient to signal to any reasonable reader that Father Searson was an unstable and dangerous person who posed a risk to the community and ought to be removed from his position as a parish priest. By not removing Father Searson, Archbishop Little abjectly failed to protect the safety and wellbeing of the children within the parish.[64]

A number of further complaints were made about Father Searson at Doveton between 1987 and 1989. We found that the Catholic education office (CEO) was informed by a teacher of a further allegation that Father Searson had held a gun at a boy, and Archbishop Little and the vicar general knew of allegations of physical assault and animal cruelty in front of young children. We found that the archbishop did nothing.[65]

We found that by October 1986 the complaints that Archbishop Little was aware of in relation to Father Searson's conduct with children were sufficient for any reasonable person to form the view that he ought to be removed from parish ministry. Archbishop Little did not take that action. Instead, he chose to do nothing. In doing nothing, he failed to protect the children of the parish and the Holy Family School.[69]

At any time from October 1986 onwards, Archbishop Little or someone assisting him could have gathered together the information that was available about Father Searson within the records of the archdiocese and the CEO and within the minds of the vicars general and auxiliary bishops. The information revealed by such a process should have indicated to any reasonable person that there was compelling evidence that Father Searson had engaged in sexual misconduct with children and that he should be suspended from parish duties, and that canonical action should be initiated to remove him permanently from the priesthood and report him to police.[70]

We found that each occasion after October 1986 when complaints were made against Father Searson to Catholic Church personnel was a missed opportunity for action by Archbishop Little. The consequence of his inaction was that children were left at risk of harm, including sexual harm, by Father Searson. At no point before 1996 had there been any proper investigation of the numerous allegations against Father Searson.[71]

BVC told us that he was sexually abused by Father Searson beginning in around the middle of 1992. He was then in Grade 5 at Holy Family School. If Father Searson had been removed before 1992, BVC may not have been abused.[72] The fact that Father Searson remained in a position of authority as a parish priest – a position he exploited to abuse BVC – is directly attributable to Archbishop Little's ongoing failure to take action against Father Searson.[73]

The case of Father Searson is remarkable in terms of the volume of complaints against him and the number of Catholic Church personnel to whom they were made. This was not a story of serious but isolated allegations being reported only to the archbishop or vicar general. Rather, Father Searson enjoyed a level of infamy within the parish and, according to some witnesses, within other parts of the archdiocese. While only the archbishop had the authority to remove Father Searson from ministry, we said in our case study report that it is extraordinary that there was such a long period of inaction given the number of individual Catholic Church personnel with knowledge of complaints against Father Searson.[74]

In *Case Study 4: The experiences of four survivors with the Towards Healing process (The Towards Healing process)*, we heard evidence about Marist Brother Ross Murrin, who sexually abused DK in late 1980 or early 1981 in a dormitory at the Marist Brothers St Augustine's College, Cairns.[75] We found that Brother Gerald Burns, then principal of St Augustine's, received complaints from two male students in 1981 that Brother Murrin had inappropriately touched them. We found that Brother Burns spoke to Brother Murrin about these complaints, and that Brother Murrin admitted that he had inappropriately touched the boys. Brother Burns informed the provincial of the Marist Brothers about the complaints, but did not remove Brother Murrin

from his position as dormitory master and did not remove the complainants from his dormitory. We found that different protective steps should have been taken when Brother Burns received the two complaints and that, if such steps had been taken by the Marist Brothers, Brother Murrin's subsequent offending may have been avoided.[76]

In another case, GFE, a former student of a Salesian school in Victoria, told a psychiatrist in 2003 that when he was at the Salesian school in late 1987 he told the deputy principal and Father Julian Fox, who was then the principal of the school, that he had been sexually abused by Father David Rapson.[77] At the time, Father Rapson was the religious education coordinator at the school.[78] CCI determined that the Salesians of Don Bosco had knowledge of Father Rapson's propensity to offend in January 1988, based on Father Fox's knowledge of that complaint at the time he became provincial in 1988.[79] Father Fox told CCI that the student 'made some sort of allegation of improper conduct on Fr. Rapson's part … I didn't take a great deal of notice at the time'.[80] In January 1988, Father Fox was elevated to the position of provincial.[81] In 2013, CCI told the provincial at the time, Father Gregory Chambers:

> Accordingly, when he became Provincial in January 1988, Fr Fox had this knowledge in his mind concerning David Rapson, and was clearly on notice of the [GFE] complaint … In these circumstances, CCI has come to the view that, from January 1988 onwards, the Salesians (by their Provincial, Fr Julian Fox) had a basis for concern that future wrongful sexual act[s] might be committed by David Rapson, but nevertheless allowed him to remain in his position and interact with young boys at the school.[82]

In addition, Father Rapson was appointed to a more senior position as deputy principal of the Salesian school in Victoria in 1988.[83] In a 1992 letter to CCI, Father Fox wrote:

> I had had no other complaint in the meantime [since the complaint in 1987]. Indeed, Fr. Rapson's general competence had induced me to offer him the deputy's job in place of the REC [Religious Education Coordinator].[84]

In 1989 the same student, GFE, made another complaint to Father Fox about Father Rapson. In a statement obtained by CCI's investigators, Father Fox said:

> In 1989 I was Provincial and [GFE] and his parents came to see me … the nature of the allegation at this time was far more specific … it was an allegation of oral sex.[85]

Father Fox said he confronted Father Rapson, who 'said that something may have happened and I took this back to the family'.[86] Father Fox also said that he suggested to Father Rapson that he attend counselling, but 'did not make any effort to get any information from the Counsellor'.[87] In a 1992 file note, Father Fox wrote:

> At that time, I saw no need to take the matter further; was not clear about an appropriate process, either, and felt that the issue had been responded to in terms of the family at that time, and my own assurances that there was not an ongoing problem.[88]

Father Rapson remained at the Salesian school in Victoria until a complaint was made by another student in April 1992.[89] Father Fox's file notes made in 1992 said, 'This most recent allegation corroborates the first … It points to the existence of a serious situation which I believe now must be acted upon in an appropriate manner'.[90] Father Fox told CCI that he did not remove Father Rapson previously because:

> I had not been fully convinced that something had happened which warranted his removal. The moment at which I became certain of this was in April [1992] ... At that point I removed him immediately.[91]

Over a series of criminal trials in 1992, 1993 and 2015, Father Rapson was convicted of multiple offences relating to child sexual abuse and sentenced to several years in prison. In 2015, he was convicted of offences which occurred over the period 1975 to 1990. These offences included five counts of rape and one count of indecent assault in relation to two complainants which occurred between 1988 and 1990.[92]

Media reports indicate that Father Fox was himself convicted in 2015 of historical child sexual offences.[93]

Transfers

The removal of priests and religious from locations where allegations of child sexual abuse arose, and their transfer to new locations, was one of the most common responses taken by the Catholic Church authorities we examined, prior to the development of national procedures in the 1990s. Transfers of alleged perpetrators following allegations or admissions of child sexual abuse should be distinguished from the movement of priests and religious into different positions as part of the usual management practice of Catholic Church authorities. The frequency of these routine types of movements and internal transfers differed depending on the particular Catholic Church authority. In the *Marist Brothers* public hearing, the Marist Brothers told us that 'it is typical for [Brothers] to move through many communities and ministries in their lifetime'.[94] During the 1960s and 1970s, for example, there were regularly up to 100 transfers each year.[95]

In our case studies, we found that some alleged perpetrators were moved to different schools, parishes or other positions where they continued roles in active ministry with access to children following allegations of child sexual abuse, including:

- Father Searson (Archdiocese of Melbourne)
- Father Wilfred Baker (Archdiocese of Melbourne)
- Father Gerald Ridsdale (Diocese of Ballarat)
- Monsignor John Day (Diocese of Ballarat)
- Brother Gerald Leo Fitzgerald (Christian Brothers)
- Brother BWX (Christian Brothers)
- Brother Edward Dowlan (Christian Brothers)
- Brother Columbanus Beedon (Christian Brothers).

In addition, documents provided by CCI indicate that the following alleged perpetrators were among those appointed to different locations after the date at which CCI determined that Catholic Church authorities had knowledge of their propensity to offend:

- Brother Rex Elmer (Christian Brothers)
- Brother David Johnson (Christian Brothers)
- Brother GLX (Christian Brothers)
- Father Robert Flaherty (Archdiocese of Sydney)
- Father Charles Alfred Barnett (Vincentian Fathers)
- Father GMG (Marist Fathers)
- Brother Keith Farrell (Marist Brothers)

We have found that some alleged perpetrators were transferred multiple times following new and successive allegations of child sexual abuse. In most of the cases discussed below, further allegations of child sexual abuse arose following such transfers. Some alleged perpetrators subsequently faced criminal charges and some were later convicted of child sexual offences that occurred after they were transferred to new locations.

As discussed in Section 13.2, provisions in the 1917 Code of Canon Law envisaged the transfer of both priests and religious to another parish or religious community in certain circumstances. Similarly, the 1922 instruction *Crimen sollicitationis* contemplated that priests convicted in a canonical court in relation to solicitation, homosexual behaviour, bestiality or child sexual abuse could be transferred to another location to avoid scandal. The 1983 Code of Canon Law also provides for the possibility of removing a parish priest when his ministry has become 'harmful' for any reason, or at least ineffective, and for his assignment to another post.[96]

In the *Catholic Church authorities in Ballarat* case study, we received evidence that in 1931, while Brother Fitzgerald, a Christian Brother, was working at St Augustine's Orphanage in Geelong, the visitor to the community described him as a 'nerve case' who 'requires special handling' following a supervisory visit. The visitor suggested 'a change to a large community at Xmas and keep him away from branch schools'. Brother Fitzgerald was moved to Warrnambool the following year, in the south of the Diocese of Ballarat.[97]

In 1943, Brother Fitzgerald was made a probation officer for Catholic Delinquent Boys, and was moved to live at St Vincent's Orphanage in South Melbourne. By 1950, the provincial was aware of specific concerns about Brother Fitzgerald's conduct around boys. The provincial made a direction that Brother Fitzgerald was to have nothing to do with the boys, and in no circumstances was he to take on any form of supervision.[98]

Despite the direction, Brother Fitzgerald was discovered in a dormitory looking after the boys. It was reported to the provincial that he had allowed one or more boys to enter his room and had kissed a boy. The provincial allowed Brother Fitzgerald to remain at St Vincent's Orphanage until the following year, when he was moved to Albert Park. He continued to work there as a probationary officer with access to children.[99]

In 1973, Brother BWX, a Christian Brother, was transferred from St Patrick's College in Ballarat by the provincial, Brother Chanel Naughtin. We found that the transfer was as a direct result of Brother BWX's admission that he had sexually abused two boarders at the school. He was given another teaching appointment, this time at St Kevin's College in Toorak as the school sports master.[100]

At the end of 1988, Brother Dowlan, a Christian Brother, most likely following reports about his conduct at Cathedral College in East Melbourne and St Augustine's, was transferred by the Christian Brothers from St Mary's Technical College in Geelong to the role of principal at St Vincent's Special School in South Melbourne. We found that by this time Brother Francis Chappell and at least three of the four members of the provincial council suspected or knew of allegations of Brother Dowlan's sexual behaviour towards children.[101]

In late 1975, a policeman came to see the Bishop of Ballarat, Bishop Ronald Mulkearns, and gave him a statement from at least one boy in Inglewood that Father Ridsdale had indecently assaulted him. We found in the *Catholic Church authorities in Ballarat* case study that by late 1975 Father Ridsdale had admitted to Bishop Mulkearns that he had offended against children at Inglewood. Bishop Mulkearns removed Father Ridsdale from the parish, and gave him a temporary appointment to the Parish of Bungaree.[102]

When Bishop Mulkearns was informed of further allegations about Father Ridsdale in 1982 at Mortlake, he also removed him from that parish. We found that Bishop Mulkearns then negotiated an appointment for Father Ridsdale at the Catholic Enquiry Centre in the Archdiocese of Sydney.[103]

Father Ridsdale was asked to leave the Catholic Enquiry Centre in 1986 after he had a young boy or teenager stay the night. When he returned to the Diocese of Ballarat Bishop Mulkearns gave him an appointment at Horsham parish.[104] After complaints about Father Ridsdale emerged while he was at Horsham parish, Bishop Mulkearns asked or required him to resign.[105]

In *Case Study 11: Congregation of Christian Brothers in Western Australia response to child sexual abuse at Castledare Junior Orphanage, St Vincent's Orphanage Clontarf, St Mary's Agricultural School Tardun and Bindoon Farm School (Christian Brothers)*, we heard that, in 1953, the assistant superior general, Brother Leo Duffy, sent a letter to the provincial of the St Patrick's Province, Brother TB Garvey, about allegations against the brother superior of Launceston, Brother Marcian Quaine. The letter concerned Brother Quaine's time at Christian Brothers College in Melbourne and an allegation that he put his hands on the private parts of one or more of the boys.[106] Brother Duffy stated that:

> If he is still being troubled in the same way, he will need a pretty straight talk. If he has gone astray in the matter in Launceston, you will have to consider transferring him … I have good reason to believe that it happened, and that kind of weakness does not easily die … [107]

Between March 1971 and December 1972, Father Robert Flaherty was an assistant priest at a parish in the Archdiocese of Sydney.[108] In November 1972, Archbishop of Sydney, Archbishop James Freeman, received correspondence from a father who said his son had been sexually abused by Father Flaherty.[109] The father wrote:

> My 15-year-old son … has made serious allegations to me concerning the conduct of Father R. Flaherty … [My son] has stated that he has been sexually assaulted on three occasions by this priest … according to my son, an act of gross indecency took place in Father Flaherty's motor vehicle. The second occasion, it should be noted, took place while my son was seeking advice from Father Flaherty in his priestly capacity.[110]

Following this, on 19 December 1972, Archbishop Freeman wrote to Father Flaherty appointing him to the position of assistant priest at a different location in Sydney from 29 December 1972. In his letter, Archbishop Freeman wrote to Father Flaherty, 'While wishing you every Blessing in your new Apostolate, I thank you for the work already performed by you in your present appointment'.[111] Two people made claims to the Archdiocese of Sydney, in 1996 and 2015 respectively, that they were sexually abused by Father Flaherty between 1977 and 1981.[112] CCI determined that the Archdiocese of Sydney had knowledge of Father Flaherty's propensity to offend by 29 November 1972, based on this correspondence and his transfer.[113]

For periods between February 1978 and December 1983, Father Charles Alfred Barnett, a priest of the Congregation of the Mission (Vincentian Fathers) was loaned to the Diocese of Port Pirie in South Australia. He worked as a priest in various parishes in the Diocese of Port Pirie from February 1978 to February 1979, and again from January 1980 to December 1983.[114] CCI determined in 2011 that the Vincentian Fathers had knowledge in late 1983 of Father Barnett's

propensity to offend, on the basis that the Provincial of the Vincentian Fathers, Father Gerald Scott, had '"prior knowledge" of seriously inappropriate sexual behaviour by Father Barnett with young boys in the Diocese of Port Pirie during late 1983'.[115]

From January 1984 to January 1986, Father Barnett worked as a chaplain in the Royal Australian Navy.[116] During this period he was on loan from the Vincentian Fathers to the Catholic Military Ordinariate of Australia.[117] Father Barnett continued in ministry between 1986 and 1992, including as a priest in the Diocese of Parramatta while on loan to the diocese, as a manager at a Catholic institution in New South Wales, as a chaplain in the Australian Army, and undertaking supply work at a parish in Queensland.[118] In a 2011 interview, Father Scott said that when Father Barnett left the Diocese of Port Pirie:

> I did not take him on specifically with the issue of homosexual behaviour with children. I am pretty sure of that and I am sorry about that but my realisation at the time was that when he was with other official bodies, then he was under their jurisdiction, especially in the armed services and that they would be taking their own steps in order to deal with the problem … Now he would have had approval of course to go into the army or whatever armed service it was … He would not have been accepted without the Provincial's approval. So somewhere along the line I would presume that I must have given approval to join the armed services and once you did that, especially the armed services, I left his behaviour or whatever in their hands.[119]

Rationales for transfers

In some cases, transfers were undertaken as a form of risk mitigation, based on the belief that there would be fewer opportunities for alleged perpetrators to be alone with children in their new locations and that the risk of offending would therefore be reduced.

As noted above, in 1982, when Bishop Mulkearns removed Father Ridsdale from Mortlake parish, he negotiated an appointment for him at the Catholic Enquiry Centre in the Archdiocese of Sydney. In the *Catholic Church authorities in Ballarat* case study we found that the need to 'negotiate' an appointment in Sydney, outside the diocese and not in a parish, made plain that the context was to remove Father Ridsdale both from the diocese and from parish work. We were satisfied that Bishop Mulkearns wanted to remove Father Ridsdale from the diocese, and preferably from access to children, to avoid further complaints and public scrutiny. It had the effect of protecting Father Ridsdale.[120] We discuss this further below. Father Ridsdale remained out of the state of Victoria and the Diocese of Ballarat for four years.[121] During his time at the Catholic Enquiry Centre, Ridsdale told us, he continued to sexually abuse children.[122] In 1989, Bishop Mulkearns considered that a parish placement for Father Ridsdale was 'too risky' and that he would 'sound out some possibilities' with other bishops. He noted the difficulty of asking another bishop to take on that responsibility. Bishop Mulkearns instead sent Father Ridsdale to the United States for treatment.[123] We discuss this further in Section 13.8.

In the *Christian Brothers* public hearing, Brother Anthony Shanahan, the former provincial of the Christian Brothers Province of Western Australia and South Australia, was asked whether a motivation for the decision to transfer a brother between 1947 and 1967 was 'to get the brother away from the immediate problem'. He told us that when Christian Brothers working in residential care were the subject of complaints, it was common to transfer them out of residential care and into day schools:

> There could have been an element of that … I've got no way of knowing that, but there was a pattern I think – not completely 100 per cent of cases, but I think it's a fairly common pattern, where there was a complaint, the person was transferred to a day school, not a residential institution.[124]

Documents relating to CCI's determination that the Christian Brothers had knowledge of Brother GLX's propensity to offend from August 1970 indicate a similar approach. These record that, in August 1970, Brother GLX told the provincial, Brother James McGlade, 'I felt myself seriously attracted to the children and I [pleaded] to be relieved from the classroom duties'.[125] In January 1971, Brother GLX commenced teaching at a different Christian Brothers school in New South Wales.[126] Brother McGlade said in an interview that by appointing Brother GLX to this position he would be with children one or two years older than those at his previous school:

> [The subject that Brother GLX was] teaching was only taught to secondary students. The students would be at least 13 in first year, second year, third year … I took him out of the younger children, where usually the failures take place.[127]

Former leaders of the Marist Brothers and the Christian Brothers have said that transfers were seen as offering accused brothers the opportunity of a 'fresh start'. At the same time, there was a willingness on the part of leaders of Catholic Church authorities to accept assurances from alleged perpetrators that they would not offend again following a transfer to a new location.

In reflecting on this practice within the Marist Brothers, the former provincial, Brother Turton, told us, 'I do understand that quite often people thought that, with an assurance, a fresh start, things might be okay'.[128] Similarly, in a 2005 statement obtained by CCI, Brother McGlade, the provincial of the Christian Brothers between 1966 and 1978, described his 'general approach' to incidents of misconduct. He stated:

> My general approach in such cases was to talk very firmly with the Brother in question, to seek to support and reassure him that such urges or problems can be dealt with through prayer and discipline. My approach was to allow a Brother a chance for a fresh start in a new school without having his reputation adversely affected or the environment contaminated by passing on information to the community leader or provincial. I would then of course be in contact with the Brother in question from time to time.[129]

Brother McGlade stated further that 'in those instances where I was prepared to allow a Brother a fresh chance in a new school, I did so in the belief that the Brother would not re-offend'.[130]

In the same statement, Brother McGlade said that he spoke to Brother David Johnson 'immediately' after receiving a complaint about him from a parent in March 1975:

> I explained to him that he would have to be removed forthwith to [a different school] and that this was unacceptable behaviour. My experience dealing with others led me to believe that Brother Johnson was sincere in his repentance and very unlikely to offend again and thus worthy of a second chance. Johnson was still in training at that time.[131]

Brother Johnson was then appointed as a teacher at another Christian Brothers school in Sydney from March 1975 until October 1977.[132] In his 2005 statement, Brother McGlade said he did not tell the principal at Brother Johnson's new school about the parent's complaint 'as I felt this was a case where the Brother should be given another chance in an unpolluted environment. I did not think at the time Brother Johnson would abuse this chance'.[133] GMV, the principal of the Christian Brothers school in Sydney at the time, said, 'I was told of the transfer and given no reason. Mid-year transfers were not a regular thing but in those days one accepted them without questioning the reason'.[134] Six people made claims to the Christian Brothers in approximately the late 1990s or early 2000s that they were sexually abused by Brother Johnson at this school.[135]

Within the Marist Fathers, a chronology from Father GMG's personnel file recorded that on 11 October 1967, when Father GMG was appointed to a Marist Fathers school in Tasmania, he told the provincial at the time, Father Glynn:

> I have had some serious temptations, and I have decided I cannot in conscience allow myself to remain in circumstances which seem to produce these temptations – I mean of course, a boarding school, and especially care of a dormitory.[136]

A further entry in the chronology on 26 October 1967 recorded that Father Glynn told Father GMG, 'I am well aware of the difficulty you refer to as we have discussed it in detail previously. I can assure you I will give you the assistance you are asking for at the end of the year'.[137]

In November 1967, Father GMG was appointed to a Marist Fathers school in northern New South Wales.[138] The rector of this school wrote to Father Glynn on 21 November 1967 regarding the appointment, stating, 'We respectfully suggest that if [Father GMG] remains in school work, [a different school in southern New South Wales] is the only reasonable place for him. At least boys cannot get to his room there [and] there are no dormitories [and] day teachers have so little time with the boys'.[139]

On 27 November 1967, Father Glynn replied to the rector:

> Thank you for your letter of November 21 with further details of the problems involved in the appointment of [Father GMG] to [the Marist Fathers school in northern New South Wales] … Under these circumstances, you can take it for granted [Father GMG] will not go to [the Marist Fathers school in northern New South Wales]. At our meeting on Sunday next, everything possible will be done to propose some alternate appointment ... [140]

CCI determined that the Marist Fathers had knowledge of Father GMG's propensity to offend in 1967.[141] In December 1967, Father GMG was appointed as a teacher and sports master at the school in southern New South Wales that had been suggested, where he remained until 1972.[142] A letter dated 28 December 1967 said:

> [Father GMG] has now been appointed to [the Marist Fathers school in southern New South Wales] ... [Father GMG] is having serious problems of conscience in his dealings with boys, and because of these difficulties he has stated that he could not in conscience accept an appointment to a boarding college where he could quite easily be assigned to the care of a dormitory.[143]

Between 1972 and 1981, Father GMG worked as a classroom teacher and dormitory discipline master at the Marist Fathers school in northern New South Wales that he had been appointed to in November 1967. He was also appointed to a senior position at the school.[144] One person made a claim in 2014 that he was sexually abused by Father GMG at this school in the 1970s.[145]

Privacy and secrecy

In some cases we examined, transfers were carried out in circumstances clouded by secrecy, apparently motivated by a desire to protect both the reputation of the alleged perpetrator and the Catholic Church more generally. Further, the timing of some transfers suggests an effort to avoid raising suspicion.

In the *Catholic Church authorities in Ballarat* case study we found that, in August 1960, Brother BWX of the Christian Brothers was transferred to Victoria from Perth after admitting to taking boys into the visitors' room in the brothers' house, having them undress, speaking to them about the functions of the genital organs and touching them in the process. A Christian Brother recommended that Brother BWX be removed immediately before school resumed. The reason given was that 'a transfer during the term break would not be so noticeable and would more easily smooth out embarrassment'. Shortly after, Brother BWX was transferred to Brunswick in Victoria, where he was appointed to another teaching position. We found that Brother BWX was moved to Victoria at a time which would conceal the true reason for his having left Perth, and to protect the reputation of the Christian Brothers.[146]

In another case, a visitation report of a Christian Brothers residential facility and school in Victoria dated 13 June 1976 said that a child welfare officer had told the acting superior that Brother Rex Elmer 'had been interfering with little boys; this was true and it has been attended to by the Provincial'.[147] In a letter to the acting superior dated 20 June 1976, the provincial at the time, Brother Patrick Naughtin, wrote:

> It would seem to me best at this stage not to transfer Brother from [the residential facility and school] immediately, though I would propose to announce his change next August – the usual time for releasing details of staffing for the following year. In coming to this decision I have been guided by Brother's assurances for the future, by his excellent record to date and by consideration for his reputation, which would undoubtedly be harmed by a sudden transfer at this time.[148]

On the basis of the visitation report and Brother Naughtin's letter, CCI determined that the Christian Brothers had knowledge of Brother Elmer's propensity to offend on 13 June 1976.[149]

In some cases, alleged perpetrators were transferred to positions a considerable distance away from the locations where the original allegations of child sexual abuse were made.

In the *Catholic Church authorities in Ballarat* case study we heard that, in January 1973, Bishop Mulkearns appointed Monsignor John Day to the position of parish priest of Timboon. This was less than a year after Monsignor Day had resigned from Mildura Parish as a result of the police informing Bishop Mulkearns of allegations that he had sexually abused children in that parish. We found that Monsignor Day's appointment to Timboon was to a parish as geographically far from Mildura as possible. It put a priest who was the subject of serious sexual allegations against children back into a parish, where he would have ongoing access to children. We found that the conduct of Bishop Mulkearns and the College of Consultors prioritised protecting the reputation of the Catholic Church at the expense of the safety of children in Timboon.[150]

A year earlier, Bishop Mulkearns considered sending Monsignor Day to the Diocese of Geraldton in Western Australia. That proposal did not eventuate.[151]

Some religious brothers were transferred interstate following allegations of child sexual abuse. In the *Christian Brothers* case study, we found that in 1946 Brother Columbanus Beedon was transferred to Adelaide from St Vincent's Orphanage in Clontarf, Western Australia, for handling a boy's private parts and fondling him.[152] In the same case study, survivor Mr Edward Delaney gave evidence that in 1954, when he was 15 years old, Brother Declan Parker admitted to the principal, Brother Benet Doyle, that he had been involved in sexual abuse at Bindoon. At the time, Mr Delaney was called into Brother Doyle's office and disclosed what Brother Parker had done to him. Brother Doyle told Mr Delaney that, 'Brother Parker has been to me and told me what he's done and because of his actions he is no longer going to be here. He has been sent to Tasmania'.[153] Brother Doyle told Mr Delaney that he would be punished if he told anyone about it.[154]

Documents provided by CCI indicate that in the case of Brother Keith Farrell (whose religious name was Brother Stephen) the reasons behind his transfer may not have been communicated to the Marist Brothers community where he was transferred. Between January and May 1975, Brother Keith Farrell was appointed to a Marist Brothers school in Queensland.[155] Brother Alexis Turton told CCI's lawyers that in April 1975, when he was principal of this school, he received a complaint about Brother Keith Farrell.[156] Brother Turton said that he removed Brother Keith Farrell from his position in charge of the dormitory and contacted the provincial at the time, Brother Charles Howard, and that Brother Keith Farrell 'was immediately moved' from the school.[157] CCI determined that the Marist Brothers had knowledge of Brother Keith Farrell's propensity to offend in April 1975, based on a Special Issues Allegation Report that set out the circumstances of that complaint.[158] In May 1975, Brother Keith Farrell was appointed to another Marist Brothers school in northern Queensland.[159]

In January 1976, Brother Keith Farrell was appointed to a Marist Brothers school in a different state.[160] The principal of this school, GLJ, said in a statement provided to CCI's lawyers that in 1978 he received a complaint from two parents that Brother Keith Farrell had been 'touching their boy', and that he told the provincial.[161] GLJ said:

> The outcome of all of this was that Br Farrell was moved quickly and promptly from the school to another Marist facility, without any explanation being provided to other members of the Marist Community or staff.[162]

In the same statement, GLJ said that there was little discussion within the Marist Brothers Community about allegations involving Brother Keith Farrell at the time:

> I was asked whether the issues concerning Br Stephen Farrell were ever spoken about between the Brothers at the Monastery, ie the Brothers in Community. This did not happen. Although I appreciate that it might sound unusual today, that was simply not a matter of discussion in Community. I note that Br Alexis [Turton] agreed with this and referred to the fact that 'matters of conscience' within the Marist Community were a matter for the Provincial only, and individual Marist Brothers at that time (perhaps different today) did not question these things, and did not question why a particular Brother might have been moved reasonably quickly from a school.[163]

Other inquiries into the Catholic Church in Australia have also reported on the practice of transferring priests and religious following allegations of child sexual abuse. In 1997, the Wood Royal Commission observed that before the early 1990s the 'quiet transfer' of an alleged perpetrator of child sexual abuse either interstate or overseas was a practice utilised by churches including Catholic Church authorities in New South Wales.[164] It reported that a typical response was:

> to move the minister or priest to another parish after counselling, or to send him away for a period of prayer and contemplation. The dangers of this being arranged in secret to avoid scandal, and of sending such a person back into an unsuspecting parish, are obvious.[165]

Similarly, in the *Betrayal of trust: Inquiry into the Handling of Child Abuse by Religious and Other Non-government Organisations* (the Victorian parliamentary inquiry) report released in 2013, the Inquiry found that it was not uncommon for Catholic Church authorities in Victoria to move offenders between schools and parishes. It reported that prior to the 1990s this approach was adopted by the Archdiocese of Melbourne in the cases of Father Ridsdale and Father Wilfred Baker, and by the Christian Brothers in the cases of Brother Rex Elmer and Brother Leo Fitzgerald.[166]

In *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children* (*Forgotten Australians* report), released in 2004, a Senate inquiry into the treatment of children in out-of-home care in Australia reported that 'perpetrators of abuse and paedophiles freely operated in many homes and were often moved between institutions operated by the various Churches'.[167] It cited some examples relating to Christian Brothers institutions in Victoria and stated that 'The movement of known offenders did not just occur between diocese and institutions, but between countries'.[168]

Similarly, the Special Commission of Inquiry reported on the many transfers of Father Denis McAlinden following allegations of child sexual abuse. This included transfers within the Diocese of Maitland-Newcastle, to Papua New Guinea, to the Diocese of Geraldton in Western Australia, to New Zealand, back to New South Wales, and then again to Western Australia. It found that Father McAlinden continued to sexually abuse children in the late 1970s, the 1980s and the 1990s.[169]

Similar practices involving transfers of alleged perpetrators following allegations of child sexual abuse were reported in the findings of overseas inquiries into the Catholic Church. The 2003 report of the Attorney General of Massachusetts on the Archdiocese of Boston found that in the 1970s and 1980s:

> the Archdiocese's response to allegations of clergy sexual abuse of children included at times quietly transferring the alleged abuser to a different parish in the Archdiocese, sometimes without disclosing the abuse to the new parish or restricting the abusive priest's ministry functions. These transfers tended to appease the concerns of victims because the abusive priests no longer were in their communities, and scandal was avoided because there was no public discussion of, or reporting on, the abuse. However, this practice of reassigning abusive priests placed new children at risk and evidence the Archdiocese's failure to set the protection of children as a higher priority than protecting the well-being of abusive priests.[170]

It also found that the Archdiocese of Boston placed children at risk by accepting priests from other dioceses with knowledge that they had a history of allegations of child sexual abuse.[171] Further:

> The Archdiocese also arranged for or assented to the transfer of sexually abusive priests so that they could work or reside in other dioceses in the country. The motivation for these transfers appears to have been to prevent further scandal within the Archdiocese and to accommodate the wishes of the alleged abusers.[172]

The Ryan report found that 'When confronted with evidence of sexual abuse', the response of religious authorities in Ireland 'was to transfer the offender to another location where, in many instances, he was free to abuse again'.[173]

The Deetman inquiry concluded that the Catholic Church in the Netherlands had primarily adopted 'internal measures' to respond to perpetrators of child sexual abuse, including transfers to other locations. It reported that within the Salesians of Don Bosco:

> A tried and tested way of avoiding too much commotion, and one applied by all religious organizations, is to quietly transfer the person concerned to another position, either within or beyond the organization itself. There are several examples of known perpetrators of abuse having been transferred elsewhere within the Salesian congregation. In some cases, the archive documents indicate that the new superior was informed of the circumstances, while in others there is no evidence to this effect.[174]

Canonical warnings

The Christian Brothers told us that a canonical warning is a formal warning given to a brother by the provincial to indicate that certain behaviour or actions they have taken are not in keeping with canon law.[175] Importantly, an alleged perpetrator of child sexual abuse who has been given a canonical warning can still continue in active ministry. A canonical warning operates as a precursor to more serious disciplinary action, such that if the conduct persists, the brother could be subject to dismissal from the order.[176] The issuing of a canonical warning is not limited to circumstances involving child sexual abuse, and could include behaviour such as breaking the vow of chastity, failure to observe regular prayer habits, or alcohol abuse.[177]

In the *Christian Brothers* case study, we were told that in the 1940s and 1950s, canonical warnings were used as disciplinary processes in relation to some Christian Brothers who were reported for conduct including fondling and 'interfering' with boys.[178] In a letter from the superior general to the provincial in 1959, the following was said about Brother B Smith at Castledare Junior Orphanage:

> I am sorry that you have had that trouble with Br B. Smith. Unfortunately that sort of trouble never seemed to be very far away and it does so much dreadful harm – especially to the boys concerned and to others who may hear of it … I am glad that you have given the C.W [canonical warning] I believe that there is no other course to follow but to impress upon transgressor the seriousness of the fault and the scandal that accompanies it.[179]

According to the Christian Brothers, there were no records of canonical warnings being issued after 1970. The Christian Brothers told us that this was indicative of a trend away from using canonical measures as a form of discipline generally.[180]

In two cases we examined, alleged perpetrators continued to offend against children after having been given a canonical warning.

In the *Marist Brothers* case study, we found that Brother Chute continued to have access to young children in circumstances where it was not made known within the Marist Brothers community that a canonical warning had been issued against him for previous allegations of child sexual abuse. This meant that no warning was given to prospective schools of the risk Brother Chute posed to children.[181]

Brother Chute told representatives from CCI, Monahan & Rowell Solicitors and Carroll & O'Dea Lawyers, that 'in or around 1967' the provincial, Brother Weldon, became aware that he had 'touched a boy' in Lismore. He said that he admitted to Brother Weldon that he had 'done something wrong', and Brother Weldon told him that it would be a 'good idea to move you' and to change principals.[182] In July 1969, the provincial council chaired by Brother Weldon gave Brother Chute a canonical warning for sexually abusing a child at St Joseph's School in Lismore. Brother Chute said that he then received a telephone call and a follow-up letter containing the canonical warning from Brother Weldon, and remembered being told words to the effect that he had 'let the church and the Marist Brothers and himself down with his behaviour'.[183]

Brother Weldon and Brother Dwyer, who was present during the provincial council meeting, did not make future provincials aware of the knowledge they had of Brother Chute's admission or of the decision that the conduct warranted a canonical warning.[184] Following the canonical warning, Brother Weldon appointed Brother Chute to the position of principal of the primary school at Marist College Penshurst in New South Wales from 1969 to 1972. Brother Chute was also placed in a position of responsibility as a teacher at Marcellin Junior College in Coogee, New South Wales, in 1973, where he is alleged to have abused one boy. Brother Chute was then appointed principal of Marist Brothers Parramatta in New South Wales in 1975.[185] In 1976 he was appointed to Marist College Canberra. He is alleged to have abused 40 students during his 17 years at this school.[186] As victim AAE told police:

> I started [at] Marist College in 1985 and the touching started almost straight away. This became very normal to me and Brother Kostka [Chute] would touch me daily sometimes 2, 3 or 4 times in a single day. He would always cuddle me and he even put his hands down my pants during the classes he was teaching, it would often be in front of other students. I think that in all Brother Kostka would have touched me 600 or 700 times during my time at Marist College. It became so normal and regular that I accepted it as part of my life.[187]

In 2008, Brother Chute was convicted of 19 child sexual offences against six former students of Marist College Canberra between 1985 and 1989.[188]

Father William Kevin Glover of the Marist Fathers was given two canonical warnings by the Marist Fathers as a result of continued inappropriate behaviour involving children, and was later incardinated into the Diocese of Bunbury, where he continued in ministry.[189] A chronology obtained by CCI from the Marist Fathers relating to Father Glover said that in June 1958:

> Kevin Glover was removed as Superior and Parish Priest … for immoral and criminal sexual behaviour with boys and male adolescents. When confronted, he eventually admitted the behaviour to the Provincial … Kevin Glover was given a formal canonical warning, and sent to do a 30 day penitential retreat at Armidale.[190]

In July 1958, following his first canonical warning by the Marist Fathers, Father Glover was appointed to an unknown position in a parish in Queensland.[191] The chronology relating to Father Glover recorded that when he was transferred to the parish in Queensland:

> he was to have no contact with young people. However he continued writing to young males in [his previous parish in Victoria], inviting some to visit him at [the parish in Queensland]; he ignored the ban on associating with young people in the parish.[192]

The chronology said that in July 1959 Father Glover was removed from the parish in Queensland, given a second canonical warning and 'specifically threatened with dismissal from the Society'.[193] In September 1959 the provincial at the time, Father James Harcombe, told the superior general of the Marist Fathers in Rome that Father Glover would be writing to 'seek a dispensation from his vows', and recommended that 'dispensation be obtained for him … as quickly as possible'.[194] Father Glover was incardinated into the Diocese of Bunbury in 1960, where he continued in ministry until 1990.[195]

13.5.4 Counselling and other forms of treatment

> [I think there was] this focus on morality rather than legality or on psychology – I think that perhaps the psychological profession had its own problems around this area. Because I know for a fact that people were referred to psychologists, and sometimes to treatment centres; they came back with reassurances that the psychologist or the treatment centre viewed them as not at risk of offending again, and then they did offend again. So there was something going on there, I think, in the 1980s that was an unfortunate collusion, if you like, of assumptions that didn't prove equal to the reality …[196]
>
> **Dr Gerry O'Hanlon SJ, Adjunct Associate Professor of Theology, Loyola Institute, Trinity College Dublin**

This section discusses the use of counselling and other forms of treatment as a response to priests and religious accused of child sexual abuse in the period leading up to the 1990s. Shifting approaches towards treatment from the early 1990s, during the development of national procedures, are discussed in further detail in Section 13.8.

We received no evidence that prior to the 1990s there were any written protocols or policies about the use of counselling and other forms of treatment as a response to alleged perpetrators of child sexual abuse within the Catholic Church in Australia. Nonetheless, counselling was used by some Catholic Church authorities.

In the *Marist Brothers* case study, the Marist Brothers told us that in the 1960s and 1970s their practice was to refer a brother who had admitted to child sexual abuse to counselling or other forms of professional therapy. At that time brothers were generally referred to generic treatment services such as those targeting depression or alcohol. The provincial made these types of referrals on a confidential basis and they were usually recorded in the brother's personnel file as 'ongoing formation'. In the 1980s, there was a shift towards referring brothers to specialist Catholic treatment centres that worked specifically with sex offenders.[197] This is discussed further in Section 13.8.

There are indications that recourse to some form of treatment for alleged perpetrators of child sexual abuse was a response adopted overseas as early as the 1940s.[198] In describing historical attitudes towards treatment within the Catholic Church, a study published in 2011 by researchers at John Jay College of Criminal Justice for the USCCB (*The causes and context of sexual abuse of minors by Catholic priests in the United States, 1950–2010* (the 2011 John Jay College report)) observed that:

> Sexual behavior by a priest that violates the expectations of chaste celibacy would, at mid-century, have been seen primarily as a moral failing or a problem requiring spiritual direction … in the 1950s and 1960s, as the discipline of psychology developed and psychological testing became more of an accepted form of screening for psychological disorders, psychological treatment began to be used to address the behavioral problems of priests. After 1960, several centers were either founded specifically for the psychological treatment of Catholic priests and religious community members or had incorporated psychological treatment into their regimens.[199]

The John Jay College researchers also stated that prior to 1984 there was a common belief that 'clergy sexual misbehaviour was both psychologically curable and could be spiritually remedied by recourse to prayer'.[200]

According to the Murphy report, in the 1960s and 1970s, priests who had sexually abused children in the Archdiocese of Dublin were sent for assessment to a number of psychiatrists and psychologists. In the 1980s the archdiocese 'began to realise that priests who had committed child sexual abuse needed lengthy treatment and therapy'.[201] The Deetman inquiry determined that in the Netherlands in the 1970s and 1980s 'Church and religious administrators … also made use of new centres for reflection and support, located both in the Netherlands and

abroad and often established by orders and congregations of priests'. However, it concluded that 'It is doubtful whether these centres were actually equipped to treat individuals who had sexually abused minors'.[202]

A similar approach was taken around this time in Canada. The Winter report stated in 1990 that:

> If action was taken on the problem of sexual deviancy, the individuals were sent to out-of-province facilities, a procedure that came to be seen as a panacea for nearly any kind of behavioural problems within the Presbyterium. This approach, despite its limited utility, allowed the Archdiocesan administration to assume that sufficient action had been taken and thus to avoid the acknowledgement of wrongdoing within the Archdiocese and awareness of serious problems within the Presbyterium.[203]

The 2011 John Jay College report found that the peak decade for treatment was the 1980s and that a sharp decline followed thereafter. It reported that: [204]

- Before 1980, a reprimand and return to ministry was as likely as a referral for professional evaluation (around 33–34 per cent).
- After 1985, the most common form of treatment for priests was specialised sex offender treatment programs. The use of spiritual retreats and medical leave declined by more than 50 per cent after 1985.
- Thirty-five per cent of priests first accused prior to 1985 were either reprimanded and returned to ministry, or reinstated. After 1985, this figure dropped to 23 per cent.

In December 1985, an initially confidential memorandum titled *The problem of sexual molestation by Roman Catholic clergy: Meeting the problem in a comprehensive and responsible manner* was sent to all Catholic bishops in the United States. It was prepared by American Dominican priest, canon lawyer and survivor advocate, Dr Thomas P Doyle OP, civil lawyer, Ray Mouton, and Father Michael Peterson, the director of the Saint Luke Institute treatment centre for clergy and religious in the United States. According to Dr Doyle, the report was commonly known as 'the Manual'.[205] It recommended that alleged perpetrators should be immediately referred for assessment and treatment by trained professionals.[206] It described private psychotherapy as an inappropriate model of treatment, and recommended in-patient residential treatment as likely to be the most effective.[207]

Rationales for treatment

One reason for referring alleged perpetrators for spiritual or psychological counselling was the tendency to view child sexual abuse as a moral failing that could be forgiven, as discussed above. This appears to have been particularly prevalent in Australia during the 1960s and 1970s.

During the *Marist Brothers* public hearing, Brother Turton told us that in the period from about 1959 to 1976, sexual offences against children were 'regarded as personal, moral offences and my understanding is that some people regarded it as something that could be dealt with person to person or with a spiritual director'.[208] The belief that sexual offences were caused by moral failings was also reflected in the willingness of some Catholic Church leaders to reassign alleged perpetrators following a period of treatment. During his evidence in the *Retired Catholic Bishop Geoffrey Robinson* hearing, Bishop Robinson was asked by Senior Counsel Assisting whether undertakings about repentance had anything to do with those who believed that an accused or a person who had admitted or was convicted of child sexual abuse could return to ministry. He responded:

> Yes. Yes. For a lot of bishops the fault was a moral one and the sin was a sexual sin. That was the big mortal sin. The harm that might have been caused to the minor was not treated as seriously. It was not realised often, that came slowly, so that they simply adopted the policy that the church had had for centuries in dealing with its concept of sexual sin, that if you repented you were forgiven and you were restored, so they would have seen, 'Well, that's what we should do here'.[209]

Similarly, in 1997 the Wood Royal Commission reported that:

> Sexual abuse has often been regarded by Churches as a problem of 'moral failure' rather than a criminal offence, calling for help rather than punishment. Often judged to be an inappropriate reaction to stress, and a temporary aberration, the response has been to offer the offender moral and spiritual counselling.[210]

It stated, 'There was an expectation that it would be sufficient if the priest was confronted with his behaviour, shamed and embarrassed by it and provided with a period of psychological and spiritual counselling'.[211]

Conceptualising the problem of child sexual abuse as a moral problem was not unique to Australia or to a particular point in time, and may even have extended into the 1990s. During the *Institutional review of Catholic Church authorities* public hearing, Dr Gerardine Robinson, clinical psychologist and former Clinical Director of the Encompass Australasia treatment program, said:

> I don't think that the idea of it being a moral lapse was just peculiar to Australia. It was worldwide. In fact, when I was working at St Luke Institute [in the 1990s], the perception of the Vatican was that paedophilia was a western, an American and an Australian problem. I heard it said that there were no treatment centres in Italy. In fact, the Italian offenders were sent to three monasteries, which is saying that if you pray hard enough, the problem will go away.[212]

In the United States, the Cardinal's Commission on Clerical Sexual Misconduct with Minors, which reported to Cardinal Bernadin of the Archdiocese of Chicago in 1992, stated in its report:

> In the past, many people considered the sexual abuse of minors primarily as a problem of immorality. If the abuser repented and made a firm commitment to amend his life, it was assumed that he would be able to control his sexual appetite in the future.[213]

The recourse to treatment can also be connected to the preference for taking a 'pastoral approach' in responding to alleged perpetrators of child sexual abuse. As discussed in Section 13.2 and 13.11.6, the 1983 Code of Canon Law incorporated the pastoral and therapeutic approaches previously introduced in the 1917 Code of Canon Law and *Crimen Sollicitationis*. The 1983 Code of Canon Law requires bishops and religious superiors to first try to reform the offending priest or religious before permanently removing them from ministry or dismissing them by way of formal canonical processes.

In 2009 the Murphy report noted the provisions of canon 1341, which states that a bishop is to 'initiate a judicial or administrative process to impose or declare penalties only after he has ascertained that fraternal correction or rebuke or other means of pastoral solicitude cannot sufficiently repair the scandal, restore justice, reform the offender'.[214] It observed that this was interpreted to mean that bishops are required to attempt to reform abusers in the first instance. As a result, in the Archdiocese of Dublin, 'significant efforts were made to reform abusers. They were sent to therapeutic facilities, very often at considerable expense'.[215]

In 2010, Pope Benedict XVI acknowledged the detrimental impact of the 'pastoral attitude' within the Catholic Church. In a revised preface to the motu proprio *Sacramentorum Sanctitatis Tutela*, the pope wrote:

> A 'therapeutic model' often prevailed in dealing with clerical misconduct. The bishop was expected to 'heal' rather than 'punish'. An over-optimistic idea of the benefits of psychological therapy guided many decisions concerning diocesan or religious personnel, sometimes without adequate regard for the possibility of recidivism.[216]

We further discuss the 'pastoral approach' in canon law, and the extent to which it may have contributed to the Catholic Church's response to child sexual abuse by clergy and religious, in Section 13.11.

At times, this over-optimistic belief that treatment could 'cure' or assist an alleged perpetrator to change their offending behaviour was reinforced by treating practitioners. This includes Father Daniel Torpy, a former priest psychologist who studied spirituality, human development and psychology at the Gregorian University in Rome and was engaged as a treating practitioner within the Diocese of Ballarat. In *Catholic Church authorities in Ballarat* Mr Torpy told us that when he completed his studies in 1983 he was aware that paedophilia was present within the Catholic Church. He said, 'The treatment of it, from my memories at the time, was through counselling and rehabilitation would occur'. He reiterated that it was his understanding, in 1983, 'that people were able to be rehabilitated'.[217]

Some Catholic Church leaders were particularly trusting of the advice of treating practitioners that alleged perpetrators no longer posed a risk to children. Bishop Robinson gave evidence that in the 1980s:

> In Victoria, they seem to have had far more trust in sending the priest, the offending priest, to a psychiatrist, and I think they were given assurances that they could cure the person. Well, whether the word 'cure' was used, but they could change his behaviour. And they seemed to have far more faith in that in Victoria – I learned this a bit later, but they did – than elsewhere. So different bishops were finding different solutions and probably none of them very good.[218]

We are not in a position to comment conclusively on the effectiveness or otherwise of any one particular form of treatment, or treatment in general, for adult perpetrators of child sexual abuse. As discussed in Chapter 36 of our *Criminal justice* report, treatment is potentially positive but should not be assumed to be a cure, with effectiveness difficult to measure.[219] Some of the alleged perpetrators we examined in our case studies and discuss further below continued to offend against children after undergoing one or more forms of counselling or treatment. Some of these alleged perpetrators were referred for different forms of treatment multiple times over their years in ministry following new allegations of child sexual abuse.

Forms of treatment provided

The tendency to view child sexual abuse as a moral failure, discussed above, sometimes resulted in alleged perpetrators being provided with 'spiritual direction' rather than clinical treatment, with an emphasis on the religious or moral implications of the offending behaviour.

As discussed in Section 13.4 and above, in the *Marist Brothers* case study we found that in 1962 the community superior, Brother Phillips, knew that Brother Chute had admitted to sexually abusing a child at St Anne's Primary School in Bondi, New South Wales. At the time, Brother Chute promised Brother Phillips that he would go and see a Father Cox, a priest in North Randwick, and would 'rectify it all'. In a 2009 interview with representatives from CCI and lawyers, Brother Chute said that he went and saw Father Cox, who was his 'spiritual director and confessor', and made a full confession. Brother Phillips did not inform the Marist Brothers provincial that Brother Chute had admitted to sexually abusing a child, because he thought 'everything was fixed up'. In a 2008 interview with solicitors, Brother Phillips said he regarded Brother Chute's admission as 'just a moral problem that [Brother Chute] had to do something about'. Brother Phillips said that he did not speak to Brother Chute again about it because he was 'satisfied enough to know that I had broached the subject, he had been reconciled and things would change and be attended to'.[220] Brother Chute is alleged to have abused 43 children following his 'spiritual direction' with Father Cox in 1962.[221] In 2008, Brother Chute was convicted of 19 sexual offences involving six former students of Marist College Canberra between 1985 and 1989.[222]

Some Australian Catholic bishops and religious superiors preferred to refer alleged perpetrators for treatment provided by a small network of Catholic psychologists and psychiatrists based in the major capital cities.

During the 1960s, some alleged perpetrators were referred to Dr Eric Seal and Dr Ronald Conway, two Catholic clinicians based in Melbourne. From 1969, Dr Conway became an advisor to the Archdiocese of Melbourne on priestly vocations, and was involved in screening priestly candidates for the Corpus Christi seminary. During the *Catholic Church authorities in Ballarat* public hearing, we considered evidence that Father Ridsdale was referred to Dr Seal in the mid-1960s.[223] Some leaders of Catholic Church authorities continued to rely on Dr Seal and Dr Conway into the 1980s, with Father Daniel Hourigan of the Diocese of Sale referred for treatment with Dr Seal and Dr Conway in 1987.[224]

The reliance on a small number of private practitioners may be attributed, in part, to the lack of specialised residential treatment programs for child sexual offenders in Australia at the time. It may also be attributed to a perceived or actual lack of private practitioners with specialised experience in dealing with child sexual offenders within Australia. The Christian Brothers told us that 'prior to 1997, there were some (though few) general psychologists working in this area and none who had specialised in-depth experience'.[225]

On the other hand, referrals of alleged perpetrators for treatment conducted by a small number of private practitioners, many of whom had close connections with the Catholic Church, reflected the approach of some bishops and religious superiors in Australia to dealing with the problem of child sexual abuse 'in-house'. This sentiment was expressed in 1993 by Professor Richard Ball, former chair of psychiatry at St Vincent's Hospital in Melbourne, who assessed a number of priests, in relation to treatment offered to Father Ridsdale. In a written report, Professor Ball said:

> The attempt to deal with the whole matter entirely in-house … was a tendency which existed within the Catholic church until not too long ago and which had unfortunately less than ideal consequences …[226]

Some Australian Catholic bishops and religious superiors also exhibited a preference for referring alleged perpetrators for treatment with Catholic clergy and religious who had trained in psychology or psychiatry. In some of these cases, the distinction between clinical and spiritual treatment became particularly blurred.

Father Ridsdale of the Diocese of Ballarat was referred to Dr Peter Evans for treatment in 1975. Dr Evans was a priest in the Order of Friars Minor (commonly known as the Franciscans) and a qualified psychiatrist. He left the priesthood in 1976.[227] In his written statement, Dr Evans told us:

> There is often not a clear line between people experiencing religious or spiritual problems, and people experiencing psychiatric or psychological problems …
>
> If people came to see me with what I diagnosed to be a psychiatric disorder, my task was not just to treat them, but to shift their mindset from thinking it was a spiritual problem to recognising that it was a psychiatric disorder.[228]

Other alleged perpetrators were referred to Father Augustine Watson for treatment, including Father Nazareno Fasciale, a priest of the Archdiocese of Melbourne, in 1979,[229] Father Ridsdale of the Diocese of Ballarat in 1982,[230] and Father Kevin Howarth of the Diocese of Sandhurst in 1984.[231] Father Watson was a priest as well as a psychologist.[232] In a 1989 letter to Bishop Ronald Mulkearns, Father Watson described the methodology he used with Father Ridsdale as being based on the work of the Austrian psychiatrist Victor Frankl, in drawing together emotional, rational and spiritual elements. He said:

> I do not believe that this – or any other serious problem – can be resolved purely by psychology. At the best, psychology is only a useful tool. And I am sure that Frankl's Logotherapy is the best available, mainly because he insists that man is essentially a spiritual being and that the most prevalent psychological illness in the modern world is a spiritual neurosis. Therefore, the ultimate solution is in our Faith, if thoroughly understood and practised.[233]

In 1993, Professor Ball was asked by a solicitor for the Diocese of Ballarat, who was acting for Father Ridsdale in criminal proceedings, to report on the success or otherwise of Father Ridsdale's therapy.[234] Professor Ball wrote in response that Father Ridsdale's treatment with Father Watson 'was interesting but clearly of little or no benefit'.[235] He added:

> Father Watson is a very good man, well trained within particular areas of expertise but I have no evidence that he was especially skilled in the treatment of delinquent behaviour and sexually deviant practices and certainly there is no hard evidence that the approach he maintained, (that is the Victor Frankl's logotherapy approach) has any specific relevance to sexual variant or deviant behaviour and is not reported as being in any way specifically effective in its management.[236]

Professor Ball also observed in a later report that Father Watson's treatment of Father Ridsdale 'whilst helpful was in no way specific or specifically remedial in any sense'.[237]

The referral of alleged perpetrators for treatment at residential treatment facilities, often overseas, appears to have been more common during the late 1980s and early 1990s. It is discussed further in Section 13.8.

Return to ministry following treatment

Some priests and religious in Australia who were the subject of allegations of child sexual abuse were returned to positions in active ministry after undergoing counselling or other forms of treatment, and were later the subject of further claims or were convicted of subsequent offences against children.

In *Catholic Church authorities in Ballarat*, we heard that Bishop Mulkearns sent some priests who were the subject of allegations of child sexual abuse for counselling or treatment. Bishop Mulkearns told us:

> I tried to get treatment for incidents that I knew about but, as I say, there were a lot of incidents that I don't know because they simply weren't admitting them …
>
> I put them in the care of psychologists and then I took notice of what the psychologists said about them, and in particular of course when they decided it was okay for them to go back into the parish.

The evidence revealed, however, that Bishop Mulkearns' approach in sending priests for treatment was not consistent. His statement that he 'took notice' of what the psychologists said, particularly whether it was okay for the priest to be returned to a parish, was in many cases not supported by the evidence.[238]

Following Father Ridsdale's admission to Bishop Mulkearns that he had offended against children at Inglewood parish in late 1975, Ridsdale attended counselling with Dr Evans at a retreat house called La Verna in Kew, Victoria. We found that Dr Evans was not asked by Bishop Mulkearns or anyone else to express a view on Father Ridsdale's suitability to return to parish work, and that Dr Evans did not proffer any such view. Father Ridsdale was not given clearance from Dr Evans before Bishop Mulkearns placed him in another parish.[239]

We found that Dr Evans had no communication with Bishop Mulkearns about Father Ridsdale at all. Dr Evans told us that, had he been informed of the prior allegations against Ridsdale, 'that would have been a much more serious diagnosis … if I had known, that there were a series – multiple allegations against him; action would have to be taken in that case'. He said:

> I would have made the diagnosis unquestionably if he had serial complaints against him prior to that allegation at Inglewood. I would certainly have regarded him as a danger to children and an established paedophile. In that situation, I would have sought advice with respect to reporting him, not to the local police who were looking into the matter, but to the Melbourne squad looking after sexual offences.[240]

Several years later, in 1982, after allegations had emerged against him in the Parish of Mortlake, Father Ridsdale was sent for treatment with Father Watson. He saw Father Watson monthly, with some gaps, from about November 1982 until about the end of 1986.[241]

We found that there was no evidence as to whether Father Watson gave any advice to Bishop Mulkearns about Father Ridsdale before he was appointed to the Catholic Enquiry Centre in Sydney. That appointment commenced in November 1982 shortly after Father Ridsdale commenced seeing Father Watson. We also found that Bishop Mulkearns did not personally impose conditions on Father Ridsdale while he was at the Catholic Enquiry Centre, and this meant he was unsupervised in relation to children. Father Ridsdale offended while he was at the centre.[242]

By 1989, Father Ridsdale had resigned from the Parish of Horsham in the Diocese of Ballarat. We found that Bishop Mulkearns asked or required Father Ridsdale to resign from Horsham as a consequence of a complaint by a woman that her son had been sexually interfered with by him on several occasions over the previous five years.[243]

In 1989, while Father Ridsdale was living in his dugout in the small town of White Cliffs, in far north-western New South Wales, Bishop Mulkearns and Father Watson communicated about Ridsdale's situation. Father Watson wrote to the bishop:

> I realize the seriousness and the difficulty of the decision you have to make to protect the community and the Church, and at the same time to be kind and considerate of the individual concerned.

Father Watson continued, 'I agree with you when you say that it would be too risky to let him take up parish work again' and suggested chaplaincy in a convent of elderly nuns as an alternative. He wrote that he would regard a regular life as a priest 'although in somewhat confined circumstances' as preferable to 'his somewhat freelance life as it is at present'.

He continued, 'Even if he should go to another diocese or even another country, I suggest he should see someone regularly, because he appears to work best when he is under regular supervision'. Finally, Father Watson noted that in the last year he had discovered that 'amongst the clergy in America there have been a large number of problems with pedophilia'.[244]

About a month later, Bishop Mulkearns responded to this letter, 'I agree that it is simply out of the question for our man to continue indefinitely at White Cliffs'. He wrote:

> The fact that other people will be looking at any appointment that is given to him makes it rather more difficult to ask a Bishop to take on responsibility. However, I will sound out some possibilities and should have the opportunity to do so within the next two or three weeks.

At the end of 1989, Father Ridsdale was sent for treatment in the United States at Villa Louis Maria in Jemez Springs, New Mexico.[245] The facility was run by religious order the Servants of the Paraclete.[246] Father Ridsdale did not return to ministry when he returned to Australia in 1990. By late 1992, Victoria Police and the Child Exploitation Unit were 'vigorously' investigating allegations against Father Ridsdale.[247]

With respect to Father Hourigan, in a 1986 letter to Bishop Eric D'Arcy of the Diocese of Sale, Father Ian Waters, the Judicial Vicar for the Archdiocese of Melbourne, said that when he confronted Father Hourigan with allegations of child sexual abuse, Father Hourigan initially 'said that the activities could be viewed from different points of view' but later 'calmly and humbly admitted he was guilty and needed help'.[248] In a letter to Father Hourigan dated 31 December 1986, Father Waters said that, following their conversation on 27 December 1986, he had arranged for him to see Dr Seal.[249] CCI determined that the Diocese of Sale had knowledge of Father Hourigan's propensity to offend in 1986.[250]

In April 1987, Father Hourigan was assessed by Dr Conway, who reported to Dr Seal that 'By all accounts, Fr. Hourigan has not been involved in other incidents in the interim period … I am inclined to accept his assurances at face value, despite the heinous nature of his original behaviour'.[251] Dr Conway also considered Father Hourigan's position as Director of Education in the diocese. He wrote:

> he is in a position of some responsibility, but he is kept pretty busy, and this may well be one of the best posts in the diocese for a man who might still have residual inclinations in that direction. His parochial duties would be somewhat limited, and he would be confined to a great extent to official and desk duties, than would be a case of the diocesan priest conducting normal pastoral duties. There is, of course the scandal which might be caused by the fact that he might seem to be 'promoted' to this post instead of being penalised for his original indiscretions. Looking at the situation from a pragmatic viewpoint, I think his present appointment is probably about the best that the Bishop could have chosen.[252]

On 22 April 1987, Dr Seal wrote to Bishop D'Arcy enclosing a copy of Dr Conway's report. He wrote:

> I must say [Father Hourigan] presented as a gentle kindly man, who seems very repentant over what happened. He did not seek to rationalise or exculpate himself by blaming anyone else and he seemed highly confident that he could avoid such problems in the future … I would have to admit that one cannot give an absolute guarantee about his prognosis for the future … but I believe he will now do his best and will most likely succeed ... I personally feel now justified in recommending that you allow him to persist in his present appointments. He is happy to keep under periodic but reasonably regular therapy with me and I shall be happy that he shall so continue.[253]

On 24 April 1987, Bishop D'Arcy replied to Dr Seal:

> Thank you especially for the clear recommendation which you make for this and I am especially grateful. It would have been seriously disappointing to Father, but also seriously unfortunate for his appointment, if you had judged that it should not continue.[254]

In a letter to Bishop D'Arcy dated 10 August 1987, Father Hourigan requested a transfer for 'health reasons' to another parish.[255] In a letter dated 12 August 1987, Dr Seal told Bishop D'Arcy that Father Hourigan had asked 'if I could give you a psychiatric opinion that it is unlikely that the situation will recur. I am indeed happy to state that I have confidence that a recurrence is indeed very unlikely'.[256] Father Hourigan was subsequently appointed parish priest of another parish in the diocese, and remained there until May 1990.[257] Ten people made claims between 1993 and 2015 to the Diocese of Sale, relating to allegations of sexual abuse by Father Hourigan between 1968 and 1989.[258] This included two people who made claims that they were sexually abused between 1986 and 1989.[259]

In the *Catholic Archdiocese of Melbourne* case study we heard that, in 1972, Father Daniel Winters, a priest psychologist, wrote to the Archbishop of Melbourne, Archbishop James Knox, in relation to Father Fasciale. Father Winters wrote, '[Father Fasciale] has found it quite painful to realize that physically and intellectually he has probably matured with his age but that emotionally he was arrested at a much younger age – 18 to 20 year old level …' Archbishop Knox responded to Father Winters expressing gratitude for his continuing assistance in the 'delicate and important matter'.[260] In a further letter to Archbishop Knox in 1972, Father Winters wrote:

> I tried to point out to [Father Fasciale] that the Parish Priest is a responsibility given to those who are ready for it and that his conduct of the past has not in fact been the conduct of a man able or ready to assume the responsibilities of a parish.[261]

Archbishop Knox replied to Father Winters saying, 'While expressing satisfaction for the progress made, I have noted the circumstances that militate against this progress and will keep them in mind'.[262] Despite the opinion expressed by Father Winters, Archbishop Knox appointed Father Fasciale as the parish priest of Yarraville the following year.[263]

By 1979, Father Fasciale was undergoing counselling sessions with another priest psychologist, Father Watson. In November 1979, the Archbishop of Melbourne, Archbishop Frank Little, wrote a letter to Father Watson seeking his help in the matter involving Father Fasciale. Archbishop Little wrote, 'I am confident that with a regular visit to you, he can continue effectively in his priestly ministry'.[264] Data produced to us records that 20 people made a claim of child sexual abuse against Father Fasciale. The claims related to alleged incidents that occurred in the period from 1953 to 1985 (inclusive).[265]

The reports of a number of overseas inquiries indicate that returning priests and religious to ministry following some form of treatment for alleged child sexual abuse also occurred overseas. In the United States, the National Review Board found that:

> Bishops were too willing to turn over the problem of sexual abuse of minors to psychiatrists and psychologists. Moreover, even after the inherent limitations of treatment became well recognized, Church leaders continued to accept favorable reports as a basis, without any other considerations, to return perpetrators of abuse to positions of ministry.[266]

Individual cases where priests of the Archdiocese of Boston were provided with some form of treatment following allegations of child sexual abuse and were then returned to positions in active ministry were also discussed in the Massachusetts report.[267] Similar examples from the Diocese of Ferns, in Ireland, were reported in the Ferns report.[268]

Similarly, in the Netherlands, the Deetman inquiry reported on the use of psychiatrists to treat clergy and religious accused of child sexual abuse since the 1930s. It found that, while psychiatrists 'often advised on areas in which perpetrators of abuse would be able to work without posing a risk', their advice was followed sometimes only on a temporary basis. It concluded that, 'The fragmented organizational structure of the Roman Catholic Church means that there was and is no vantage point from which to oversee the further career of perpetrators and to therefore assess the risk that they might reoffend'.[269]

13.5.5 Temporary leave from ministry

On occasion, Catholic Church authorities in Australia temporarily removed priests and religious from positions in active ministry following receipt of allegations that they had sexually abused children, by granting them leave.

In the Archdiocese of Melbourne, Father Fasciale was granted an extended leave of absence from parish duties following allegations of child sexual abuse in mid-1960, and was permitted to travel overseas. This was a few months after the vicar general, Monsignor Lawrence Moran, received a report from a mother that Father Fasciale had touched her daughter on her vagina. In June 1960, Father Fasciale wrote a letter to Auxiliary Bishop Francis Fox and asked for permission from Archbishop Daniel Mannix to travel to Italy. Days later, Monsignor Moran advised Father Fasciale he had been granted leave until December 1960. Father Fasciale returned to the parish of North Fitzroy at the end of 1960, where he remained as the assistant priest until 1963.[270] According to the Catholic Church claims data, there were claims of child sexual abuse against Father Fasciale relating to incidents alleged to have occurred after 1960.[271]

Around February 1962, Auxiliary Bishop Fox requested that Father Fasciale participate in a retreat. In June 1962, Father Fasciale wrote to Auxiliary Bishop Fox and said, 'I have today finished the three-day Retreat you asked me to make last February' and that 'after making it … I have great confidence of being more prudent in the future'. In the *Catholic Archdiocese of Melbourne* public hearing, Archbishop Hart stated that Father Fasciale's letter to Auxiliary Bishop Fox (when read together with later correspondence) reinforced that there were known problems in relation to Father Fasciale.[272]

Archbishop Hart was asked whether permitting an alleged perpetrator to leave the jurisdiction for a period following a complaint was not an uncommon response of the Archdiocese of Melbourne. In speaking of the rationale behind this response, Archbishop Hart said:

> Certainly to permit some treatment or a sabbatical or a time of reflection, the idea being, as it was thought then, to try and help the person to reflect on the enormity of what they'd done.[273]

Father Ronald Pickering, also of the Archdiocese of Melbourne, was given a three-month leave of absence to visit his family in the United Kingdom in 1986. A medical doctor signed a certificate to say that Father Pickering would be unfit for duty for three months. In the *Catholic Archdiocese of Melbourne* case study we found that this occurred only two weeks after Archbishop Little confronted Father Pickering with a complaint that he had fondled the genitals of a boy and given the boy alcohol at Gardenvale parish. We found that Father Pickering was sent overseas as a consequence of this complaint.[274]

Father Pickering's request for extended leave was granted and he travelled to the United Kingdom in March 1986. His parishioners were informed in a parish newsletter that Father Pickering was taking leave to see his sister in England who was ill, and also on his own doctor's advice that he was in need of sick leave. We found that the reasons provided to the parishioners of Gardenvale were misleading, and reflected an approach to responding to complaints that was protective of the reputation of the Catholic Church and of Father Pickering.[275]

According to the Catholic Church claims data, there was a claim of child sexual abuse against Father Pickering relating to an incident alleged to have occurred in 1989.[276]

13.5.6 Appointments to positions with limited access to children

In other cases, after receiving a credible complaint, or having substantiated a complaint of child sexual abuse, Catholic Church authorities appointed alleged perpetrators to positions in ministry where it was believed they would have limited access to children or youth. This included positions in adult education and aged care homes, roles in administration or general duties.

In the *Christian Brothers* case study, we found that this was a response adopted by the Christian Brothers as early as 1945. A letter from 1945 from Brother McCarthy, an Irish brother who was an assistant to the superior general of the Christian Brothers in Dublin, discussed the case of a Brother McSweeney. Brother McCarthy wrote:

> His is a really bad case … He merits the most severe penalty but as you say there are circumstances which make one hesitate before passing sentence. He must be kept out of any danger of relapse and never in contact with the young … He must not be idle and he must be made feel that he has to atone for his offences.[277]

In addition, records indicate that a Brother Foy was transferred to Leura (a retirement home and also a residence for brothers under investigation) where he had no more contact with boys, after a parent made a complaint in 1944 that he was interfering with their son at Castledare Junior Orphanage in Western Australia.[278]

The Christian Brothers told us that, between 1963 and 2013, 20 brothers were removed from school environments or were prevented from working or having contact with children as a consequence of a complaint or allegation of, or conviction for, child sexual abuse.[279]

Documents provided to us by CCI included a letter dated 16 June 1989 in which the provincial of the Christian Brothers, Brother Kevin McDonnell, told the presiding magistrate at the time of criminal proceedings against Brother William Obbens that Brother Obbens was stood aside from a teaching position in 1989 following 'allegations of misconduct'.[280] Brother Obbens was subsequently moved into an administrative role at the Provincial House in Strathfield, New South Wales.[281] Brother McDonnell said in his letter:

> Certainly in the short term he would not be engaged in any form of work which would bring him into contact with children. In fact it seems to me unlikely that he would be so engaged at any time in the future, though this may depend to some extent on the outcome of rehabilitation programs which he will be following. [282]

In two cases we examined, the action of appointing alleged perpetrators to positions with limited access to children was not effective in preventing further abuse of children.

As discussed previously, in late 1982, Father Ridsdale was removed from the Parish of Mortlake in the Diocese of Ballarat by Bishop Mulkearns. In the *Catholic Church authorities in Ballarat* case study we found that Father Ridsdale's removal from Mortlake was discussed when the College of Consultors met in September 1982. We found that Bishop Mulkearns gave the reason to the College of Consultors that it was necessary to remove Ridsdale from the diocese and from parish work because of complaints that he had sexually abused children. Bishop Mulkearns negotiated with the Archdiocese of Sydney for a position for Father Ridsdale at the Catholic Enquiry Centre in Sydney. We found that it was thought an appointment to the Catholic Enquiry Centre, out of an ordinary parish environment, would reduce Father Ridsdale's access to children.[283]

In a letter he wrote to a treatment facility in the United States in 1989, Bishop Mulkearns said of Father Ridsdale's move to the Catholic Enquiry Centre:

> This position was an office one which involved replying by mail to interested enquirers. It was specifically chosen to ensure he had no contact with ordinary parish work.[284]

Father James FitzPatrick was the Director of the Catholic Enquiry Centre at the time of Father Ridsdale's transfer. In 1982, Bishop Mulkearns approached Father FitzPatrick about a posting for Father Ridsdale. He said he had a priest he could release to work as master of studies at the Catholic Enquiry Centre. Father FitzPatrick told us that Bishop Mulkearns told him the priest 'had been in a bit of personal trouble here and it could be serious, so I'd like to get him out of the place and away'. He told Father FitzPatrick the priest had had some problems with young people.[285]

Father FitzPatrick agreed to take Father Ridsdale, because it was an office role and he would not be mixing with people. He said he did not like to inquire any further with the bishop, and he was satisfied the bishop obviously had enough confidence in Father Ridsdale.[286]

Father FitzPatrick was not aware of any conditions agreed between the bishops in relation to Father Ridsdale's presence at the Catholic Enquiry Centre. During office hours, he was responsible for Father Ridsdale, as his employer, but at other times Father Ridsdale was answerable to Bishop Mulkearns.[287]

Ridsdale told us he did not recall any conditions or restrictions put on him while he was at the Catholic Enquiry Centre, including a condition that he not be in contact with children. Ridsdale told us that during his time at the Catholic Enquiry Centre he continued to sexually abuse children.[288]

Cardinal Edward Bede Clancy, who became Archbishop of Sydney in 1983, said many years later that the arrangement for Father Ridsdale's appointment to the Catholic Enquiry Centre was initially agreed between Bishop Mulkearns and his predecessor as archbishop, Cardinal James Darcy Freeman. Bishop Mulkearns and Cardinal Clancy, on his becoming archbishop, agreed to certain conditions of Father Ridsdale's stay in the archdiocese: Father Ridsdale would work at the Catholic Enquiry Centre, he would not be in contact with children, and he would continue with his counselling. These were the same conditions originally agreed between Bishop Mulkearns and Cardinal Freeman. According to Cardinal Clancy, the arrangements were informal and were not documented.[289]

We received evidence that Bishop Mulkearns took Cardinal Clancy aside during the Australian Catholic Bishops Conference in 1983 and explained that Father Ridsdale 'had certain sexual problems, was under professional treatment', and had come to Sydney to get away from the problems in Victoria.[290]

While he was at the Catholic Enquiry Centre, Father Ridsdale continued to have contact with children, including altar boys and school students. After he arrived at the Catholic Enquiry Centre, he started attending prayer groups once a week at the homes of various families. He also started participating in community activities and saying mass regularly on Tuesday evenings at Yarra Bay. The president of the Yarra Bay Eucharistic Prayer Community, Ms Marika Gubacsi, gave a statement in which she said a 10-year-old boy, BAO, became Father Ridsdale's altar boy.[291]

We found that it must have been plain to Bishop Mulkearns that Father Ridsdale still had access to children while he was at the Catholic Enquiry Centre.[292]

Similarly, in the *Marist Brothers* case study we considered the case of Brother Gregory Sutton, a prolific offender who is alleged to have abused 27 children at six primary schools in Queensland, New South Wales and the ACT between 1973 and 1987.[293] In April 1987, almost 14 years after concerns were first raised about his inappropriate contact with children, Brother Sutton was

removed from a teaching position at St Carthage's Primary School in Lismore, New South Wales. He was then placed in an administrative role at Provincial House in Drummoyne, New South Wales.[294] In 1996, Brother Sutton was convicted of an act of gross indecency involving mutual masturbation that occurred in June 1987, only two months after he had been placed in a position where he was intended to have no access to children. The victim, ACY, was 15 years old at the time of the abuse, and had previously been abused by Brother Sutton as an 11 year old student at St Carthage's Primary School. Brother Sutton's removal clearly was not effective in preventing him from abusing ACY on a further occasion.[295] In 1996, Brother Sutton pleaded guilty to a total of 67 child sex offences in relation to 15 students at schools in New South Wales.[296]

13.5.7 Removal from ministry

While religious brothers and sisters could be moved from one position to another due to their vows of obedience to a particular religious order, ordained priests who ministered in parishes could only be removed from that ministry by the bishop of the relevant diocese. Under canon law, bishops can take action to remove a priest from ministry in certain circumstances, though they retain their status as a priest. The canonical provisions relating to the removal of priests are set out in Section 13.2.

An example of the application of those provisions concerns Father Michael Glennon. Archbishop Hart told us that around 1978, after Father Glennon pleaded guilty to charges of indecent assault, he had his faculties (ecclesiastical powers or authorisation for performing ministry) removed. In the documents produced to us, there is no record of them being removed and Archbishop Hart said his knowledge came from working to present Father Glennon's case for laicisation.[297]

In 1984, Father Glennon tendered his resignation as priest and stated that he would seek laicisation. However, he subsequently refused to apply for laicisation. On 30 March 1984, the Archbishop of Melbourne, Archbishop Little, wrote to Father Glennon stating:

> Because of this explicit statement of your resignation, I hereby withdraw your faculties to exercise the Priesthood in any manner whatsoever, including the celebration of Mass privately … I also wish to inform you that your authorisation to act as a marriage celebrant will also be withdrawn.[298]

Archbishop Hart told us that, although Father Glennon's faculties had already been withdrawn in about 1978, this withdrawal of faculties was 'a more formal thing' and to 'indicate very clearly that they were permanently withdrawn'.[299]

In *The Towards Healing process* case study, we heard from Mrs Jennifer Ingham that she was sexually abused by Father Paul Rex Brown between 1978 and 1982.[300] Father Brown had his faculties removed by the Bishop of Lismore on 26 October 1987. Prior to this, in 1986, he had been removed from his appointment as parish priest of Tweed Heads by the bishop. A document was prepared as part of the process of removal of Father Brown's faculties.

It recorded a number of allegations of child sexual assault against him. Despite these allegations, the principal reason given for Father Brown's removal from ministry was his problem with alcohol and the effect that had on his 'pastoral responsibilities'.[301]

In 1988, Bishop Mulkearns withdrew Father Ridsdale's faculties for a period of 12 months. He told Father Ridsdale the future position could be discussed in light of developments at that time. This withdrawal followed allegations that Father Ridsdale had sexually abused a boy in the Archdiocese of Sydney years earlier, while he was at the Catholic Enquiry Centre. As discussed in Section 13.4 and above, in the *Catholic Church authorities in Ballarat* case study we found that by late 1975 Father Ridsdale had admitted to Bishop Mulkearns that he had offended against children.[302]

In the *Catholic Archdiocese of Melbourne* case study, we examined the reluctance of Archbishop Little to engage with the canon law processes following a request to remove Father Searson from ministry in the 1980s. In October 1986, Mr Vaughan, a parishioner of Doveton parish, wrote to Archbishop Little on behalf of parishioners who had attended a meeting with parish priest Monsignor Hilton Deakin about Father Searson. In his letter, Mr Vaughan said it was the 'unanimous view' of those at the meeting that there was a serious problem in the Doveton parish caused by Father Searson and that the only solution was to remove him from the parish.[303]

The material Mr Vaughan provided to the archbishop was significant. It contained some of the most serious allegations regarding Father Searson up until that time (most of which had previously been communicated to the archdiocese). It included the allegation that Father Searson had pointed a gun at parishioners, that people held concerns for their safety and the safety of their children and that there had been an allegation, described as a sexual assault, of a girl in the confessional.[304] On 28 October 1986, Archbishop Little responded to Mr Vaughan. Among other things, Archbishop Little wrote that:

> Long experience has brought home to the Church that the removal of a priest is rarely of benefit to the priest or the parishioners. Over the years, the internal law of the Church – the Code of Canon law … has built in strong protection for the tall poppy who is in the vulnerable position. The further canons to 1740 and 1741 demonstrate the sensitivity with which the Church seeks to support the man in the hot seat.[305]

In the course of the public hearing, the former director of the Catholic education office, Monsignor Thomas Doyle, described Archbishop Little's response as 'hopeless' and 'embarrassing'. We found that this was an apt description, and that Archbishop Little's response was grossly inadequate.[306] As discussed in Section 13.8, Father Searson's faculties were ultimately withdrawn in 1997.

CCI documents relating to Father Glover, discussed above, indicate that the Marist Fathers did take steps to remove him from the order as early as 1958, following allegations of child sexual abuse. However, in 1960 Father Glover was incardinated into the Diocese of Bunbury, which had the result that he was not permanently removed from ministry.

A chronology from the Marist Fathers relating to Father Glover said that he was removed from his parish in Victoria 'for immoral and criminal sexual behaviour with boys and male adolescents', and had 'admitted the behaviour to the Provincial', following which he was given a formal canonical warning.[307] In July 1958, Father Glover was appointed to an unknown position in a parish in Queensland.[308] The chronology said that in July 1959, Father Glover was removed from this parish, given a second canonical warning and 'specifically threatened with dismissal from the [Marist Fathers] … He was told he would not be given ministry by the [Marist Fathers] in Australia.'[309]

In September 1959, the Bishop of the Diocese of Bunbury, Bishop Launcelot Goody, told the Marist Fathers provincial, Father Harcombe, that he had received a letter from Father Glover asking to be accepted into his diocese.[310] Bishop Goody wrote:

> His letter was a very frank one, telling me of his troubles at [the parish in Victoria] and I was impressed by the whole tone of his letter. In any case although not personally acquainted, I had heard of him and his work in Victoria.
>
> I always feel the greatest of sympathy for a priest who has had a fall and I replied to Fr. Glover that I would be prepared to accept him on trial 'ad triennium' in this Diocese if all the Canonical requirements were observed. Bunbury is so distant from the Eastern States of Australia that I feel that here he would have the opportunity of a fresh start with a completely clean sheet.[311]

In September 1959, Father Harcombe wrote to the Superior General of the Marist Fathers in Rome, stating:

> Father Glover is writing to you to seek a dispensation from his vows. We have had a Council meeting about it and unanimously we recommend with all our hearts that the dispensation be obtained for him, and that as quickly as possible.[312]

In September 1959, Father Glover was accepted into the Diocese of Bunbury on a trial basis,[313] and in October 1960, he was incardinated into the diocese.[314] As discussed in Section 13.4, CCI determined that the Diocese of Bunbury had knowledge of Father Glover's propensity to offend in September 1959.[315] He was appointed to various parishes in the diocese until October 1990, including as priest in charge, parish priest and administrator.[316] Five people made claims between 1997 and 2014 to the Diocese of Bunbury that they were sexually abused by Father Glover between 1967 and 1986.[317]

13.5.8 Laicisation, dispensation and dismissal

Canon law provides mechanisms for voluntary application for laicisation or dispensation from vows, or involuntary dismissal from priesthood and religious life of priests and religious who have been accused of child sexual abuse. The canonical provisions relating to laicisation are set out in Section 13.2.

Despite the existence of these canon law provisions, we did not receive evidence to suggest that Catholic Church authorities in Australia made use of them in the period prior to the development of national protocols. The extent to which this approach changed during the 1990s and 2000s is discussed further in Section 13.8.

13.5.9 Conclusions about Catholic Church responses to alleged perpetrators before the development of national procedures

> Well, if there is a culture in a religious organisation to describe rape as 'inappropriate touching'; if nothing happens unless somebody is going to the police; if there's a polite conversation between the Provincial and the alleged offender, who says, 'No, nothing happened', and that's all the extent of the investigation; if people are simply moved to another province or to another part of the world and … kept away from the police – all of that gives permission to continue offending knowing that there will not be serious consequences or may not be serious consequences.
>
> So I think there is a connection between a response to concerns of child sexual abuse and the actual numbers of those who have been now found, allegedly at least, to have offended against children.[318]
>
> **Professor Patrick Parkinson AM, professor of law, University of Sydney**

Our examination of the responses of Catholic Church authorities to allegations of child sexual abuse prior to the 1990s exposed catastrophic failures of leadership over many decades.

Those failures led to the suffering of a great number of children, their families and wider communities. For many, the harm was irreparable. In numerous cases, that harm could have been avoided had the Catholic Church authorities acted in the interests of children rather than in their own interests.

The response of various Catholic Church authorities to complaints and concerns about its priests and religious was remarkably and disturbingly similar. It is apparent that the avoidance of public scandal, the maintenance of the reputation of the Catholic Church and loyalty to priests and religious largely determined the responses of Catholic Church authorities when allegations of child sexual abuse arose. As acknowledged by the Catholic Church, in some cases, those in

positions of authority concealed or covered up what they knew. We agree with Archbishop Fisher of the Archdiocese of Sydney that a lack of empathy contributed to the concealment of sexual abuse within the Catholic Church.

Prior to the development of national procedures, complaints of child sexual abuse were not reported to police or other civil authorities, contributing to the Catholic Church being able to keep such matters 'in house' and out of the public gaze. Had the Catholic Church authorities reported all complaints received to the police, they could have prevented further sexual abuse of children.

In some cases, the leaders of Catholic Church authorities were reluctant to remove alleged perpetrators from positions that involved contact with children. Some alleged perpetrators were allowed to remain in religious ministry in the same positions and locations for an extended period of time after allegations of child sexual abuse were raised; in some cases there were further allegations of child sexual abuse. If appropriate protective steps had been taken, this subsequent abuse may have been avoided.

In other cases, alleged perpetrators were moved to new positions in other locations after allegations were raised, where in some instances they continued to sexually abuse children. The removal of priests and religious from locations where allegations of child sexual abuse arose, and their subsequent transfer to new locations, was one of the most common responses adopted across Catholic Church authorities in Australia prior to the development of national procedures. Some priests and religious brothers who were accused of child sexual abuse were moved on multiple occasions. On some occasions, the transfer was to a location where it was thought that the access to children was more limited, for example from a residential institution to a day school.

When the priest or religious left, sometimes hurriedly, untrue or misleading reasons were sometimes given for their departure. On occasions, the move was timed so as to avoid raising suspicion. It appears that in some cases, no warning, or no effective warning, was given to the new parish or school of the risk posed by the incoming priest or religious.

Until at least the early 1990s, alleged perpetrators often were sent away for a period of 'treatment' or 'reflection' before a new appointment. Some leaders of Catholic Church authorities believed that psychological treatment or other forms of counselling could assist or 'cure' alleged perpetrators of child sexual abuse. The evidence revealed a preference to send offending clergy to psychologists or psychiatrists who were ordained priests, or who were Catholic.

In one case we examined a bishop returned an alleged perpetrator to a position in religious ministry with access to children after being encouraged by assurances from treating professionals that treatment had been successful. In another case, the bishop did not follow up or seek the advice of the treating professionals, and appears to have assumed that treatment had been successful. When further complaints of sexual abuse were received after the treatment was concluded, this bishop did not appear to question the efficacy of the treatment.

In some cases, priests or religious against whom allegations of child sexual abuse had been made were simply granted leave, or restrictions were placed on their ministry, such as by appointing them to administrative positions. These measures were not always effective in preventing them from having access to children.

Throughout this period, there was a system under canon law for disciplining priests and religious accused of child sexual abuse, under which the most severe penalty was dismissal from the priesthood or religious life and a return to the lay state. However, the Catholic Church authorities we examined did not engage with these canonical processes for priests or religious accused of child sexual abuse in the decades before the development of national procedures. Instead, bishops and religious superiors adopted a range of informal responses aimed at limiting the capacity of alleged perpetrators to engage in ministry or, at most, permanently removed alleged perpetrators from particular dioceses or religious congregations. These measures did not always prevent alleged perpetrators from continuing in ministry within another Catholic Church authority, or continuing in other positions where they had access to children.

The clearest indication of the inappropriateness and ineffectiveness of institutional responses by Catholic Church authorities to alleged perpetrators of child sexual abuse in this time period is the fact that often they did not prevent the further sexual abuse of children. Some alleged perpetrators continued to offend even after multiple responses had been made following initial and successive allegations of child sexual abuse.

As discussed in Chapter 11, 'Disclosure of child sexual abuse in religious institutions', we heard from victims and survivors that the actions taken by the leaders of Catholic Church authorities in response to alleged perpetrators of child sexual abuse following disclosures was often too little, too late, and in many cases allowed the abuse to continue.

In reflecting on the response of the Catholic Church in Australia to alleged perpetrators of child sexual abuse during the *Institutional review of Catholic Church authorities* public hearing, Archbishop Timothy Costelloe, Archbishop of Perth, said that it was 'scandalously insufficient, hopelessly inadequate … It's just such a fundamental failure that I am not sure what else I could say'.[319]

A similar sentiment was reflected in the comments of Mr Francis Sullivan, the Chief Executive Officer of the Truth, Justice and Healing Council, during the same public hearing. Mr Sullivan said that the evidence of child sexual abuse we have uncovered:

> can only be interpreted for what it is: a massive failure on the part of the Catholic Church in Australia to protect children from abusers and perpetrators; a misguided determination by leaders at the time to put the interests of the Church ahead of the most vulnerable; and a corruption of the gospel the Church seeks to profess.[320]

We can only agree with these words.

Endnotes

1 Transcript of PG Carroll, Case Study 43, 8 September 2016 at 18231:18–35.
2 Transcript of GJ Robinson, Case Study 31, 24 August 2015 at 16017:15–29.
3 Transcript of A Fisher, Case Study 50, 23 February 2017 at 25997:12–18.
4 Exhibit 35-0024, 'Statement of Bishop Peter Joseph Connors', 13 November 2015, Case Study 35, STAT.0769.001.0001_R at 0003_R.
5 Transcript of PJ Evans, Case Study 28, 25 February 2016 at 16169:12–23.
6 Transcript of MJ Malone, Case Study 43, 1 September 2016 at 17731:7–11.
7 Transcript of BV Heather, Case Study 44, 14 September 2016 at 21085:9–14.
8 Transcript of BV Heather, Case Study 44, 14 September 2016 at 21084:29–31.
9 Transcript of BV Heather, Case Study 44, 14 September 2016 at 21084:5–19.
10 Transcript of BV Heather, Case Study 44, 14 September 2016 at 21086:6–29.
11 Transcript of GJ Robinson, Case Study 31, 24 August 2015 at 16035:11–12.
12 Transcript of PJ Connors, Case Study 35, 27 November 2015 at 13552:18–19.
13 Transcript of TM Doyle, Case Study 35, 26 November 2015 at 13432:41–46.
14 Transcript of TM Doyle, Case Study 35, 26 November 2015 at 13433:28–29.
15 Transcript of TM Doyle, Case Study 35, 26 November 2015 at 13433:38–44.
16 Transcript of MJ Malone, Case Study 43, 1 September 2016 at 17749:11–31.
17 Transcript of GJ Robinson, Case Study 31, 24 August 2015 at 16028:22–28.
18 Transcript of GJ Robinson, Case Study 31, 24 August 2015 at 16028:33–35.
19 Exhibit 28-0003, 'Qualifications, CV and experience of Professor Carolyn Quadrio', Case Study 28, CORR.0036.001.0026_E at 0026_E.
20 Transcript of C Quadrio, Case Study 28, 25 May 2015 at 8448:19–21.
21 Transcript of C Quadrio, Case Study 28, 25 May 2015 at 8448:22–25.
22 Transcript of PJ Evans, Case Study 28, 25 February 2016 at 16186:42–16187:11.
23 Transcript of J Usher, Case Study 8, 25 March 2014 at 6384:33–42.
24 Transcript of PJ Connors, Case Study 35, 3 December 2015 at 13995:16–21.
25 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 35: Catholic Archdiocese of Melbourne*, Sydney, 2017, s 9.2.
26 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 35: Catholic Archdiocese of Melbourne*, Sydney, 2017, s 9.2.
27 Exhibit 43-0005, 'Transcript of interview between Geoff Jay and Bishop Malone', 5 June 1996, Case Study 43, CTJH.210.01025.1749 at 1756.
28 Transcript of MJ Malone, Case Study 43, 1 September 2016 at 17738:43–17739:9.
29 Transcript of A Fisher, Case Study 50, 23 February 2017 at 26028:19–28, 26029:2–6.
30 Transcript of TM Doyle, Case Study 50, 7 February 2017 at 24831:20–31.
31 Transcript of GJ Robinson, Case Study 31, 24 August 2015 at 16011:46–16015:28.
32 Transcript of GJ Robinson, Case Study 31, 24 August 2015 at 16015:1–17.
33 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 13: The Response of the Marist Brothers to Allegations of Child Sexual Abuse Against Brothers Kostka Chute and Gregory Sutton*, Sydney, 2015, p 58.
34 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 13: The Response of the Marist Brothers to Allegations of Child Sexual Abuse Against Brothers Kostka Chute and Gregory Sutton*, Sydney, 2015, p 57.
35 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 13: The Response of the Marist Brothers to Allegations of Child Sexual Abuse Against Brothers Kostka Chute and Gregory Sutton*, Sydney, 2015, pp 57–9.
36 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 13: The Response of the Marist Brothers to Allegations of Child Sexual Abuse Against Brothers Kostka Chute and Gregory Sutton*, Sydney, 2015, pp 44–5.
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13.6 Catholic Church responses to victims and survivors before the development of national procedures

> I thought to myself, 'What can I do? It is the word of two little boys against that of a Catholic priest.' Catholic priests in 1974 were held in the highest esteem and were trusted by the community and their congregation.[1]
>
> **Parent of two victims of child sexual abuse, CNA**

During public hearings and in private sessions, many survivors told us that they were sexually abused as children in Catholic institutions. These survivors gave compelling accounts of their experiences when they disclosed the abuse and about the responses they received when they reported it to persons in positions of authority in the Catholic Church and/or sought some form of redress. Many of these private sessions accounts are available as narratives in an online appendix to Volume 5, *Private sessions*.

In Section 13.5 above, we have described a number of cases where allegations or reports of child sexual abuse made to persons in positions of authority in the Catholic Church resulted in some action with respect to the alleged perpetrator. However, particularly prior to the development of national procedures by the Catholic Church in Australia, culminating in the announcement of Towards Healing and the Melbourne Response in 1996, responses were not focused on the victims of such abuse.

This was illustrated in *Case Study 13: The response of the Marist Brothers to allegations of child sexual abuse against Brothers Kostka Chute and Gregory Sutton* (*Marist Brothers*) in evidence about an incident said to have taken place in 1986 at Marist College Canberra. We heard that Brother Kostka Chute sexually abused ACK, who immediately disclosed what had happened to his parents. They complained to the headmaster at the time, Brother Terence Heinrich. Brother Heinrich told us that he was in many respects 'bereft of a strategy to deal with [the situation]'. He further stated that he did not have any further discussion with ACK's parents about the incident and no steps were taken to remove ACK from Brother Chute's class or to make sure that there was no association between them. He accepted that he failed to ask ACK's parents for details about ACK's disclosure and the nature of the alleged abuse.[2]

Few survivors who provided evidence described receiving any kind of official or formal response from the relevant Catholic Church authority when they made a report of child sexual abuse while they were still children, in the period prior to the early 1990s. In addition, as discussed in Chapter 11, 'Disclosure of child sexual abuse in religious institutions', children who disclosed at or close to the time of their experience of abuse in a Catholic institution were often disbelieved, ignored or punished, or in some cases were further abused.

In *Case Study 28: Catholic Church authorities in Ballarat (Catholic Church authorities in Ballarat),* we heard evidence of a number of instances where victims or their parents disclosed to Catholic Church authorities in the period prior to the early 1990s and were met with disbelief and/or inaction.

Mr Timothy Barlow was a student at St Patrick's College in Ballarat and a member of the student representative council (SRC) at the college in 1973. After Mr Barlow started on the SRC, a younger student told him he wanted Brother Edward Dowlan to stop putting his hand down his and his brother's pants. At the next SRC meeting, Mr Barlow moved that the SRC request 'Brother Nangle to tell Brother Dowlan to stop putting his hands down kids' pants', or words to that effect. The request was documented as a motion in the minute book. The minute book normally went to Brother Paul Nangle after each meeting for his consideration.[3]

Mr Barlow said he was physically assaulted the following night by Brother Dowlan and another brother, and made to sleep in the stairwell outside the dorm room. A day or two later, Mr Barlow was called into Brother Nangle's office. Mr Barlow said:

> Brother Nangle told me that I had to be more discerning and avoid spreading lies, and told me that I would have to recant the allegation about Brother Dowlan touching boys at the next school assembly. I think he told me then that the SRC was being suspended until students learned to exercise their responsibilities in a more mature fashion.

Brother Nangle announced at the next school assembly that the SRC was to be disbanded as a result of certain students using it to tell 'scurrilous lies' about the brothers, and asked Mr Barlow to come forward and apologise to the school for spreading lies, which he did. We found that Brother Nangle's response to Mr Barlow was humiliating to Mr Barlow and wrong.[4]

In the same case study, we heard evidence from Mr Martinus Claassen. Mr Claassen is also a former student at St Patrick's College in Ballarat. In 1974, when Mr Claassen was about 12 or 13 years old, Brother Dowlan was his housemaster. Mr Claassen told us he was sexually abused by Brother Dowlan that year, and he reported it to his mother. A meeting was arranged between Mr Claassen, his mother and Brother Nangle. At the time Brother Nangle was the headmaster of St Patrick's College and the superior of the St Patrick's community. Mr Claassen told us:

> It was just the three of us seated in a sort of triangle. I was crying at the meeting. Brother Nangle asked me to tell him what had happened, which I did. I said to Brother Nangle that Brother Dowlan had touched me.
>
> He asked me, 'Why are you making up these stories? Are you sure you're not making this up?' I remember him asking me, 'Show me where he touched you'. And I showed him by putting my hand over my crotch and said that Brother Dowlan had put his hand on my dick. Brother Nangle said, 'Are you sure that's where he touched you?' I replied, 'Yes' and started to cry again.

> Brother Nangle then terminated the meeting saying, 'Thank you for coming' … Brother Nangle made no other comment.

Mr Claassen told us he never heard anything else about the interview from Brother Nangle, but that there were no further incidents with Brother Dowlan. We accepted Mr Claassen's evidence, and we found that there was no evidence that Brother Nangle reported this complaint to the provincial, or took any other action in relation to it.[5]

[redacted]

In another case from our *Catholic Church authorities in Ballarat* case study, we received evidence that, in early 1981, BAI and her husband approached the Bishop of Ballarat, Bishop Ronald Mulkearns, after their son had told them, 'I think our friend, Father Gerry, is gay' and said Father Gerald Ridsdale had grabbed him. BAI said they wanted to find out if Father Ridsdale had a history of problems with boys and whether they should be concerned. When they telephoned the bishop's office the following day, they spoke to Father Brian Finnigan, who at that time was the bishop's secretary.[7]

Father Finnigan told BAI and her husband that Bishop Mulkearns was not available. They told Father Finnigan their inquiry was related to the safety of their son, and asked if they needed to be concerned about the welfare of their child in relation to Father Ridsdale. BAI's evidence was that Father Finnigan told them there had been no reports of improper behaviour by Father Ridsdale, and there was no need for concern. We found that Father Finnigan clearly did not satisfy himself that there was no cause for concern before offering that reassurance to BAI and her husband.[8]

About 18 months after she first spoke to Father Finnigan, BAI's sons disclosed to her that Father Ridsdale had touched them. BAI and her husband then travelled to Bishop Mulkearns's office with two other parents, BPF and her husband. BAI's evidence was that she and her husband told Bishop Mulkearns they had been put in a situation because of the actions of Father Ridsdale, and other boys had been affected. She told Bishop Mulkearns that next time they would go straight to the police. BAI told us Bishop Mulkearns just sat there and stared at them, was devoid of emotion, and was totally dismissive.[9]

BPF had two sons who stayed overnight in the presbytery with Father Ridsdale in November 1981. BPF told us that, afterwards, she sensed something was wrong and asked one of her sons if Father Ridsdale had touched him. The boy hung his head and would not make eye contact. The same day, BPF and her husband drove to neighbouring Terang parish, where Monsignor Leo Fiscalini was the parish priest. At the time, Monsignor Fiscalini was the Vicar General of the Diocese of Ballarat.[10]

BPF told us:

> We met Monsignor Fiscalini at the front door of the presbytery. I don't think we went inside. I said to him, 'we've got a problem in Mortlake'.
>
> That was as far as we got. We didn't even get a chance to say that it was Father Gerry who was involved. He told us that Bishop Mulkearns was not in the diocese at the time. He said 'I will deal with it' and dismissed us. He did not ask us any questions.[11]

Not long after this confrontation, BPF's son came home with a letter from Father Ridsdale apologising, although he did not admit to anything. BPF destroyed the letter. We found that Monsignor Fiscalini reported the incident to Bishop Mulkearns in November 1981. Father Ridsdale remained in the parish for another nine months, until September 1982.[12]

As noted above, in August 1982, BPF and her husband, along with BAI and her husband, went to meet with Bishop Mulkearns. BPF or her husband said to Bishop Mulkearns, 'We've got big problems in Mortlake'. Before they could say anything more, Bishop Mulkearns replied, 'How am I to take the word of a child over one of my priests?' BPF said they were in Bishop Mulkearns's office for less than five minutes.[13]

Mr Paul Levey was first sexually abused by Father Ridsdale during a camping trip that occurred in about 1980 when he was 12 years old. Mr Levey's parents had separated in March 1980. One day his father rang his mother and said Father Ridsdale had offered to take him to live in the presbytery and Paul would attend the Catholic Regional College. At around Easter 1982, when he was 14 years old, Mr Levey went to live in the Mortlake presbytery with Father Ridsdale. Mr Levey told us he was sexually abused 'all the time, just about every day' while he lived with Father Ridsdale.[14]

Paul's mother, Mrs Beverley Levey, told us that, not long after Paul was moved to live with Father Ridsdale, she telephoned Bishop Mulkearns and said, 'How can you let a child live in a presbytery with a priest? That's not appropriate. I want Paul taken out of there'. Bishop Mulkearns told her there was nothing he could do as the arrangement had Paul's father's approval. Mrs Levey had at least two similar conversations with Bishop Mulkearns but each time she was ignored.[15]

On one occasion, Mrs Levey was angry and upset and telephoned the bishop's office. She asked Bishop Mulkearns, 'Do you think it's appropriate that a boy is living at the presbytery with the priest?' He did not answer, and she said, 'I will get the police involved if you don't do something about Paul and Ridsdale'. Mr Levey remained living in the Mortlake presbytery until about October 1982.[16]

As discussed in Sections 13.4 and 13.5, Bishop Mulkearns arranged for Father Ridsdale to take up an appointment at the Catholic Enquiry Centre in Sydney in late October 1982.

Several years later, in 1987, a mother, BAE, was told by her son that he had been molested by Father Ridsdale in 1978. BAE reported the allegation to Father Brian McDermott, who was the bishop's secretary at the time. The following week, BAE telephoned the bishop's office and again spoke to Father McDermott, who said he had passed on her concerns to the bishop and that Bishop Mulkearns had spoken to Father Ridsdale about his behaviour. Days later, BAE wrote to Bishop Mulkearns, 'Thank you for your message that Father Gerry Ridsdale had been spoken to by you but I am not satisfied that anything has as yet been resolved'. She asked for a meeting with the bishop if he was not able to answer her question as to what could be done with Father Ridsdale. We found that for Bishop Mulkearns not to remove Father Ridsdale from Horsham parish, where he was then working as an assistant priest, or from ministry, immediately upon learning of BAE's allegations, given all the earlier knowledge he already had, was inexcusably wrong.[17]

In *Case Study 35: Catholic Archdiocese of Melbourne*, we received evidence that in 1978 Mr Bryan Cosgriff, who was the chairman of the Good Shepherd Primary School Council and also a magistrate, and Mr Brendan Murphy, a lawyer, met with Archbishop Thomas Francis Little at his residence in Kew. They reported an allegation that Father Wilfred Baker had taken a boy, BTO, away for the weekend, that they had showered together, and that Father Baker had touched BTO sexually. Mr Cosgriff said that Archbishop Little gave them 'a pretty cold reception'. He recalled that Archbishop Little appeared to be angry towards them and said he thought they were despicable, the allegations were despicable, and he did not believe them. We also received evidence from BTO about the response he received from the Melbourne Archdiocese at the time of his experience of abuse and concluded that no pastoral or other support was offered to him and little regard was had for his welfare.[18]

In the same case study we received evidence that Sister Rose Wood, a parish pastoral worker, wrote to Archbishop Little in or about June 1986, reporting that a boy, BTZ, had disclosed to her that Father Kevin O'Donnell had sexually abused him. She did not receive any response from the archbishop.[19] We also heard that in 1986 general practitioner Dr Peter Barker received an allegation from an adolescent male, BVE, that Father Ronald Pickering had fondled his genitals when he was 12 or 13. Dr Barker reported the matter to the vicar general, Monsignor Peter Connors, who told him that the matter would be looked into. Dr Barker subsequently learnt from BVE that Father Pickering had left the Parish of Gardenvale, where he was ministering at the time. We found that Monsignor Connors would have informed Archbishop Little of Dr Barker's complaint. Monsignor Connors did not follow up with Dr Barker to inform him of the outcome of the complaint. We heard from Bishop Connors that he regretted not doing so.[20]

Some survivors told us that when they or their parents reported child sexual abuse, they were given some kind of general assurance that the matter would be dealt with. If a victim's complaint did result in some kind of action with respect to the alleged perpetrator of child sexual abuse, they were not always told about that action or that it resulted from their complaint.

In 1962, following receipt of a complaint about sexual abuse by Brother Chute, the principal of St Anne's Primary School and community superior of the Marist Brothers community, Brother Des Phillips, let the victim's father know that he had spoken to Brother Chute and 'things would be righted'.[21] Despite the fact that Brother Chute admitted to Brother Phillips that he had indecently touched or indecently assaulted a boy, Brother Phillips did not report the matter to the provincial. In our *Marist Brothers* case study report we found that Brother Phillips's response to this complaint was 'grossly inadequate', which was accepted by the Church parties.[22]

In the *Catholic Church authorities in Ballarat* case study, CCD told us that in 1974 he was sexually assaulted at St Alipius Primary School by then Brother Stephen Farrell, who was his Grade 5 teacher. Afterwards, he ran home and told his mother that Farrell had touched him. That night, CCD's mother, CCE, took him up to St Patrick's College to the brothers' residence and asked to speak to the 'head brother'. CCE told us when she spoke to the head brother:

> I told him what CCD had said Brother Farrell had done to him. The Brother tried to get me to calm down.
>
> The Brother said to me numerous times, 'Don't go to the police'. I said, 'Well, what's going to happen to my little boy tomorrow at school.' I told him something like, 'If Brother Farrell is at the school tomorrow, I'll be going to the police'. The Brother said to me that Brother Farrell would not be there tomorrow.

CCE said she never saw Farrell again. We found that the 'head brother' was Brother Nangle, the superior of St Patrick's community in Ballarat. We accepted Brother Nangle's evidence that he reported CCE's complaint to Brother Chanel Naughtin, the provincial at the time. Shortly after this complaint, Farrell decided not to take his final vows and left the Christian Brothers.[23]

In the same case study, we heard of Monsignor Henry Nolan's response to BPE. BPE was the president of the school council at St Colman's in Mortlake in the early 1980s and the father of three boys at the school. BPE had been informed of allegations of inappropriate conduct with children by Father Ridsdale. One of BPE's sons had disclosed that Father Ridsdale had fondled him and another son had disclosed that Ridsdale had attempted to sexually abuse him. In 1982, BPE met with Monsignor Nolan, the vicar general at the time. BPE told us that Monsignor Nolan was 'horrified' to learn how widespread the sexual abuse by Father Ridsdale was. BPE told Monsignor Nolan that he heard on the grapevine that Father Ridsdale had engaged in similar offending in other parishes but had just been moved from place to place once it had been identified.[24]

BPE told us that Monsignor Nolan:

> seemed quite shocked and told me that they would deal with it. He said that Ridsdale had gone off the rails because his brother had died. He said he thought this was a one-off and couldn't imagine it ever happening again.

BPE's evidence was that Monsignor Nolan said:

> 'do nothing, leave it with me, I'll talk to the Bishop about it'. The meeting was fairly brief. Monsignor Nolan did not get back to me with any further information about this matter and I did not speak to him again.

We found that Monsignor Nolan's response to BPE was consistent with an intention to reassure him, and to therefore discourage any further action in relation to Father Ridsdale's sexual abuse of children in Mortlake.[25]

We also heard in *Catholic Church authorities in Ballarat* that in 1988 the father of a boy at St Mary's Technical College in Geelong telephoned Ms Isabel Clingan, a teacher at the college. He was 'outraged' by something Brother Dowlan had done to his son, but said he was too embarrassed to tell Ms Clingan about it on account of her being a woman. He told Ms Clingan, 'Brother Dowlan treated my boy like no teacher, let alone a Christian Brother should treat a boy'. Ms Clingan said she told the father to speak to the principal, Brother John O'Halloran, and she subsequently told Brother O'Halloran about the call. A couple of days later, Ms Clingan said she asked Brother O'Halloran about the matter. He told her he had met with the father, and the complaint was a private matter for the Christian Brothers. He told her, 'don't worry about that, it's all been fixed'.[26]

In the following section we set out how Catholic Church authorities in Australia developed national protocols to guide their responses to allegations of child sexual abuse raised by victims, beginning in the late 1980s. Then, in Section 13.9, we discuss what we learned from survivors about the responses they received from that time onwards.

Endnotes

1 Transcript of CNA, Case Study 43, 31 August 2016 at 17609:21–25.
2 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 13: The response of the Marist Brothers to allegations of child sexual abuse against Brothers Kostka Chute and Gregory Sutton*, Sydney, 2015, pp 42–5.
3 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 28: Catholic Church authorities in Ballarat*, Sydney, 2017, s 3.6.
4 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 28: Catholic Church authorities in Ballarat*, Sydney, 2017, s 3.6.
5 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 28: Catholic Church authorities in Ballarat*, Sydney, 2017, s 3.6.
[redacted]
7 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 28: Catholic Church authorities in Ballarat*, Sydney, 2017, s 4.3.
8 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 28: Catholic Church authorities in Ballarat*, Sydney, 2017, s 4.3.
9 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 28: Catholic Church authorities in Ballarat*, Sydney, 2017, s 4.3.
10 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 28: Catholic Church authorities in Ballarat*, Sydney, 2017, s 4.3.
11 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 28: Catholic Church authorities in Ballarat*, Sydney, 2017, s 4.3.
12 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 28: Catholic Church authorities in Ballarat*, Sydney, 2017, s 4.3.
13 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 28: Catholic Church authorities in Ballarat*, Sydney, 2017, s 4.3.
14 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 28: Catholic Church authorities in Ballarat*, Sydney, 2017, s 4.3.
15 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 28: Catholic Church authorities in Ballarat*, Sydney, 2017, s 4.3.
16 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 28: Catholic Church authorities in Ballarat*, Sydney, 2017, s 4.3.
17 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 28: Catholic Church authorities in Ballarat*, Sydney, 2017, s 4.3.
18 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 35: Catholic Archdiocese of Melbourne*, Sydney, 2017, s 3.1.
19 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 35: Catholic Archdiocese of Melbourne*, Sydney, 2017, s 6.
20 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 35: Catholic Archdiocese of Melbourne*, Sydney, 2017, s 4.2.
21 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 13: The response of the Marist Brothers to allegations of child sexual abuse against Brothers Kostka Chute and Gregory Sutton*, Sydney, 2015, p 31.
22 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 13: The response of the Marist Brothers to allegations of child sexual abuse against Brothers Kostka Chute and Gregory Sutton*, Sydney, 2015, p 32.
23 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 28: Catholic Church authorities in Ballarat*, Sydney, 2017, s 3.5.
24 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 28: Catholic Church authorities in Ballarat*, Sydney, 2017, s 4.3, s 4.6.
25 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 28: Catholic Church authorities in Ballarat*, Sydney, 2017, s 4.3.
26 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 28: Catholic Church authorities in Ballarat*, Sydney, 2017, s 3.6.

13.7 Development of national procedures in the Catholic Church

> If there is one hole in all of the processes, the procedures and the protocols that have been issued from the top down, it is proper care of the victims. Over the number of protocols and reports that I've read, promoted and created by different Church entities, one of the things that I see hardly ever mentioned is something comprehensive about caring for the victims. It is not enough to say, 'Give them money to go to psychologists'.[1]
>
> **Dr Thomas P Doyle OP, American Dominican priest, canon lawyer and survivor advocate**

> Looking back on the late 1980s and early 1990s reveals a great struggle within the Church in its grappling with the reality of sexual abuse and adult boundary violations and, in particular, the task of remaining open to the needs of victims and the predicaments of offenders. For many in the Church, as well as in broader society, there was still a significant lack of openness and willingness to squarely face issues of sexual abuse.[2]
>
> **Dr Gerardine Robinson, clinical psychologist and former Clinical Director of Encompass Australasia**

As set out in Section 13.4, in the period leading up to the late 1980s, Catholic Church authorities in Australia were aware that complaints were being made about the sexual abuse of children by Catholic Church personnel. From 1988, Catholic Church leaders began to discuss the issue of child sexual abuse more formally at the Australian Catholic Bishops Conference (ACBC), and to make efforts to coordinate their responses with respect to both alleged perpetrators and victims.

Bishop Geoffrey Robinson, who was an Auxiliary Bishop in the Archdiocese of Sydney from 1984 until his retirement in 2004, gave evidence about the development of these efforts. Bishop Robinson was one of the key figures in Australia driving change within the Catholic Church with respect to responses to child sexual abuse.

A decision by the ACBC to set up a Special Issues Committee in 1988 was a significant development. As Bishop Robinson told us, such committees were 'an essential part' of how the ACBC functioned.[3] Similarly, the drafting of a series of protocols from 1989 was an important step towards the formulation of a nationally consistent response to child sexual abuse. However, these protocols retained a focus on responding to the alleged perpetrators of sexual abuse rather than on the victims, and their implementation by Catholic Church authorities was sporadic, as discussed further below in Section 13.8.

By the mid-1990s there had been a shift in understanding concerning the appropriateness of keeping alleged perpetrators in ministry where they would be in regular contact with children. At around the same time, members of the newly constituted Bishops' Committee for Professional Standards recognised the need for a new protocol that focused on the needs of victims. The formulation and adoption of Towards Healing and the Melbourne Response in 1996 were considerable achievements in this regard. Leaders of the Catholic Church in Australia also began to realise the need for a study of causal factors and for a program to treat perpetrators of child sexual abuse.

At the same time, certain provisions of Towards Healing conflicted with the provisions of canon law that govern the response of bishops and religious leaders to complaints of child sexual abuse made against priests and religious. From the 1990s, Australian bishops sought to influence the Vatican to improve its response to child sexual abuse, in particular through amending canon law.

The effectiveness of all these developments, both with respect to the alleged perpetrators of child sexual abuse and from the perspective of victims of such abuse, is discussed in Sections 13.8 and 13.9 below.

13.7.1 Developments in the late 1980s

By the late 1980s, bishops and religious leaders in Australia had become increasingly aware not only of cases of child sexual abuse perpetrated by priests and religious in their own dioceses and provinces but also of cases that had been reported from overseas. Media reporting of several high-profile criminal cases involving priests and religious accused of child sexual abuse also resulted in increased public attention to the issue. We received detailed evidence about developments around this time from Monsignor John Usher, who was the director of the Catholic welfare agency Centacare from 1983.[4]

Monsignor Usher recalled that 'About 3 to 4 years after NSW introduced child protection legislation' he received information from the New South Wales Child Protection Council about a number of reports to the council concerning child abuse in Catholic schools by members of religious orders. Around the same time, there was publicity surrounding several cases involving Christian Brothers in Canada.[5] He wrote a letter to the Archbishop of Sydney, Cardinal Edward Bede Clancy, suggesting that a special unit be set up to handle issues of child abuse by clergy. According to Monsignor Usher, while that suggestion was not taken up, he and several others formed an unofficial group in New South Wales which sought to further understand the problem of child abuse within the Catholic Church so that they could advise and assist bishops and religious leaders.[6] We received evidence that around this time most of then Father Usher's energy was going into trying to help the bishops and religious leaders to understand that sexual abuse was a 'big issue' that had to be addressed.[7]

Father Brian Lucas told us that he believed the arrest of a Catholic priest in August 1987 served to 'galvanise' the Australian Catholic bishops' attention to the issue of child sexual abuse, in addition to developments that were occurring in the United States and Canada at that time.[8] That case and the case of Father Gerald Ridsdale in Ballarat were in his mind when he and Father Usher spoke at a meeting of the ACBC in November 1987.[9] Bishop Robinson, who attended the November 1987 ACBC meeting, gave evidence that the presentation from Fathers Lucas and Usher came as a 'considerable shock' to him at that stage and he believed that it was a shock to many other bishops as well.[10]

In April 1988, Fathers Usher and Lucas made a more formal presentation to the ACBC.[11] They concluded that a national committee should be established by the ACBC, to 'monitor cases and be a resource for individual bishops'.[12] They recommended that all complaints should be brought to this committee's attention 'so that there is a consistency of approach'.[13] The ACBC subsequently tasked them with developing the terms of reference for such a committee.[14]

13.7.2 The Special Issues Committee and Special Issues Liability Insurance

As requested by the ACBC, Father Usher and Father Lucas drew up proposed terms of reference for the Special Issues Committee Relating to Priests and Religious (the Special Issues Committee) for consideration by the Central Commission of the ACBC.[15] In November 1988 the ACBC established the proposed committee on a two-year interim basis.[16] The Truth, Justice and Healing Council (the Council), which represented dioceses, archdioceses and religious congregations before the Royal Commission, told us that the coordinating body of the religious orders in Australia – the Australian Conference of Leaders of Religious Institutes (ACLRI), also known as Catholic Religious Australia (CRA) – was also involved in and supportive of the establishment of the committee.[17]

Among the functions of the new Special Issues Committee were to act as a resource for bishops and religious leaders in connection with legal proceedings involving a priest or religious; to collate research locally and overseas; to ascertain available treatment options for priests or religious alleged to be involved in criminal behaviour; to establish a protocol to be observed by bishops and major superiors if an accusation was made against a priest or religious alleging criminal behaviour, and to advise on the implementation thereof; and to identify needs with respect to the ongoing education and formation of clergy and religious.[18]

The Bishop of Ballarat, Bishop Ronald Mulkearns, whose response to allegations of child sexual abuse against priests in Ballarat in the 1970s and 1980s was examined in *Case Study 28: Catholic Church authorities in Ballarat (Catholic Church authorities in Ballarat)*, was the first chair of the Special Issues Committee.[19] Bishop Mulkearns invited Fathers Usher and Lucas of Sydney, and Father Dan Torpy from Victoria, to be members of the new committee, and noted that the major superiors should be given the opportunity to nominate a representative to it.[20]

Representatives of the Catholic Church in Australia's principal insurer, Catholic Church Insurance Limited (CCI), also attended meetings of the Special Issues Committee, which were sometimes held at CCI's offices in Melbourne.[21]

At around the same time, CCI was considering whether its public liability policies would cover claims of sexual abuse.[22] In 1989 it set aside $600,000 for a 'temporary scheme' intended to provide financial support in relation to claims of sexual abuse. A further $600,000 was set aside in 1990.[23] In September 1990, CCI underwriting manager Mr John Taylor made a written submission to the ACBC describing the concept of a self-insurance pool and proposed Special Issues Liability Policy, stating that 'CCI's aim is to assist the Church by providing protection in a difficult area and one which is increasingly being excluded by worldwide insurance markets'.[24] The pool and the Special Issues Liability Policy were initiated with effect from 1 July 1991.[25]

Bishop Robinson told us that, while he was not involved in the Special Issues Committee's work in the initial period of its operation, he felt an 'increasing unease that it did not seem to be producing the protocols the Church needed'.[26] He also stated that he would have preferred the committee to have been given a broader mandate, so that it could 'come up with more holistic responses'.[27]

13.7.3 The 1990 Protocol

The Special Issues Committee prepared a draft *Protocol for dealing with allegations of criminal behaviour* (the 1990 Protocol) and presented it to the ACBC meeting held in November – December 1989 for consideration.[28] The 1990 Protocol provided that: 'The management of allegations of criminal behaviour against the accused shall be the responsibility of the bishop or major superior'.[29] As Bishop Robinson told us, it permitted each bishop to respond in his own way.[30] A report from the Special Issues Committee to the ACBC dated 7 May 1990 noted 'the need for a Bishop to be free to exercise his discretion about removing an accused person from his/her office'. It also stated that:

> The protocol is not intended to be absolute in its application, nor can it be forced on any Bishop. However, the Committee argues against Bishops going to the other extreme and not taking the protocol very seriously. The excessive exercise of individual discretion obviously defeats the object of having a protocol. Should a bishop exercise his discretion and make a mistake, the matter becomes a problem for every bishop.[31]

At the May 1990 ACBC conference, the 1990 Protocol was accepted on a trial basis for 12 months. It was also presented to the ACLRI/CRA, which approved the document in principle.[32] The CCI Special Issues Liability Policy was to apply only to those insured dioceses and religious orders which agreed to be subject to the 1990 Protocol.[33]

Among other things, the 1990 Protocol provided that:

> The management of allegations of criminal behaviour against the accused shall be the responsibility of the bishop or major superior … Bishops and major superiors have the right to make their own investigation and act in accordance with their own judgment but shall take into account the recommendation in 6.1.1.[34]

However, it also emphasised 'the critical importance of adopting uniform approaches and working in close co-operation with each other, not only for the good of individuals but for the good of the whole church'.[35]

It further stated, 'In dealing with allegations of criminal behaviour against the accused, bishops and major superiors are obliged to take into account and preserve various values'. These 'values' included that they must act with justice, mercy and charity; they must not obstruct or pervert the process of civil law; they must have regard to the welfare of any complainant, victim and accused; and they must safeguard the reputations of individuals and their right to privacy and must safeguard the good name of the Catholic Church as a whole and act to prevent or remedy scandal.[36]

'Advisory committees' were to be established on a regional basis, to assist bishops and major superiors as required. The 1990 Protocol set out the procedure to be followed when complaints were made. Paragraph 6.1.1 provided that the relevant advisory committee was to undertake any necessary investigations.[37]

The 1990 Protocol also dealt with the interaction between the relevant bishop or major superior and the alleged perpetrator of the abuse (referred to as 'the accused'), stating in paragraph 8.1 that 'If further investigation is required, or further time is required for the resolution of the allegation, the usual procedure shall be for the accused to be requested to take leave from his office'. It also provided that:

> In every case pending investigation the accused must not remain in a situation where it may be perceived that other people, especially children, might be at risk. He ought not undertake any public function since this might create greater scandal if he is subsequently found to have offended.[38]

In addition, paragraph 9.1 of the 1990 Protocol provided that:

> Immediately upon informing the accused of a complaint the bishop or major superior should reassure him that his welfare is important. Following his interview with the priest member of the advisory committee, and in light of the recommendations of the advisory committee, he should immediately be referred to an appropriate person or facility for assessment.

It then stated that 'Treatment options and the details of particular personnel or facilities should be made available to bishops and major superiors' by the Special Issues Committee.[39]

In August 1990, Dr Nicholas Tonti-Filippini, who was at that time a researcher for the ACBC and later a consultant ethicist, provided written comments on the 1990 Protocol to Bishop Mulkearns as Chair of the Special Issues Committee. Among his concerns was that it did not directly address statutory obligations for mandatory reporting of child abuse to civil authorities. He also noted that if the 1990 Protocol were to become a public document some of the language used may cause scandal because it suggested that the Catholic Church was more concerned to defend itself and its reputation than to defend victims. He further questioned the lack of separation in the 1990 Protocol between counselling and investigation, and emphasised the 'moral obligations to seek to bring a criminal to justice'.[40]

In the course of giving evidence to us, Bishop Robinson agreed with these concerns and expressed his view that the 1990 Protocol was too oriented towards priests, rather than towards victims. He also considered that it permitted each bishop to respond in his own way, rather than providing for a consistent response across Australia to child sexual abuse.[41] In a 2013 submission to our *Issues paper 2: Towards Healing* (Towards Healing Issues paper), the Council acknowledged that the 1990 Protocol 'did not go far enough' and did not 'sufficiently address or prioritise the needs of victims'. Nor was it a public document.[42]

13.7.4 The 1992 Protocol and Special Issues Resource Groups

Fathers Lucas and Usher have explained that there were two types of committees operating from around 1989: the national Special Issues Committee, which was set up by the ACBC and designed to be a specialist advisory group to the bishops but not to deal with individual cases; and advisory committees which operated on a regional basis, some of which were referred to as 'Special Issues Resource Groups'. These were more loosely structured and were available to bishops and superiors to advise and assist on individual cases.[43] Both Father Lucas and Father Usher were members of the New South Wales advisory committee.[44]

The Special Issues Committee circulated a revised version of the 1990 Protocol in April 1991, and it was adopted by the ACBC at its April 1991 meeting.[45] With respect to responding to alleged perpetrators, in addition to stating that 'the usual procedure shall be for the accused to be requested to take leave', the 1991 version added that 'If he refuses the bishop or major superior will consider imposing such leave'.[46]

A further revised version was issued in April 1992 (the 1992 Protocol), which for the first time formally used the term 'Special Issues Resource Groups' to describe what were previously termed regional 'advisory committees'.[47] They were later referred to as 'Professional Standards Resource Groups' or 'Professional Standards Reference Groups'.[48]

According to the 1992 Protocol, the Special Issues Resource Groups were to comprise at least one priest, along with 'other professionals skilled in the relevant social sciences'. Moreover, the 1992 Protocol required that whenever a Catholic Church authority received 'information of alleged criminal behaviour', 'the matter shall immediately be referred, except in circumstances of a most serious and extraordinary nature, to the relevant Special Issues Resource Group'.[49]

The 1992 Protocol for the first time referred to alleged perpetrators being placed on 'administrative leave' for the duration of any internal church investigation into a complaint of child sexual abuse. It stated in part:

> 9.1 If further investigation is required the procedure shall be for the accused to be given administrative leave from any public duties.
>
> 9.2 Proper arrangements must be made for the accused to reside in a secure place during the period of administrative leave, and consequently the competent ecclesial authority shall choose an appropriate place for him to reside pending the outcome of the investigation. The accused should have access to such spiritual and psychological assistance as he may require.
>
> 9.3 In every case pending investigation the accused must not remain in a situation where it may be perceived that other people, especially children, might be at risk. The accused ought not undertake any public function since this might create greater scandal if he is subsequently found to have offended.
>
> 9.4 If the accused refuses to take administrative leave or is otherwise unco-operative action may be taken in accordance with the provisions of CIC can. 1319. In such circumstances specific advice should be sought from an expert in canon law.[50]

Father Lucas told us that it was only after the 1992 Protocol that the New South Wales bishops formally appointed people to a 'committee' to give advice on matters of child sexual abuse. Before that, he, Father Usher and others were simply acting as individuals responding to particular requests from individual bishops. He stated that 'it wasn't a committee in the sense of having any interaction between ourselves'.[51]

Archbishop Denis Hart, Archbishop of Melbourne and President of the Australian Catholic Bishops Conference, told us that it would appear that a Special Issues Resource Group was also set up in the Melbourne Archdiocese under the 1992 Protocol.[52] Archbishop Hart said, 'notwithstanding the role and purpose of the Special Issues Resource Group as set out in the 1992 ACBC Protocol, I have not seen any documents showing the Special Issues Resource Group playing a role in the investigation of complaints during the period of its existence'.[53]

Monsignor Glynn Murphy was the secretary to Bishop Mulkearns in the Diocese of Ballarat from 1990 to 1997.[54] Around 1993 he became the chair or convenor of a 'Special Issues Committee' that was formed to give advice to Bishop Mulkearns about issues of child sexual abuse. According to Monsignor Murphy, that committee was set up in part in response to the 'Gerald Ridsdale situation' and to provide support to Ridsdale's victims. It was made up of 'various experts' who could assist him in an advisory capacity to the bishop. Monsignor Murphy also gave evidence that Bishop Mulkearns had taken the protocol which had been developed by the national Special Issues Committee and adopted by the ACBC, edited it and promulgated it as a protocol to be applied when complaints were made about child sexual abuse in Ballarat.[55] Due to his health, Bishop Mulkearns gave evidence in the *Catholic Church authorities in Ballarat* public hearing by video link from his nursing home in Ballarat. He passed away in April 2016, before his evidence was completed and before he could be asked about his application of this protocol.

Similarly, we received evidence that by 1994 the Catholic bishops in Queensland had established an 'Inter-Diocesan Special Issues Resource Group'.[56] This group was to be involved in responding to allegations of child sexual abuse complaints by way of 'pastoral action' in accordance with a protocol titled *Pastoral action in response to allegations of sexual abuse by people who work on behalf of the Church in Queensland* issued by the Queensland Catholic Bishops Conference and the Queensland chapter of the ACLRI.[57] The protocol stated that it was 'in accordance with the National Principles and identifies pastoral action following an allegation of sexual abuse on children or vulnerable adults by any person who works in the name of the Catholic Church'.[58] However, compliance with the protocol by the Queensland dioceses and religious institutes was not mandatory.[59]

13.7.5 The *1992 Pastoral statement* and further developments in 1992–93

In its 2013 submission to the Towards Healing Issues paper, the Council told us that the 1992 Protocol applied to all dioceses, orders and congregations across the country. It acknowledged, however, that, while the 1992 version of the protocol was an improvement on the original, it 'did not represent the breakthrough that was needed' and remained a confidential document.[60] In a subsequent written submission it has also acknowledged that the main focus of the 1992 Protocol 'continued to be the accused rather than the victim'.[61]

During 1992 and 1993, Fathers Usher and Lucas gathered more information about how allegations of sexual abuse had been or were being dealt with by different Catholic Church authorities, and sought to educate bishops, priests and religious about the 1992 Protocol. For example, in September 1992 Father Lucas visited the United States and Canada at the request of CCI to gather information with respect to 'Special Issues'.[62]

In October 1992, Father Usher made speeches in Brisbane and Sydney about the importance of the Catholic Church speaking openly about violence and sexual exploitation, including sexual abuse of children. In one of these speeches he stated:

> we must shift the focus from institutional protection towards victim wellbeing – then and only then will the victim and the perpetrator be properly helped or dealt with. Only then will the institution have real credibility.[63]

At its meeting on 16 November 1992 in Melbourne, the Special Issues Committee discussed a report prepared by Father Lucas following his visit to the United States and Canada. The committee recommended that 'the present policy in Australia of encouraging a plea of guilty be continued'. It also resolved to create a subcommittee to investigate the establishment of a therapy program in Australia for priest 'offenders' and acknowledged that the 'prognosis for offenders to be returned to any form of active ministry as a Priest is not good'. However, it considered that 'The small number of offenders who might be seeking such assistance would not warrant the establishment of a permanent Centre at the present time'.[64] The committee noted that 'The extent of distribution of the Protocol is a major problem at the present time'.[65]

At its December 1992 meeting the ACBC discussed the fact that a subcommittee was investigating the establishment of a 'therapy programme' in Australia for perpetrators of child sexual abuse.[66] The bishops also resolved to publish a *Pastoral statement on child protection and child sexual* abuse (the *1992 Pastoral statement*).[67] This was issued on 19 December 1992 and was the first public statement by the Catholic Church in Australia concerning child sexual abuse.[68]

Among other things, the *1992 Pastoral statement* provided that:

> In the past, lacking the knowledge provided by modern behavioural sciences, church authorities sometimes denied or minimized the seriousness of such incidents or accepted too readily the promise by an offender that such behaviour would not be repeated. Mistakes have been made. They need to be acknowledged and are being acknowledged.[69]

In January 1993, Father Usher provided a *Draft discussion paper re therapeutic interventions for victims of child sexual assault, perpetrators and alleged offenders* for the ACBC 'Special Issues Sub-Committee'. This concluded, among other things, that the Special Issues Resource Groups should establish a network of counsellors and therapists who were prepared to deal with persons who were alleged child sexual offenders. It also recommended that 'serious consideration be given to the establishment of a small, but professionally resourced, therapeutic centre in Australia for the long term treatment and supervision of those who are known to be child sexual assault offenders'.[70]

Father Usher referenced developments and findings from overseas and wrote that:

> any prognosis for 'a cure' for people who admit to acts of sexual misconduct in relation to children and young people is remote. Overseas and local clinical experience indicates that the possibility of any offender returning to fill active ministry is unlikely.
>
> Arrangements whereby such offenders return to some form of 'special ministry' in the Church under supervision is a possibility and there are models of such arrangements in the process of development in Canada and the United States of America.[71]

In July 1993, the ACBC published a further public statement, titled *Sexual offences and the Church*. This reaffirmed that the bishops and leaders of religious congregations had been 'developing procedures for dealing with allegations of sexual offences against minors and adults'.[72] On 29 November 1993, the ACBC issued a media release announcing that its Special Issues Committee had 'completed a first draft of a set of principles in relation to sexual abuse and professional misconduct by Church personnel in Australia' and was seeking comment on it.[73]

However, as discussed further in Sections 13.8 and 13.9 below, despite the development of the 1990 and 1992 protocols, and the existence of both the national Special Issues Committee and, in some regions, Special Issues Resource Groups, there remained, in practice, no consistently applied process for responding to complaints or allegations of child sexual abuse through the early to mid-1990s. As noted at the 16 November 1992 meeting of the Special Issues Committee, this may have been, in part, a problem of dissemination of the protocols and of a lack of education about how to implement them.

In *Case Study 26: The response of the Sisters of Mercy, the Catholic Diocese of Rockhampton and the Queensland Government to allegations of child sexual abuse at St Joseph's Orphanage, Neerkol*, we found that Bishop Brian Heenan of the Diocese of Rockhampton and the Congregational Leader of the Sisters of Mercy, Sister Berneice Loch, had not followed Catholic Church protocols in 1993 and 1996 when they received reports of child sexual abuse at St Joseph's Orphanage, Neerkol.[74] Sister Loch rsm, now Institute Leader of the Institute of Sisters of Mercy Australia and Papua New Guinea, and Bishop Heenan both gave evidence that they were aware of the existence of the Queensland and/or national protocols, but until November 1996 Sister Loch had not organised any training about their implementation or about responding to allegations of child sexual abuse generally.[75]

In *Case Study 4: The experiences of four survivors with the Towards Healing process* (*The Towards Healing process)*, we found that the Provincial of the Marist Brothers between 1989 and 1995, Brother Alexis Turton, did not comply with the 1992 Protocol when he received complaints of the sexual abuse of children by Brother Raymond Foster.[76] During his testimony in *The Towards Healing process*, Brother Turton stated that he could not recall having seen the 1992 Protocol until 'recently'.[77]

13.7.6 The Committee for Professional Standards

In April 1994, the ACBC resolved to replace the Special Issues Committee with a new bishops' committee of three, with 'a more appropriate name', which was the Bishops' Committee for Professional Standards (the Committee for Professional Standards). It also agreed that three representatives of the ACLRI/CRA and other persons be invited to join the work of the committee.[78] Bishop Robinson told us that he was approached by the chairman of the ACBC membership panel and asked to stand for the new committee, because there was a feeling that the previous committee had not produced what was needed and he could 'get it moving'.[79]

The new Committee for Professional Standards held its first meeting on 18 August 1994. Representatives from CCI attended this and subsequent meetings.[80] At an April 1995 meeting the participants discussed the problems associated with getting individual bishops or superiors to act in a 'responsible' manner when receiving disclosures about sexual assault, and noted the importance of directing bishops and superiors to the relevant resource group. The committee also continued its discussion on the possibilities for establishing a therapy centre and on the *Draft principles in relation to sexual abuse and professional misconduct* that had been prepared by Bishop Robinson.[81]

These draft principles ultimately were developed into the Towards Healing protocol. Bishop Robinson explained that in drafting what became Towards Healing, 'It was quickly decided that we would try to refer as many complainants as possible to the police'.[82] He stated that at the same time, the drafters were aware that many potential complainants had no interest in going to the police. This was due, in his view, to fear that their cases would then become public knowledge or to concern about the possibility of being cross-examined in court by a barrister. Bishop Robinson stated that he felt that the Catholic Church had an obligation to try to 'fill the gap' when people did not want to go to the police and would otherwise be denied any form of justice.[83]

At its April–May 1995 meeting, the ACBC discussed the draft principles prepared by Bishop Robinson as well as the report of the Committee for Professional Standards setting out the problems facing the establishment of a therapy centre. It decided to engage a researcher 'to examine the advantages and disadvantages of setting up a treatment programme for Priests or Religious with psychosexual disorders' and to investigate other therapeutic options.[84]

13.7.7 The April 1996 plan of action

Bishop Robinson described events surrounding the April 1996 ACBC meeting, at which the Committee for Professional Standards presented a comprehensive plan to the bishops. A few days before the meeting started, he and others made a presentation at a conference on sexual abuse being held at the University of Sydney. In answer to a question posed during the conference, Bishop Robinson responded that he was not happy with the support that

the Australian bishops were receiving from the Vatican on the matter. Around the same time, a priest in Wollongong was arrested in relation to child sexual abuse and the Bishop of Wollongong, Bishop William Murray, appeared before the Royal Commission into the New South Wales Police Service, which received a lot of publicity.[85]

These events had the effect that the matter of child sexual abuse was the subject of great public interest at that time, and over the course of the April ACBC meeting the bishops debated and adopted over 20 motions that had been presented by the Committee for Professional Standards.[86] Bishop Robinson told us that debate on the motions was 'fierce' and there were a number of older bishops, particularly, who were very uneasy about the matters being discussed. However, the majority of bishops ultimately 'did come on board and support the thrust of what we were trying to achieve'.[87]

Among the motions carried at the April 1996 meeting, the ACBC resolved to 'produce a pastoral letter addressed to the Catholic people of Australia and detailing the steps the ACBC [was] taking to respond to the fact of sexual abuse within the Catholic Church in Australia'.[88] This letter was published on 24 April 1996. It set out a plan of action, reflecting the content of the motions that had been carried by the ACBC at the April meeting. This read, in part, as follows:

> 1. The Bishops and Leaders of Religious Institutes set up in 1988 a Professional Standards Committee composed of appropriately qualified professionals. The Committee will continue to review and update, in the light of the discussion that has taken place at the Conference, the principles and procedures according to which the Bishops operate.
>
> …
>
> 3. Dioceses and Religious Institutes will be asked to engage professional and independent persons to make suitable case studies of how incidents of sexual abuse have been handled and how well or badly the needs of victims have been met and what might now be done to assist victims.
>
> 4. Likewise Dioceses and Religious Institutes will be asked to make a study of how an incident of sexual abuse has been handled in relation to the community in which it occurred, what lessons might be learned, what effects both the abuse and the Church body's response have had on the community, and what the Church body might now do to assist the community.
>
> …
>
> 6. A widely representative Committee is to be established to prepare codes of conduct for priests and religious. It will consult widely, and seek the advice of victims of sexual abuse.

7. The Australian Catholic Social Welfare Commission and Centacare Sydney will be asked to co-ordinate a study of any factors peculiar to the Catholic Church which might lead to sexual abuse by priests, religious or other church workers. The study will include a review of the relevant literature, interviews with experts and with other relevant Catholic bodies, and with those offenders who are willing to assist.

8. In collaboration with the Leaders of Religious Institutes it is proposed to establish a program to treat those clergy and religious who suffer from psycho-sexual disorders. The programme will contain a suitable spiritual input.[89]

Following the publication of the plan of action, Bishop Peter Connors, Sister Angela Ryan, Father Lucas, and Mr Laurie Rolls of CCI made a presentation titled 'The Australian experience' at a consultative meeting on child sexual abuse in the United States.[90] In addition to summarising the recent history of the developing response to child sexual abuse by the Catholic Church in Australia, the presenters outlined some of the difficulties being faced at that time. They stated that there were two major challenges: the publication of a revised statement of principles to guide bishops and congregational leaders in dealing with the sexual misconduct of Catholic Church personnel, which faced a tension between a victim-oriented approach and acting in accordance with legal advice mindful of the 'need to protect the material patrimony of the diocese or congregation'; and the establishment of a therapy program for clergy and religious.[91]

13.7.8 Towards Healing

> I do not doubt the integrity and sincerity of those who established [Towards Healing]. It was pioneering work, back in 1996. No other Church had such a scheme at the time … Any fair history of the response of the Church to child sexual abuse ought to acknowledge the integrity and commitment of people like Bishop Robinson and Sr Angela Ryan who were in the forefront of the Church's response.[92]
>
> **Professor Patrick Parkinson AM, professor of law, University of Sydney**

In June and August 1996, the Committee for Professional Standards met and discussed the draft principles which had been prepared by Bishop Robinson.[93]

Bishop George Pell was appointed as Archbishop of Melbourne and installed in August 1996. Cardinal Pell told us that around the time of his appointment, in mid-June 1996, he was very conscious that there was 'growing awareness of the issue of child sexual abuse, and of the fact that such offences had been committed by clergy and Church personnel'.[94] He recalled that the then Premier of Victoria, Mr Jeff Kennett, and the then Governor of Victoria, Mr Richard McGarvie, expressed 'strong views' to him that 'the Church needed to act decisively on the issue'.[95] He told us that the Premier said, 'Now, you clean this thing up, and there won't be any Royal Commission' and that this was 'certainly an incentive for me to act, but I didn't need

incentives; I needed to identify some useful way forward quickly'.[96] Archbishop Pell instructed Corrs Chambers Westgarth (Corrs), who were the solicitors for the archdiocese, to put together a new scheme for responding to claims of child sexual abuse to be applied within the archdiocese. He said he wanted the scheme to be formulated quickly and for it to operate independently of the archdiocese.[97]

Mr Richard Leder, a partner at Corrs, provided detailed evidence about the drafting of the new scheme, which became known as the Melbourne Response.[98] He told us that he and others first met with Archbishop Pell at the end of July 1996, about two weeks after his appointment as archbishop was announced. Archbishop Pell wanted to remove the function of receiving complaints of abuse in the archdiocese from the Vicar General's Office and proposed the outline of a new system for investigating and responding to complaints. There followed a series of meetings involving lawyers and clergy from the archdiocese, which culminated in the drafting of a document entitled 'Special issues four part plan' on 14 August 1996. By the middle of October 1996, it was proposed that Mr Peter O'Callaghan QC would be appointed as the Independent Commissioner, a role which would have an investigatory function under the plan, and he was consulted regarding the draft terms of his appointment, as was the Assistant Commissioner of the Victoria Police.[99] On 25 October 1996, Mr Leder sent the plan to Archbishop Pell for approval.[100] The final document was titled *Sexual abuse the Melbourne Archdiocese Response: A four part plan* (*Four part plan*).[101] Archbishop Pell announced what became known as the Melbourne Response at a media conference held on 30 October 1996.[102]

By the time of the ACBC meeting held in November 1996, the Committee for Professional Standards had finalised a draft document setting out both principles and procedures for responding to complaints of child sexual abuse. This document was given the title *Towards Healing: Principles and procedures in responding to complaints of sexual abuse against personnel of the Catholic Church in Australia* (Towards Healing (1996)).[103] Bishop Robinson described the announcement of the Melbourne Response four weeks previously as coming 'out of nowhere' and causing consternation, as he believed it was important to have unity among all the Catholic authorities in Australia.[104] On 26 November 1996, the members of the Committee for Professional Standards agreed that 'the initiative taken by the Melbourne Archdiocese undermines the credibility of how serious the bishops and religious leaders are in making this statement (Towards Healing)' and resolved to inform the ACBC accordingly.[105]

At the November 1996 ACBC meeting, the ACBC agreed that Towards Healing would be implemented on 31 March 1997, allowing time for the appointment of relevant personnel.[106] It would be applied in all the Catholic dioceses and archdioceses in Australia except for the Melbourne Archdiocese. The Towards Healing process was also adopted by the leaders of the Catholic religious institutes, with the exception of the Society of Jesus, which ultimately did so in 2004.[107]

At this time, the ACBC replaced the Bishops' Committee for Professional Standards with the National Committee for Professional Standards (NCPS) as a joint committee of the ACBC and the ACLRI/CRA, funded equally by them and responsible to both.[108] Under Towards Healing (1996), it was envisaged that the NCPS would 'oversee the development of policy, principles and procedures in responding to complaints of sexual abuse against Church personnel'.[109]

The ACBC also approved a pastoral letter that announced the publication of Towards Healing (1996) and stated, 'We recognise that the document will become credible only to the extent that it is actually put into effect'.[110]

Bishop Robinson told us that Towards Healing (1996) was 'the moment when … Australian bishops began to turn from past practices towards a new way of responding to victims of child sexual abuse'.[111] Despite this, he said that:

> not all individuals changed in the same way and at the same pace. The following few years involved a process of education and gradual adaptation. As it turned out, a number of bishops were in favour of the proposals [of Towards Healing], but at the same time reserved their right to make their own decisions in individual cases.[112]

Bishop Robinson told us that:

> The major negative in the early days was that, because *Towards Healing* had no coercive power, various bishops dispensed themselves, not from the entire document, but from this or that aspect of it. With the example of Melbourne before their eyes, they felt free to do this. Over the years this has gradually changed as pressure has mounted on bishops and they have realized that *Towards Healing* gives them a protection that they need, though I still cannot give a guarantee of complete observance.[113]

In its 2013 submission to the Towards Healing Issues paper, the Council described the introduction of Towards Healing in 1996 as a 'watershed moment in the Church's approach to dealing with child sexual abuse within the Church'.[114] It stated, 'The offering and provision of pastoral care to victims is at the heart of *Towards Healing*'.[115] A pastoral response may include an apology, provision of counselling services, payment of counselling costs, financial assistance or reparation, and/or spiritual support.[116] It also submitted that Towards Healing 'seeks to place the position of the victim at the forefront of the process …'[117] It acknowledged, however, that no single response process can meet the needs or expectations of every individual victim and that 'difficult judgments' are necessary to strike a balance 'for example, between flexibility and fairness, between transparency and privacy and between independence and personal engagement and empathy'.[118]

Towards Healing (1996)

Part 1 of Towards Healing (1996) set out the 'principles' for dealing with complaints of sexual abuse, while Part 2 established the 'procedures' for the same.[119] Among the principles was an acknowledgement that 'Any form of sexual behaviour with a minor, whether child or adolescent, is always sexual abuse. It is both immoral and criminal'. It also expressed 'regret and sorrow for the hurt caused whenever the response denies, distorts or minimises complaints'. It provided that:

> The Church makes a firm commitment to strive for seven things in particular: truth, humility, healing for the victims, assistance to other persons affected, an effective response to those who are accused and those who are guilty of abuse, and prevention of abuse.[120]

While it then stated that 'All persons are presumed innocent unless and until guilt is either admitted or proved', it continued that when guilt had been admitted or proved 'the response must be appropriate to the seriousness of what has happened'.[121]

Towards Healing (1996) provided that all bishops and leaders of religious institutes of each province in Australia should maintain a Professional Standards Resource Group for the province. This resource group was to act as advisor to the 'Church bodies' within the relevant province, both in general and in particular cases. It was to consist of at least one priest and one religious, along with a 'suitable number' of other persons 'of diverse backgrounds, skilled in the areas of child protection, the social sciences, civil and Church law and industrial relations'.[122]

When a complaint of sexual abuse against Catholic Church personnel came to the attention of a member of the Catholic Church, the matter was to be referred to a contact person. The contact person was to provide a written report to the appropriate Catholic Church authority and to make a recommendation concerning whether a formal assessment of the matter was required. If the complaint raised issues of a criminal nature, the contact person was to tell the complainant of their right to take the matter to the police and provide assistance to do so, if desired.[123]

If an assessment was considered to be required, the Catholic Church authority was to appoint two independent assessors from a list kept by the relevant resource group.[124] Towards Healing (1996) set out the process to be followed by the assessors, who could recommend to the Catholic Church authority that the 'accused' person be asked to stand aside from a particular office or from all offices held in the Catholic Church. Once the assessment process was completed, the assessors were to provide a written report with recommendations to the Catholic Church authority.[125] No standard of proof was provided for in Towards Healing (1996). Bishop Robinson told us that the standard applied by the assessors was that of 'moral certainty', which was 'less than that of beyond reasonable doubt'.[126] The revised version of Towards Healing produced in 2010, however, specifies that the assessors are to determine whether a complaint has been substantiated 'on the balance of probabilities', based on the evidence available at the time of the assessment.[127]

If a complaint was established (either through admission of the perpetrator, through a finding of a civil court or through the assessment process), the Catholic Church authority and the victim were to mutually agree on a facilitator from an approved panel. The function of the facilitator was to arrange and moderate a meeting between the victim and the relevant Catholic Church authority. Among other things, the facilitator was to 'seek to know the ongoing needs of the victim and the response of the Church authority to those needs' and to 'seek to identify any outstanding issues where the victim is not satisfied with the response received and … explore with both parties the best means of confronting such issues'. When complainants were not satisfied with decisions taken by the relevant Catholic Church authority in relation to any aspect of the complaint there was a 'review of process'.[128]

Like the 1992 Protocol, Towards Healing (1996) required that alleged perpetrators were to be placed on administrative leave while a complaint was being assessed. Paragraph 6.2 provided:

> At any time prior to or during the assessment, the Contact Person and the assessors may recommend to the Church authority that the accused be asked to stand aside from a particular office or from all offices held in the Church …
>
> …
>
> 6.2.2 If accused persons are asked to stand aside from any office they hold while the matter is pending, it is to be clearly understood that they are on administrative leave and that no admissions of any kind are implied by this fact alone. Accused persons who are employees shall, therefore, be on full pay while standing aside.[129]

Paragraph 9.1 then provided that:

> If the complaint is not resolved, either through the processes of civil law or through a Church assessment, the Church authority must decide whether it is appropriate for the accused to continue in ministry or return to ministry while the doubt remains.
>
> 9.1.1 Whenever a risk of abuse to others is feared, or there is likely to be scandal, an accused who is an employee shall be suspended on full pay and a volunteer shall be required to step aside.
>
> 9.1.2 In the same circumstances, clerics or religious shall take administrative leave, in accordance with the principles of canon 1722, until the matter is resolved. They shall be provided with a suitable place to live and some useful activity. They shall not engage in any public ministry during this time.
>
> 9.1.3 These actions do not involve a penalty and do not imply guilt.[130]

Paragraph 10 of Towards Healing (1996) set out a number of 'preventive strategies' for sexual abuse and included reference to the need in some cases for 'spiritual and psychological assistance'. It provided that the names of 'suitable therapists and treatment programs should be made available' to Catholic Church personnel who felt they might be in danger of committing sexual abuse.[131]

Bishop Robinson acknowledged that Towards Healing (1996) created a procedure set up by the Catholic Church and was seen to be under the control of the Catholic Church. While recognising that this meant that people might accuse the process of being biased, Bishop Robinson stated that he made a pragmatic assessment of what the bishops would be willing to accept at that time. He was of the view that he 'would not have been successful if [he] had asked them to set up and pay for a system over which they had no control'.[132] He also explained that he would have preferred the question of compensation to have been taken out of the hands of individual bishops, but he knew that he would not be able to achieve that in formulating Towards Healing. Bishop Robinson told us that this was an area in which the bishops and religious leaders refused to relinquish control.[133]

Bishop Robinson was also of the view that in the early days Towards Healing worked well. He stated that the process relied to a very large extent on getting the relevant priest to admit to the 'offence' and to accept that he could not continue to work as a priest. At first, this was often achieved but it changed later when cases became more adversarial. Admissions of guilt became fewer and the number of cases that were resolved diminished greatly. The major negative in the early days, according to Bishop Robinson, was that, because Towards Healing had no coercive power, some bishops felt enabled to dispense with aspects of it.[134] This is discussed further below.

Revisions to Towards Healing

In its submission to the Towards Healing Issues paper, the Council stated that, since the first Towards Healing cases commenced in 1997, the Catholic Church in Australia has worked to progressively develop, review and improve the process.[135] In 1999, the NCPS began the process of planning the first review of Towards Healing, and engaged Professor Patrick Parkinson AM, professor of law, University of Sydney, to conduct an independent review process.[136] Professor Parkinson implemented a consultative process and at the end of 1999 presented a revised draft of Towards Healing to the NCPS, ACBC and ACLRI/CRA.[137] The revisions were further discussed and amended, and a new version of Towards Healing was approved in December 2000, to come into effect on 1 March 2001.[138]

Towards Healing (2000) provided for the appointment of state and territory directors of professional standards to be 'the central point for communication about, and the management of, cases brought to *Towards Healing*'.[139] In a written submission to us, Professor Parkinson stated that in his revisions to the protocol he tried to increase the independence of the process from individual Catholic Church authorities, by having it managed by the directors of professional standards while still leaving outcomes in the hands of the Catholic Church leaders.[140]

As discussed further below, in November 2002, the NCPS discussed whether cases concerning child sexual abuse by priests and religious in Australia should be referred to the Congregation for the Doctrine of the Faith (CDF) in the Vatican instead of using Towards Healing (2000). The NCPS recommended to the ACBC and ACLRI/CRA that Towards Healing should continue to be utilised, but that resort to canonical processes should be considered in some cases where the alleged perpetrator strongly denied the allegation(s).[141] The minutes of the November 2002 ACBC meeting record that the ACBC agreed with this recommendation.[142]

Professor Parkinson was engaged to conduct a second independent review of Towards Healing in 2008, which again involved consultation with a range of individuals and organisations.[143] He recommended further amendments to the protocol, and a revised version was published in January 2010 (Towards Healing (2010)).[144] In addition, the NCPS has proposed amendments to Towards Healing from time to time, which have been adopted by the ACBC and ACLRI/CRA.[145] In this section, as well as in following sections, we only refer to the 1996, 2000 and 2010 versions of Towards Healing. In addition, in 2016 two paragraphs were inserted into Towards Healing (2010) and a new digital edition was published (Towards Healing (2016)).[146] These two paragraphs relate to canon law requirements with respect to referrals to the CDF, which are discussed in Section 13.11.6.

Contemporary Towards Healing practice and procedure

In its written submission to the Towards Healing Issues paper, the Council informed us that, as at 30 September 2013, the usual main steps under the Towards Healing process were as follows:[147]

a. The Church Authority or Director of Professional Standards receives a complaint.

b. A contact person meets the victim, and explains the process. Any mandatory reporting occurs, and counselling is also usually offered to the victim.

c. The contact person or Director encourages the victim to go to the police. If he or she declines to do so, the Director should make a non-identifying report to the police.

d. Once the written complaint is received, if the victim has chosen not to go to the police, the allegations will be passed on to the relevant Church authority, who will put them to the accused person if possible. At that point, the accused person is usually stood aside pending investigation.

e. If the allegations are denied, and the Church Authority believes it necessary, an independent assessor may be appointed to investigate the allegations and make findings.

f. A facilitator is then appointed to moderate a process and a meeting between the victim and the Church Authority. The outcomes of that meeting typically include an apology, payment of counselling costs, and agreed financial assistance or reparation.

g. Where the claim is accepted or admitted, or substantiated by the assessment process, the Church Authority has to decide what action it should take with respect to the perpetrator.

h. An independent review process is available for people not satisfied with the process or the finding of the assessment.

The Council also informed us that Professional Standards Offices (PSO) have been established in Queensland, the Northern Territory, Western Australia, South Australia, Tasmania, Victoria and New South Wales/ACT, each with a Director.[148] In addition, there is a Professional Standards Resource Group (PSRG) for each state and the Northern Territory, comprising one Catholic priest or religious and a group of lay people, appointed by the relevant bishops and leaders of religious institutes. According to Towards Healing (2010), the PSRG is to have an advisory role, respond to requests for assistance, and act in a 'proactive manner'. In its submission to the Towards Healing Issues paper, the Council told us that, in practice, the role of the PSRG varies between the states and territories, relative to the resourcing of the PSO and the need within that particular area.[149]

According to the Council, where a complaint is made that involves an allegation of child sexual abuse, the relevant Director of Professional Standards usually recommends to the Catholic Church authority that the alleged perpetrator be stood aside from any current duties, including active ministry.[150] Any interim measures taken by the Catholic Church authority in relation to the alleged perpetrator should remain in place until the outcome of the assessment or other investigatory process is known.[151] The Council submitted that Towards Healing (2010) does not prescribe the specific response a Catholic Church authority should adopt in the case of an alleged perpetrator who has admitted to, or has been found to have engaged in, child sexual abuse. However, the guiding principle is that no one shall be permitted to exercise a public ministry if doing so presents an unacceptable risk of abuse to children.[152]

In its 2013 submission, the Council informed us that in cases which do not raise particular problems, it might take about six to nine months for the Towards Healing process to be completed. In some cases there may be delays, for a number of reasons.[153] If an agreement is reached about financial assistance or reparation, some Catholic Church authorities require the survivor to sign a deed of release, whereas others do not. It further submitted that no one is required to sign a deed of release without being given the opportunity to obtain independent legal advice, for which the Catholic Church authority will pay.[154] Furthermore, while in the early days of Towards Healing confidentiality provisions were sometimes included in deeds of release, according to the Council's submission, since about 2000 no such provisions have been utilised.[155]

During the public hearing in *Case Study 50: Institutional review of Catholic Church authorities (Institutional review of Catholic Church authorities)*, Mr Francis Sullivan, the CEO of the Council, stated that in November 2014 it had released guidelines for revisiting payments that had been settled under Towards Healing, regardless of whether a deed of release was entered into. He further stated that payments made to survivors had been revisited extensively by many dioceses and religious orders across Australia.[156]

The Council also told us that victims now frequently approach the Church outside Towards Healing, sometimes through a lawyer or a victims' group.[157] This was echoed in the evidence of bishops and religious leaders in the *Institutional review of Catholic Church authorities*.[158] Many such cases are dealt with through direct legal engagement and negotiation of a civil claim. Nonetheless, according to the Council, in 2013 Towards Healing remained the 'central uniform and structured process offered by the Church to engage with and provide support and assistance to victims'.[159]

Many survivors of child sexual abuse who came forward and told us about their experiences going through the Towards Healing process were critical of how the protocol operated in practice. These accounts are discussed further in Section 13.9 below.

13.7.9 The Melbourne Response

On 30 October 1996, Archbishop Pell announced the Melbourne Response.[160] The archdiocese published a brochure setting out its terms.[161] It included an apology to victims and to the people of the Melbourne Archdiocese for the sexual abuse of children and adults by members of the clergy. It stated:

> Sexual abuse of minors and adults has emerged as one of the most horrific issues in recent memory. It is an evil that has permeated all levels of society, including our ranks. It is all the more serious when it involves priests and others who have betrayed the trust placed in them by virtue of the privileged position they occupy in society. It is now time for me, on behalf of the Catholic Church, to apologise sincerely and unreservedly, first of all to the victims, and then to the people of the Melbourne Archdiocese for this betrayal of trust.[162]

The brochure then described a number of 'initiatives' that together formed the Melbourne Response. These were:[163]

- the appointment of Mr Peter O'Callaghan QC as an Independent Commissioner to enquire into allegations of sexual abuse by priests, lay people and religious under the control of the archdiocese
- the establishment of a free counselling and professional support service for victims, called Carelink

- the formation of a Compensation Panel to give recommendations to the archdiocese as to the making of ex gratia compensation payments to victims of sexual abuse by priests, lay and religious who are or were under the control of the archdiocese
- an 'upgrade' of the existing Pastoral Response Team, to offer spiritual support and counselling at the parish level, and to provide a forum for pastoral healing
- a service providing counselling and support for priests and others accused of sexual assault.

According to the *Four part plan* that set out the Melbourne Response, the Independent Commissioner was intended to be the 'public face' of the process and to be the first point of contact for those wishing to report allegations or make complaints of sexual abuse. Upon receiving a complaint, the Independent Commissioner was to inform the complainant of their continuing and unfettered right to report the matter to the police and to 'appropriately encourage' the exercise of that right. The Independent Commissioner was empowered to require priests, religious and lay persons within the archdiocese to attend before him, answer questions and produce documents. He was to report and make recommendations to the archbishop.[164]

Mr O'Callaghan QC was originally retained as Independent Commissioner for a period of six months as 'it was anticipated that things would be really attended to in a very short space of time'.[165] Mr Jeffery Gleeson SC was appointed as a second Independent Commissioner with effect from 1 August 2012.[166] According to a media release from the Archdiocese of Melbourne, Mr O'Callaghan QC announced in June 2017 that he would be retiring after 20 years' service as an Independent Commissioner, effective on 31 August 2017.[167]

The documents setting out the elements of the Melbourne Response did not prescribe any particular procedures to be followed by the Independent Commissioners.[168] Rather, the terms and conditions of their appointments are the 'primary sources of procedures to be followed' in their investigation of complaints.[169] There was thus no provision equivalent to those in Towards Healing (1996) and the 1992 Protocol about placing an alleged perpetrator on administrative leave following receipt of a complaint, pending an investigation. However, the Independent Commissioner was empowered to make recommendations to the archbishop about action to be taken in relation to those against whom a complaint had been made.[170] Mr O'Callaghan QC gave evidence that, when a complaint was made about a priest, he recommended to the archbishop that, pending the determination of the matter, the priest be placed on administrative leave. In all such cases, his recommendation was followed.[171]

Professor Richard Ball, former director of the Department of Psychiatry at St Vincent's Hospital in Melbourne, was appointed as the head of Carelink, responsible for administering the provision of counselling and professional support services to victims. Carelink was to be staffed 'by persons with appropriate qualifications and experience'.[172] In addition to providing services directly, Carelink was to administer the reimbursement of costs of approved private treatment, counselling and support. According to the *Four part plan* that set out the Melbourne Response, only 'actual victims' of sexual abuse within the archdiocese were eligible for professional support services through Carelink.[173]

The Compensation Panel was to be composed of 'an eminent psychologist or psychiatrist', along with 'an eminent lawyer' and 'two other eminent lay persons'.[174] The functions of the panel were 'to provide complainants with an alternative to the pursuit of legal proceedings against the Archbishop or the Archdiocese'.[175] The document setting out the elements of the Melbourne Response said that the establishment of the panel and the payment or offer of compensation was not an admission of legal liability.[176] If the panel determined that an amount of compensation should be paid, then that determination was binding on the archdiocese.[177] When the Melbourne Response was established, ex gratia payments were capped at $50,000. This amount increased to $55,000 in 2000 and to $75,000 in 2008.[178] In November 2016, the Archdiocese of Melbourne announced that the cap would be increased to $150,000, with effect from 1 January 2017.[179]

The implementation of the Melbourne Response process is discussed further in Section 13.9 below.

Review of the Melbourne Response

By the time of our public hearing in *Case Study 16: The Melbourne Response* there had been no formal review of the Melbourne Response process.[180] Archbishop Hart told us during that public hearing that a former Federal Court judge had been appointed to consult and provide a report on compensation payments under the Melbourne Response.[181] Subsequently, on 4 April 2014, Archbishop Hart announced that he intended to hold a consultation process to review the Melbourne Response.[182]

The review of the Melbourne Response was conducted by the Hon. Donnell Ryan QC, who was specifically charged with providing a report in relation to compensation, including whether the cap on compensation should be increased or removed, and whether any changes to the structure, practices, policies, protocols and procedures of the Melbourne Response were required in light of such increase or removal. Mr Ryan was asked to seek the views of a range of interested parties, including victims, victims' legal representatives, the Independent Commissioners, members of the Compensation Panel, and the Carelink coordinator. Mr Ryan's report was provided to the archdiocese on 25 September 2015 but not released publicly by the archdiocese.[183]

Among the recommendations made by Mr Ryan were:

- changing the operation of the Melbourne Response to ensure the appearance of complete independence from the archdiocese of the Independent Commissioner, the Compensation Panel and the Director of Carelink[184]
- renaming the Compensation Panel as the Assessment Panel, giving it the function previously performed by the Independent Commissioner of determining whether abuse has occurred and its nature and extent, and empowering it both to recommend further amounts if an applicant's needs and circumstances change and to recommend offers of payments to secondary as well as primary victims[185]
- removing the requirement that the acceptance of an offer of compensation be conditional upon the complainant executing a deed of release[186]
- expanding the area of operation of the Melbourne Response to cover complaints of abuse allegedly committed in any part of Victoria by any person under the control of a bishop of any Victorian diocese or any religious leader of a Catholic religious order carrying on activity in Victoria[187]
- increasing the cap on payments under the Melbourne Response to $150,000, with complainants who have accepted offers made previously under prior caps being entitled to apply to have their settlements reopened.[188]

In a statement provided to us on 8 December 2016, Archbishop Hart noted that the archdiocese had engaged an actuary 'to review and advise on the amounts to be paid by way of additional payment to those who have received compensation for complaints of child sexual abuse'.[189] Archbishop Hart stated that additional payments would be made to survivors of child sexual abuse who have already received payments through the Melbourne Response, to reflect the new $150,000 cap.[190] He also stated that, since the announcement of the review of the Melbourne Response by Mr Ryan:

> all releases entered into in relation to survivors of child sexual abuse have included a provision that the release does not affect any right which the survivor may have arising from the implementation of the recommendations of the Ryan Review or of the Royal Commission.[191]

In his statement Archbishop Hart did not address any of the other structural and procedural changes to the Melbourne Response recommended by Mr Ryan, although he noted that the Compensation Panel would be re-named the Assessment Panel. He did describe some changes to the operation of Carelink, and steps taken 'to ensure that pastoral care is available and that survivors are appropriately welcomed and supported through the Vicar General's Office'.[192]

13.7.10 Towards Healing, the Holy See and the Australian bishops

> One of the difficulties that the Holy See faces – and I say this as one who worked there – is that at times these are people who have never been at the coalface. They haven't sat down with victims. They haven't heard the stories. They haven't listened to the pain, and so on. So to that extent, they're at a certain remove, and as long as that continues, there will be fumbling, at best, from people, decision-makers in the Holy See.[193]
>
> **Archbishop Mark Coleridge, Archbishop of Brisbane**

In this section, we set out what we have learned about how the Holy See's (also referred to as the Vatican) response to child sexual abuse has impacted the development of national responses in Australia. As discussed in detail in Section 13.1, the Roman Curia is comprised of a number of different entities, including the Secretariat of State, the nine Vatican congregations and various Vatican tribunals.

The Holy See's response to child sexual abuse has a direct influence on the response of the Catholic Church in Australia (and in other parts of the world) in two primary ways:

1. The Holy See is responsible for promulgating and amending canon law both globally and for particular regions (canon laws relevant to child sexual abuse are discussed in Section 13.2).
2. The Holy See determines petitions from bishops that a priest be removed from the clerical state following allegations of child sexual abuse (discussed in Section 13.8).

Towards Healing and canon law

Canon law has, for a long time, regulated how the Catholic Church may respond to allegations of child sexual abuse made against Catholic clergy and religious. Relevant provisions are set out in Section 13.2.

Bishop Robinson gave evidence that, when developing the protocol that became Towards Healing:

> We then looked at the law of the universal Church and its provisions for processing criminal cases. We quickly found that this law would be so inadequate for cases of sexual abuse that it would be a sham. It was a criminal process that was designed largely for religious offences such as heresy or breaking the seal of confession, and was of no use in cases of sexual abuse.[194]

Bishop Robinson also gave evidence that, because the ACBC is not a legislative body, Towards Healing had no legal force to compel individual bishops. He stated:

> The only way to obtain legislative force for the process would have been to forward it to Rome and ask that it be 'recognized', that is, that it become, in effect, papal law for Australia (canon 455). We could not do this, for we knew that Rome would have insisted that our process conform to Canon Law, with its five-year statute of limitations and its provisions for a collegiate tribunal of priests etc.[195]

Bishop Robinson told us that Towards Healing created two serious difficulties for Australian bishops. First, it meant they were acting outside, and sometimes contrary to, canon law.[196] He said that when the Australian bishops made the decision to implement Towards Healing, they were 'well aware that they were outside church law and that their document had no standing in church law'.[197] In particular, Towards Healing's reporting and administrative leave requirements conflicted with canon law.[198] He commented:

> Rome is pretty good at times at turning a blind eye to things when it sees it's not going to happen quite the way it wanted. At the same time – you know, there was a bravery in what the Australian bishops were doing.[199]

Second, Towards Healing 'created serious problems in the relationship between bishops and their priests'. In particular, some accused priests claimed their rights under the Code of Canon Law, which 'would have seen nearly all cases rejected at the outset and provided an environment hostile to victims'.[200] As Professor Parkinson noted in 2003, the main problem with this was that, if a priest was disciplined under their provisions, he could simply appeal to the Holy See and have the decision overturned.[201] These difficulties were illustrated in the case of Father John Gerard Nestor, set out in the box below.

Father John Gerard Nestor

In *Case Study 14: The response of the Catholic Diocese of Wollongong to allegations of child sexual abuse, and related criminal proceedings, against John Gerard Nestor, a priest of the Diocese (Catholic Diocese of Wollongong)* we considered the case of Father John Gerard Nestor. Father Nestor had been the subject of a number of complaints in the 1990s, and in 1996 was convicted of child sexual abuse offences. This conviction was overturned on appeal, and Father Nestor was acquitted following a fresh trial.[202]

After Father Nestor was acquitted, the then Bishop of Wollongong, Bishop Philip Wilson, decided that a formal Towards Healing assessment should commence to determine whether Father Nestor would be suitable for any future appointment. Bishop Wilson appointed assessors and informed Father Nestor that the assessment procedure would fulfil, in part, the function of a 'preliminary investigation' under canon 1717 of the 1983 Code of Canon Law. It was contemplated that the Towards Healing and canon law processes would run together.[203]

Archbishop Philip Wilson, now the Archbishop of Adelaide, gave evidence at our *Catholic Diocese of Wollongong* public hearing that he wanted to make sure that the results of the Towards Healing assessment could be used to show that there was 'sufficient evidence' of a case against Father Nestor.[204] He told us that he believed evidence obtained from an investigation conducted using the civil standard of proof (as the assessment process was) satisfied this requirement.[205]

In May 1998, the Towards Healing assessors found that the complaints against Father Nestor could be sustained on the balance of probabilities.[206] Consistent with the recommendations of the assessors, Bishop Wilson issued two decrees. The first required Father Nestor to undergo a full appraisal by the treatment centre Encompass Australasia before any further ecclesiastical appointment. The second restricted Father Nestor from celebrating the liturgy publicly.[207]

In October 1998, Father Nestor applied to the Congregation for the Clergy to have the first decree set aside. In December 2000, more than two years later, the Congregation for the Clergy decreed that Father Nestor's recourse to it was upheld, and ordered that he be restored immediately to the full exercise of his priestly ministry in the Diocese of Wollongong.[208] The Congregation for the Clergy found that Bishop Wilson's decree was penal (not administrative) in nature. Penal decrees can only be enacted after a 'preliminary investigation' in accordance with canons 1717–1719, and after starting a penal process under canon 1720.[209]

The Congregation for the Clergy ruled that the Towards Healing assessment process had not complied with the procedural requirements for a preliminary investigation under canon law, including because Father Nestor had requested, but was not afforded, the opportunity of a canonical process to prove his innocence. It also considered that the standard of proof adopted by the Towards Healing assessors was not consistent with a preliminary investigation under canon 1717 – in particular, that the standards of 'balance of probabilities' and 'unacceptable risk' were foreign to canon law.[210]

We heard evidence that the Congregation for the Clergy's 2000 decree that Father Nestor must be restored immediately to the full exercise of his priestly ministry placed the then Bishop of Wollongong and his successors in a difficult position.[211] Archbishop Wilson and his successor, Bishop Peter Ingham, gave evidence that, despite this decree, they felt bound by conscience not to permit Father Nestor to engage in public ministry.[212] Bishop Geoffrey Robinson told us that, in refusing to give Father Nestor a new appointment, Bishop Ingham 'was putting his job on the line'. He said, 'Had push come to shove, the Congregation would have insisted that he do it or else resign'.[213]

Australian attempts to improve the Holy See's response to child sexual abuse

> However great the faults of the Australian bishops have been over the last thirty years, it still remains true that the major obstacle to a better response from the Church has been the Vatican. However slow the Australian bishops may have been to respond, the Vatican has been far slower. It still has a long way to go.[214]
>
> **Bishop Geoffrey Robinson, retired Auxiliary Bishop, Archdiocese of Sydney**

From early 1997, after Towards Healing had been approved, the ACBC corresponded with the Holy See about its concerns that canon laws and processes were inadequate for responding to priests against whom allegations of child sexual abuse had been made. Documents indicate that in January 1997, the ACBC wrote to the Congregation for Divine Worship and the Discipline of the Sacraments to express 'concern of members of the conference regarding perceived delays in the granting of dispensations from the obligations of the Priesthood, including celibacy'.[215]

In May 1997, the prefect of the congregation replied to these concerns.[216] In particular, he advised that in situations where a priest had not yet reached 40 years of age, consideration of a request for dispensation was deferred until he reached 40 years of age, 'as a precautionary measure … insisted upon to sustain an esteem for priestly celibacy, to correct the erroneous impression that dispensations may be easily obtained, and to preclude creating scandal amongst the clergy or the faithful'.[217] At the same time, he advised that consideration would be given to cases where the petitioner was under 40 years of age 'when grave scandal is present', such as when the defects had already emerged before ordination, but were not taken into serious consideration by those entrusted with formation.[218]

Just over a year later, in June 1998, the President of the ACBC, Cardinal Edward Clancy, wrote to Pope John Paul II:

> In response to the unanimous decision of the Australian Bishops' Conference, I write humbly to request, as a matter of great urgency, a thorough review of canons 1717 ff concerning process, and canon 1362 concerning prescription in the penal procedures of the Code of Canon Law.
>
> This request is made, in accordance with the principles of canons 223, 1, and 1341, by reason of the issues raised by accusation of sexual assault made against priests and religious.[219]

The ACBC documents provided to us did not include a reply to this letter.

Bishop Robinson told us that in the Synod for Oceania towards the end 1998 he asked Cardinal Ratzinger, then prefect of the CDF, whether a meeting could be held with the Holy See about the issue of child sexual abuse by clergy and religious.[220] Bishop Robinson told us:

> My purpose in the question was that I felt it was high time, long beyond high time, when we sat down with people in the Vatican to talk this through, because Rome's response up until then had been so poor.
>
> They were dismissing it as an Anglo-Saxon problem, it didn't exist anywhere else, it was just those dreadful Anglo-Saxons, and they had also dismissed it as a homosexual problem, because, I'm sure you are aware, most of the victims of priests were male, so they dismissed it as a homosexual problem. I felt we really needed to sit down with them.[221]

Bishop Robinson gave evidence that Cardinal Ratzinger told him to apply to the Secretary of State for the Vatican.[222]

In March 1999, the ACBC wrote to the Vatican Secretary of State to propose 'a formal meeting of [the Australian] Conference of Bishops with the Holy See regarding cases of sexual abuse by clerics'.[223] In May 1999, the prefect for the Congregation of the Clergy replied, stating that a 'similar request has been forwarded by other Conferences of Bishops of the English-speaking world'. That letter proposed a meeting with representatives of the conferences of bishops in March or April of 2000.[224]

A meeting of bishops on the theme of 'Clerical Sexual Abuse' was held in April 2000, in Rome, with senior figures from various Dicasteries of the Roman Curia.[225] Two bishops from each of the several English-speaking national bishops' conferences were invited,[226] and each conference was requested to make a presentation on statistics from the previous five years, including on the total number of clergy who had been convicted of sexual abuse and the number of cases that had been dealt with by canon law.[227] Bishops Robinson and Wilson were the ACBC representatives at this meeting.[228]

Before the conference, the prefect of the Congregation for the Clergy wrote to the president of the ACBC that participants at the meeting:

> should present practical suggestions to the Church's Legislator regarding how to confront the problem while considering the well being of the individuals – clerics and their victims – and the common good. The Holy Father's task, one exclusively reserved to him, will be to decide on how to handle such this [sic] question burdened with pastoral consequences for the entire Church.[229]

The Australian bishops who attended the meeting tabled a report noting that conflicts between the laws of the Catholic Church and the laws of Australia did arise in relation to sexual abuse, and that they could cause serious problems. The report noted the following areas of conflict:[230]

- the concept of 'unacceptable risk' – that a bishop cannot give a priest an appointment when he has knowledge that indicates such that an appointment would create an unacceptable risk of abuse of minors, which does not exist in canon law
- the fact that canon law has a period of prescription of only five years in cases of offences, which means that a canon law tribunal can hear a case only if the complaint was received within five years of the time of the offence or the last in a series of offences
- the question of administrative leave – under civil law a person is automatically required to stand aside from office when accused of a serious offence; however, under canon law the person is only asked to stand aside after the penal process has begun, when there is already a substantial case against the person
- in Australia neither the accuser nor the accused has an advantage over the other, while under canon law the person complaining must appear before three judges, a notary and a promoter of justice, all of whom are priests, which would prevent many victims from appearing.

The report also noted, 'The laws and procedures of the Church must not prevent a bishop from obeying the reasonable laws of the State and they must not prevent a bishop from following his conscience'.[231] The ACBC subsequently reported on the meeting, 'Vatican officials insisted that Canonical processes be assiduously applied in all cases'.[232]

Bishop Robinson wrote an account of this meeting in which he observed, 'We received little sympathy in relation to e.g. the statute of limitations or the need to stand a person aside while a matter is heard'.[233] He continued:

> At times, it must be said, some of them appeared downright patronising concerning the superiority of their Latin law over our Anglo-Saxon law. They did not seem to have the slightest understanding of the truly serious problems they create for us by imposing Latin law on Anglo-Saxon countries, and they appeared to blame these problems on our secular societies and moral laxity and on the media.[234]

Bishop Robinson observed in his account that at the end of the meeting, 'we were duly thanked and sent on our way, while all power rested with them. We were not told what would happen after this and no promises were made of further consultation'.[235] He expressed the view to us that the Holy See representatives in 2000 were 'at the stage where the Australian bishops were back in the 1980s. There hadn't been the movement forward'.[236]

In July 2000, the president of the ACBC wrote to the prefect of the Supreme Tribunal of the Apostolic Signatura, noting a number of important questions that remained to be resolved following the meeting in Rome.[237] He stated that the major unresolved question was that of '"prescription" or the statute of limitations'.[238] This letter also sought a response to a number of 'difficult questions', including: [239]

- If a priest is found guilty of abuse of a minor by a civil court, must the Catholic Church then hear the case all over again before an ecclesiastical tribunal, with a new interrogation of the victim, before it could impose a perpetual penalty on the priest?
- If a number of accusations are made against the same priest, must there be a separate trial for each of them or can they be considered together?
- The standing in canon law of the Australian civil law concept of 'unacceptable risk', which requires that an accused must be denied 'privileged access to children'.
- What a bishop should do when a civil proceeding has commenced and the bishop realises that for the accused to continue to exercise his office would constitute a danger to young people: 'He cannot in practice begin a canonical penal process against the priest or deacon while the civil case is being heard and yet he cannot forbid him the exercise of his office without the canonical process'.
- Whether a local bishop has the authority to deprive a priest of his 'title or insignia' – that is, to 'depriv[e] him of the right to wear clerical clothes and call himself "Father"'.

An enclosure to the letter stated that the 570 bishops who were represented at the meeting in Rome had called for the Catholic Church to adopt the civil legislation of each country in cases of sexual abuse, and that 'The mature judgment on this matter of 570 bishops must surely constitute a convincing argument'.[240]

In June 2001, over a year after the meeting in Rome, the president of the ACBC wrote again to the prefect of the Congregation for the Clergy requesting that further consultation be undertaken before the response to the concerns at this meeting was formally issued.[241] That letter also stressed the importance that 'any proposals from the Holy See should not be seen to be at variance with the civil requirements of the countries in which we live', noting that 'In that situation, the Bishops would be placed in an intolerable position and great harm would be done to the Church'.[242]

Review of Towards Healing in 2000

As discussed above, Towards Healing was reviewed by Professor Parkinson between August and December 1999. This review 'foresaw some of the canonical problems that could arise and attempted to accommodate them'.[243] In May 2000, the Committee for Professional Standards noted that 'as a result of the meeting in Rome in April, the review process will need to be revised further'.[244] A revised version of Towards Healing was published in December 2000.

The review recommended that assessors be appointed under Towards Healing where there is a 'significant dispute about the facts'. Towards Healing (1996) already contained provisions relating to assessment. The assessors would 'fulfil the role in Canon Law of conducting a preliminary inquiry', although this would not take away the rights of an accused priest to defend himself in canon law.[245] In a written submission to us, Professor Parkinson said in relation to this review:

> Canon law remained a major potential obstacle in dealing with priests or religious, although there was some 'wriggle room'. I sought, in the first review, to make the connection with Canon law more explicit, to provide at least some appearance of consistency.[246]

The 2000 revision of Towards Healing also introduced the concept of 'unacceptable risk',[247] which does not exist in canon law.[248] Paragraph 30 provided:

> No person shall be permitted to work in a position if the Church Authority believes, on the basis of all the information available, that there is an unacceptable risk that children or young people may be abused.[249]

As set out above in our discussion of the case of Father Nestor, in December 2000 the Congregation for the Clergy ruled that the concept of 'unacceptable risk' was 'foreign to Canon Law and its processes'.[250] In a letter dated 21 December 2001 to ACBC Secretary Bishop Brian Finnigan, Bishop Robinson observed that this meant 'Unless there is a tribunal conviction for an offence, a priest would have to be given an appointment'.[251]

In March 2001, Archbishop Carroll, the President of the ACBC, wrote to the Prefect of the Supreme Tribunal of the Apostolic Signatura in relation to the Nestor decision.[252] He noted, 'we are perturbed by the statement in the decree of the S. Congregation that the criterion of "unacceptable risk" is foreign to canon law and cannot be taken into consideration'.[253] The letter went on to comment, 'Granted the effects of abuse on the young, this seems to be a reasonable law' and 'It is not a penalty, but a balancing of the rights of the priest against the rights of minors'.[254] The letter concluded:

> In matters affecting the spiritual, moral and physical safety and well being of minors, the bishop must not be placed in a situation where the State is ordering him to do one thing while the Church is ordering him to do the opposite.[255]

Towards Healing and the Congregation for the Doctrine of the Faith

As set out in Section 13.2, in 2001 the pope promulgated a motu proprio, *Sacramentorum sanctitatis tutela,* that included the sexual abuse of a minor under 18 years of age in the list of grave crimes reserved for the CDF.[256] This motu proprio also stated that petitions for dismissal or laicisation should be sent to the CDF, when previously they were sent to the Congregation for the Clergy. The CDF would either elect to deal with the matter itself, or advise the bishop on the appropriate action to take in canon law.[257] In a written submission to us, canon lawyer,

Dr Rodger Austin stated: 'The reservation of the offence of sexual abuse of minors to the Congregation for the Doctrine of the Faith … means that the diocesan bishop or the superior of a clerical religious institute is no longer competent to deal with the matter'.[258]

In July 2001, the CDF sent a document to every bishop in relation to how sexual offences by a cleric against a child were to be handled.[259] The Australian NCPS subsequently prepared a report on whether the requirements of the congregation's July 2001 document could be reconciled with civil law and Towards Healing.[260] This was distributed to the ACBC in May 2002.[261] That report noted that the document contained a prescription (limitation) of 10 years from the time the victim reached the age of 18 years.[262] The report considered that this law was most probably not retroactive, meaning that, for any offence that occurred before May 2001, the prescription was five years from the time of the last offence, in accordance with the 1983 Code of Canon Law.[263]

The NCPS report observed that, if a penal process was not 'possible or advisable', there were two other possible legal remedies. The first was removal from office, although it noted that a cleric could appeal to Rome against a decree of removal.[264] The second was declaring that the cleric had a 'psychological infirmity', which was an administrative process and was not considered a penalty under canon law.[265] However, the report concluded:

> Where none of these procedures is opportune, all that is left is to return to *Towards Healing* and follow what is set out in no.40:1-15 [provisions relating to assessment of allegations]. It must be clearly understood that in these cases the procedure has no 'teeth' and cannot be enforced. The bishop or leader would proceed solely in the hope that, if the offence is confirmed, he will be able to reach an agreement with the offender based on the good of the whole Church. In many cases this is possible, but it is usually the cases in which it is most required that it is not possible. In these cases the CDF document will, in most instances, block any enforceable solution.[266]

Finally, the report noted, 'The CDF document does not address the whole issue of abuse. It does not even mention victims. A response to the <u>whole</u> pastoral problem is essential [emphasis in original]'.[267]

In June 2002, the United States Catholic Bishops Conference approved the *Charter for the protection of children and young people, and essential norms for diocesan/eparchial policies dealing with allegations of sexual abuse of minors by priests and deacons*.[268] A joint commission of bishops from the United States and officials from the Holy See subsequently amended this charter to resolve 'perceived conflicts' with canon law.[269] One change was the removal of a requirement that all bishops report allegations of child sexual abuse by clergy and religious to civil authorities. It was replaced with the requirement that the diocese 'comply with all applicable civil laws with respect to the reporting of allegations of sexual abuse of minors to civil authorities'.[270] At that time, not all American states had mandatory reporting laws that applied to priests and religious.[271]

Under the charter, where an allegation of child sexual abuse falls outside the canon law limitation period (10 years after the victim has turned 18), the bishop 'shall apply' to the CDF for dispensation of the statute of limitations. This can result in laicisation for 'any priest who has engaged in sexual abuse of a minor, whether or not the limitations period has expired'.[272] The revised charter was approved by the Holy See and became law for the Catholic Church in the United States.[273]

In November 2002, the Australian NCPS discussed the charter.[274] The NCPS considered in particular whether they should follow the procedures of the CDF, with the 'slight modifications' allowed to the United States, or whether they should continue to utilise Towards Healing. The NCPS moved:

> That the bishops and congregational leaders re-commit to *Towards Healing* as the normal means of responding to complaints of abuse. But in those cases where a cleric strongly denies the allegation then case by case one considers the use of the canonical process. In those cases the *Towards Healing* process would provide the preliminary investigation under canons 1717-1719.[275]

This motion was substantially adopted by a meeting of the ACBC in November 2002.[276]

In May 2010, the pope revised the norms attached to the 2001 motu proprio, *Normae de gravioribus delictis*.[277] Following the announcement of these changes, Father Federico Lombardi, the Vatican's media spokesperson, stated:

> The Congregation for the Doctrine of the Faith is currently examining how to help the bishops of the world formulate and develop, coherently and effectively, the indications and guidelines necessary to face the problems of the sexual abuse of minors, either by members of the clergy or within the environment of activities and institutions connected with the Church, bearing in mind the situation and the problems of the societies in which they operate.[278]

A year later, in May 2011, Cardinal William Levada, the Prefect of the CDF, issued a circular letter to all bishops' conferences concerning the May 2010 revisions to the motu proprio.[279] This circular letter stated that among the 'important responsibilities of the Diocesan Bishop' was:

> the duty he has to give an appropriate response to the cases of sexual abuse of minors by clerics in his diocese. Such a response entails the development of procedures suitable for assisting the victims of such abuse, and also for educating the ecclesial community concerning the protection of minors. A response will also make provision for the implementation of the appropriate canon law, and, at the same time, allow for the requirements of civil law.[280]

The letter requested that 'each Episcopal Conference prepare Guidelines whose purpose will be to assist the Bishops of the Conference to follow clear and coordinated procedures in dealing with these instances of abuse'.[281] Each conference of bishops was also asked to provide a copy of the completed guidelines to the CDF by the end of May 2012.[282] The letter noted, 'In the event that the Conference wishes to establish binding norms it will be necessary to request the appropriate *recognitio* from the competent Dicasteries of the Roman Curia'.[283]

On 26 August 2011, Father Brian Lucas, who at that time was the general secretary of the ACBC, wrote to the prefect of the CDF ahead of a visit of the Australian bishops to Rome in October 2011.[284] The letter indicated that the Australian bishops wished to discuss a number of issues with the CDF, including 'Sexual abuse by clergy and new CDF guidelines' and 'Removal from clerical state'.[285]

On 10 October 2011, bishops from Australia met with the CDF.[286] In a subsequent letter to the president of the ACBC, the prefect of the congregation referred to the 'concerns and inquiries expressed by numerous Bishops regarding the cases of sexual abuse of minors in Australia'.[287] He also requested a report regarding:

a. 'All publicly known cases of sexual abuse of minors involving clerics who have already been prosecuted for their crimes, and all cases of clerics credibly accused of sexual abuse of minors. (Both diocesan and religious clerics);

b. The canonical status of every cleric criminally and/or civilly prosecuted for the crimes of sexual abuse of minors in Australia, and also of those clerics who have been credibly accused of sexual abuse of minors'.[288]

Finally, the letter requested that the ACBC 'make a proposal regarding the application of the canonical penalties, particularly *ex officio* dismissals in cases deriving from Australia'.[289]

Documents indicate that the ACBC sent the CDF a document entitled *Australian Catholic Church guidelines*, which included Towards Healing (2010) as an attachment.[290]

In February 2013, the apostolic nuncio to Australia wrote to the president of the ACBC offering some 'limited observations' on the *Australian Catholic Church guidelines*.[291] The CDF requested that the guidelines be provided once they had been revised according to these observations.[292] The letter observed that 'some necessary elements lacking in the *Australian Catholic Church Guidelines* are present in *Towards Healing*, while elements lacking in the latter, are found in the former' and suggested that 'The complete guidelines addressing sexual abuse of minors perpetrated by clerics should be contained in a single document'.[293]

In relation to Towards Healing, the letter noted, 'That the Congregation has exclusive competence in matters of sexual abuse of minors perpetrated by clerics is not mentioned', and that 'The document is to incorporate the *motu proprio Sacramentorum sanctitatis tutela* dated 30 April 2001 and the amendments made to the same *motu proprio* on 21 May 2010'.[294] It continued:

> It must be made clear that provided there is a semblance of truth to the allegation, the acts of the case are to be sent to the Congregation for evaluation and decision. It is the Congregation that will determine the 'appropriate process' for clerics accused of sexual abuse of minors. In effect, sections 39 and 40 are applicable only to non-clerics.[295]

Clauses 39 and 40 of Towards Healing (2010) relate to 'Selecting the appropriate process' and 'Assessment' of complaints, respectively.[296] As set out earlier in this section, clause 40 requires the assessment to be undertaken by two assessors appointed by the director of professional standards, who are independent of the relevant Catholic Church authority.

In the *Institutional review of Catholic Church authorities* public hearing, Archbishop Mark Coleridge, Archbishop of Brisbane, gave evidence that, in his experience, the 'official position' of the CDF is that the Towards Healing provisions relating to the investigation of complaints against clerics have no application to priests 'and that those provisions only relate to lay persons'.[297] This view appears to be consistent with the apostolic nuncio's February 2013 letter.

On 27 February 2013, Archbishop Hart, then chair of the ACBC, responded to the letter from the apostolic nuncio, noting he would arrange for the 'revision and return of the document as has been suggested'.[298] As discussed above, in 2016, two additional paragraphs were inserted into Towards Healing (2010) and a new digital edition was published (Towards Healing (2016)).[299] These two paragraphs (38.1.a and 42.5.a) relate to canon law requirements with respect to referrals to the CDF.[300]

We discuss other changes to canon law since 2001 in Section 13.2.

13.7.11 *Towards understanding*

As set out above, item 7 of the plan adopted by the ACBC in April 1996 was that the Australian Catholic Social Welfare Commission and Centacare Sydney would be asked to coordinate a study of any factors peculiar to the Catholic Church which might lead to sexual abuse by priests, religious or other church workers. The study was to include a review of the relevant literature and interviews with experts, with other relevant Catholic bodies, and with offenders who were willing to assist. The NCPS reported to the November 1997 ACBC meeting that the research project was completed and was entitled *Towards understanding: a study of factors specific to the Catholic Church which might lead to sexual abuse by priests and religious* (*Towards understanding*). It stated that 'Final corrections and editing are required prior to release' by the ACBC and ACLRI/CRA.[301]

We received a copy of the *Towards understanding* study, dated July 1999.[302] However, it does not appear that it was ever released publicly by the Catholic Church.[303] Among other things, it sought to define 'child sexual abuse' and categorise types of offenders. It then discussed the reasons why certain people sexually offend against children and examined the 'profiles and characteristics' of priests and religious child sex offenders. On the basis of a literature review and a survey distributed to 'persons with an interest in the research area', the study set out 'observations' concerning 'the extent and the nature of child sexual offences committed by priests and religious in Australia'.[304] It also described 'a number of factors specific to the Church itself which are considered to contribute to the structural and cultural environment' in the Catholic Church in Australia.[305] It dedicated a chapter to a discussion of celibacy, concluding that there was 'no evidence to support the view that celibacy, of itself, is a significant factor in contributing to child sexual offences committed by priests or religious, any more than it is for anyone else'.[306] We discuss these factors further below in Section 13.11, 'Contributing factors in the Catholic Church'.

The minutes of the NCPS meeting held on 12 July 2000 record that 'Significant discussion was held in considering the future' of the *Towards understanding* project. It was decided that the NCPS would propose an afternoon of 'brainstorming' in this regard.[307] This occurred on 17 October 2000, and focused around the need for additional research to be conducted, particularly with regard to the issue of celibacy.[308]

We also received a copy of a similar type of study of 'the child abuse issue' within the Christian Brothers Congregation that was presented to a leadership conference of the Christian Brothers Congregation held in Rome in April 1998.[309] Brother Gerald Faulkner was commissioned by the General Chapter of the Christian Brothers to conduct this study. Brother Faulkner's report set out a number of 'learnings' for the Christian Brothers, on subjects such as the culture of the Christian Brothers, the importance of preventive strategies and of listening to victims, and the necessity of codes of behaviour and protocols for dealing with complaints.

13.7.12 Encompass

As discussed in further detail in Sections 13.5 and 13.8, a number of Australian Catholic priests and religious were sent for some kind of counselling or therapeutic treatment following complaints against them of child sexual abuse throughout the 1970s, 1980s and 1990s.

There had been considerable discussion at the ACBC and by its Special Issues Committee and Professional Standards Committee[310] of the possibility of setting up some kind of treatment program or centre in Australia for priests and religious involved in child sexual abuse, in the period leading up to the announcement of the plan of action in April 1996.[311] While the ACBC resolved to establish a national treatment program for priests or religious with 'psycho-sexual and related disorders' as part of the plan, Bishop Robinson told us that 'no-one [within the Catholic Church] wanted to touch this subject of sexual abuse and no-one wanted to be seen as associated with it in any way'.[312] In its 2013 submission to the Towards Healing Issues paper,

the Council told us that, at the time the program was eventually established, in 1997, there was a 'widely held view … that psychiatric or psychological treatment was appropriate and effective for people with "psycho-sexual disorders", and that such therapy could be an important component for rehabilitation'.[313]

Two Australian psychologists who were working in the United States were approached to set up the Australian treatment program, which was called Encompass.[314] Encompass was operating by April 1997[315] and had treatment centres in Sydney and Melbourne.[316] Encompass's services were based on a 'user pays' model, where treatment was paid for by the religious order or diocese that was responsible for the offending brother or priest.[317]

However, by the late 1990s it was accepted, at least among the treatment providers at Encompass, that there was no chance of returning to ministry any individual who had been referred for treatment in relation to child sexual abuse. During the public hearing in our *Institutional review of Catholic Church authorities*, the following exchange took place between the Chair of the Royal Commission and clinical psychologist and former Clinical Director of Encompass Australasia, Dr Gerardine Robinson:

> CHAIR: When they had been through your processes [at Encompass], did you then certify back to the Church, 'This man is cured and can go back into ministry'?
>
> DR ROBINSON: Never, not a child offender.[318]

According to Bishop Robinson, the cost of referring alleged perpetrators to Encompass 'became a big problem, particularly for country dioceses. You know, small dioceses, $50,000 is a lot of money', especially if the priest was never going to work again.[319]

On 13 June 2008, Archbishop Hart wrote to the Australian bishops, saying that in light of the 'grave financial situation' a review of the operation of Encompass had concluded that it should cease operating from 30 June 2008.[320] Dr Robinson gave evidence that the closure of Encompass 'left a big hole' in terms of treatment options for offending clergy and religious within the Catholic Church in Australia.[321] She said that:

> when Encompass closed, I think the intention of the bishops was to refer these clients to other agencies or to individual psychologists.
>
> I think that was a shortsighted view, because again the treatment of psychosexual disorders is a speciality …
>
> I also think that, at the time, the bishops and major superiors thought the problem was over. Add to that the fact that I think there were some who thought why would one put money into treating offending clergy if they were no more useful in ministry, which I have an issue with, because I think if the Church has selected and produced men who offend, then they should have some responsibility for treatment, because research will indicate that treatment reduces recidivism exponentially.[322]

According to an Encompass *Report to bishops* dated November 2007, which advocated against the closure of the program, since it had started operation in 1997 it had provided residential treatment and assessment services for over 1,000 clients (clergy and religious), which included both sexual offenders and individuals with other types of problems.[323] Of these, 247 clients had been provided with residential treatment and 840 had been provided with 'assessment services'. The report noted that assessments conducted by Encompass identified that:

> there is a significant number of priests and religious with either a history of sexual offending against children and vulnerable adults or a serious level of emotional and/or psychosexual dysfunction requiring intensive therapeutic intervention. Failure by the Church to provide the services of Encompass to these individuals could have dire consequences for the Church in the years ahead.[324]

In Section 13.8 we set out what we learned about priests and religious referred to Encompass in relation to allegations of child sexual abuse.

13.7.13 *Integrity in ministry* and *Integrity in the service of the church*

The April 1996 plan included a commitment on the part of the ACBC to develop a code of conduct for clergy and religious. It established a Code of Conduct Committee (CoCC), chaired by Bishop Patrick Power of the Archdiocese of Canberra and Goulburn and including representatives of the ACLRI/CRA and NCPS, which was tasked with preparing a draft code of conduct.[325]

On the basis of the responses received to a questionnaire distributed to all dioceses and religious institutes, the CoCC developed a draft document. This draft, *Integrity in ministry: A document of ethical standards for catholic clergy and religious in Australia*, was released at the beginning of 1998. In response to concerns that a code of conduct would 'stifle creative and responsive approaches to ministry', the draft was instead presented as a non-binding 'Standards Document'. The CoCC invited comment and consultation on the draft from victims and survivors of sexual abuse, clergy and religious, lay organisations of the Catholic Church, and any other interested party.[326]

At a meeting of the NCPS held on 5 August 1998 it was noted that there had been 'a strong negative reaction from groups of priests who have discussed this document but this has not been translated into written comments on the issues of concern'. The meeting records indicate that comments included that:

> we are dealing with accountability issues and the changing of a culture of a lack of accountability and this is going to take an enormous amount of time and current resistance is to be expected.[327]

The first published edition of *Integrity in ministry: A document of principles and standards for Catholic clergy and religious in Australia* (*Integrity in ministry*) was released in June 1999. This stated that it was not to be imposed on clergy and religious but that, rather, bishops and religious leaders should seek the support of clergy and religious in implementing the document for a two-year trial period.[328] A revised edition of *Integrity in ministry* was published in June 2004 and another in April 2010. This latter version was presented as a code of conduct intended to apply immediately to all clergy and religious.[329]

Among the stated aims of *Integrity in ministry* was 'to provide positive guidelines both for healthy lives among clergy and religious, and for the highest standards of pastoral practice'. The listed objectives included supporting clergy and religious 'to protect children and adults from all abuses of power, including sexual abuse and harassment' and supporting the Catholic Church in responding to sexual abuse.[330] Among the many lists of behavioural standards set out in the document, the following were provided to assist religious and clergy in protecting the 'dignity and safety of children and youth' and preserving 'clarity of sexual and professional boundaries' with regard to children and youth:[331]

- avoid any form of over-familiarity or inappropriate language
- ensure whenever reasonably possible that another adult is present or close when providing pastoral ministry to a minor
- avoid, whenever reasonably possible, being alone with a minor or group of minors in sleeping, dressing or bathing areas, making sure to exercise prudent judgment and behaviour when another adult cannot be present
- familiarise oneself with the causes and signs of child abuse or neglect, the steps to be taken for the protection of children, and the procedures to follow if abuse or neglect is suspected or observed
- familiarise oneself with the procedures outlined in the document 'Towards Healing'
- behave with due prudence, not staying overnight in the same room as a minor or vulnerable person unless it is impossible to avoid. In that circumstance every provision needs to be made to provide a safe environment
- never administer corporal punishment
- use electronic and print media responsibly
- do not supply or serve alcohol or any controlled substance to a minor without the express permission of a parent or guardian.

Integrity in ministry also provided some guidance as to what should be done in the event of a complaint that any of the principles and behavioural standards had been violated.[332]

In 2007 and 2009 the NCPS also published drafts and undertook consultation for a parallel set of behavioural standards for lay persons working for the Catholic Church as employees and volunteers. In September 2011 it published *Integrity in the service of the church: A resource document of principles and standards for lay workers in the Catholic Church in Australia* (*Integrity in the service of the church*). Rather than being a code of conduct, this document states that it provides guidance to organisations and lay persons working 'in the service of the Church', which can be used to develop new, or accompany existing, organisational guidelines, policies and procedures.[333]

13.7.14 The National Committee for Professional Standards and Catholic Professional Standards Limited

As noted above, in November 1996 the ACBC and ACLRI/CRA established the National Committee for Professional Standards (NCPS). Since 1997 the NCPS has operated under a charter approved by the ACBC and ACLRI/CRA, which has been amended on a number of occasions.[334] In 2004, a retired judge was appointed to conduct an appraisal of the NCPS. The report of this appraisal, produced in 2005, set out a number of recommendations. Among these was that the NCPS should explore the amalgamation of Towards Healing with the Melbourne Response process.[335] According to its 2009 charter, the mandate of the NCPS includes:[336]

1. providing advice to the ACBC and CRA on all aspects of the formulation of policy regarding professional standards and the implementation of such policies
2. revising, as necessary, Towards Healing and presenting other policy documents for consideration by the ACBC and CRA from time to time
3. implementing Towards Healing and overseeing its operation, including working with state directors to promote national consistency
4. authorising and/or conducting research, where appropriate, on aspects of professional standards relevant to the Catholic Church
5. participating in consultations with similar committees with other denominations and in the broader Catholic Church.

In its 2013 submission to our Towards Healing Issues paper, the Council stated that in practice more than half of the time of the NCPS Executive Officers was spent on matters relating to providing advice and training in relation to Towards Healing.[337]

On 23 November 2016, a new, independently structured company named Catholic Professional Standards Limited (CPS) was launched by the ACBC on the recommendation of the Council. The Council has told us that:

> The primary object of the company is to promote the safety of children and vulnerable people and to prevent abuse and (or) misconduct towards them by persons associated with entities identifying themselves as Catholic and being accepted by competent authorities as being so. The focus will be on setting, and auditing compliance with professional standards.[338]

According to the Council, CPS will have a wide-ranging standard-setting power in recognition of the 'organisational deficiencies' recognised in its previous submissions to the Royal Commission and the 'cultural elements that have contributed to the way the Catholic Church has managed child sexual abuse cases'.[339] All Catholic Church authorities will be required to enter into a contract with CPS agreeing to ensure that their various entities meet the professional standards set and to have themselves publicly audited by CPS. The Council also stated that, 'in time' it is envisaged that CPS 'will assume all of the tasks presently carried out by the NCPS'.[340] In Chapter 20, 'Making religious institutions child safe', we discuss the information and evidence we have received about the creation and operation of CPS.

Endnotes

1 Transcript of TPM Doyle, Case Study 50, 7 February 2017 at 24814:34–41.
2 Exhibit 50-0003, 'Precis – Dr Gerardine Robinson', Case Study 50, IND.0685.001.0001 at 0002.
3 Transcript of GJ Robinson, Case Study 31, 24 August 2015 at 16097:29–32.
4 Exhibit 8-0013, 'Statement of Reverend Monsignor John Joseph Usher EV', Case Study 8, STAT.0168.001.0001_R at 0001_R.
5 Exhibit 44-0005, 'Statement of Father John Usher', Case Study 44, CTJH.400.400003.3345_R at 3346_R.
6 Exhibit 8-0013, 'Statement of Reverend Monsignor John Joseph Usher EV', Case Study 8, STAT.0168.001.0001_R at 0003_R.
7 Exhibit 44-0009, 'Confidential interview of Monsignor John Usher', 28 September 2012, Case Study 44, CTJH.240.01001.0748_E_R at 0761_E_R.
8 Transcript of BJ Lucas, Case Study 44, 19 September 2016 at 21242:13–14, 21245:21–25.
9 Exhibit 44-0009, 'Confidential interview of Father Brian Lucas', 18 September 2012, Case Study 44, CTJH.240.01001.0645_E_R at 0650_E_R.
10 Transcript of GJ Robinson, Case Study 31, 24 August 2015 at 16018:5–9.
11 Exhibit 31-0002, 'ACBC Clergy and Child Sexual Assault – Brief Notes prepared by Father Brian Lucas', 12 April 1988, Case Study 31, CTJH.301.11015.0176; Exhibit 31-0002, 'Child Sexual Abuse – Father John Usher and Father Brian Lucas', 12 April 1988, Case Study 31, CTJH.301.11002.0098; Transcript of GJ Robinson, Case Study 31, 24 August 2015 at 16018:15–34.
12 Exhibit 31-0002, 'ACBC Clergy and Child Sexual Assault – Brief Notes prepared by Father Brian Lucas', 12 April 1988, Case Study 31, CTJH.301.11015.0176 at 0179.
13 Exhibit 31-0002, 'Child Sexual Abuse – Father John Usher and Father Brian Lucas', 12 April 1988, Case Study 31, CTJH.301.11002.0098; Exhibit 31-0002, 'ACBC Clergy and Child Sexual Assault – Brief Notes prepared by Father Brian Lucas', 12 April 1988, Case Study 31, CTJH.301.11015.0176 at 0178.
14 Exhibit 44-0005, 'Letter from Monsignor Kevin Manning to Father John Usher', 25 August 1988, Case Study 44, CTJH.301.11002.0094; Exhibit 44-0005, 'Letter from Monsignor Kevin Manning to Father Brian Lucas', 25 August 1988, Case Study 44, CTJH.301.11002.0095; Exhibit 44-0005, 'Letter from Father John Usher to Monsignor Kevin Manning', 13 October 1988, Case Study 44, CTJH.301.11002.0093; Exhibit 8-0013, 'Statement of Reverend Monsignor John Joseph Usher EV', Case Study 8, STAT.0168.001.0001_R at 0003_R; Exhibit 4-0001, 'Submission of the Truth, Justice and Healing Council to the Royal Commission, Issues Paper No. 2', 30 September 2013, Case Study 4, CTJH.0001.002.0001 at 0073.
15 Exhibit 44-0005, Letter from Father John Usher to Monsignor Kevin Manning', 13 October 1988, Case Study 44, CTJH.301.11002.0093; 'Letter to Monsignor Kevin Manning with Draft Terms of Reference for ACBC Special Issues Committee Relating to Priests and Religious', 21 November 1988, Case Study 44, CTJH.301.11002.0086.
16 Exhibit 31-0002, 'Australian Catholic Bishops Conference Minutes November/December 1988', 28 November 1988, Case Study 31, CTJH.301.02001.1431.
17 Exhibit 4-0001, 'Submission of the Truth, Justice and Healing Council to the Royal Commission, Issues Paper No. 2', 30 September 2013, Case Study 4, CTJH.0001.002.0001 at 0073.
18 Exhibit 31-0002, 'Australian Catholic Bishops Conference Minutes November/December 1988', 28 November 1988, Case Study 31, CTJH.301.02001.1431.
19 Transcript of GJ Robinson, Case Study 31, 24 August 2015 at 16022:35–41; Exhibit 4-0001, 'Submission of the Truth, Justice and Healing Council to the Royal Commission, Issues Paper No. 2', 30 September 2013, Case Study 4, CTJH.0001.002.0001 at 0074.
20 Exhibit 50-0006, 'Letter from Bishop Mulkearns to Monsignor Manning ', 26 January 1989, Case Study 50, CTJH.301.11002.0078.
21 See, for example, Exhibit 50-0006, 'Report of Matters Discussed at the Meeting of the Special Issues Committee', 16 November 1992, Case Study 50, CTJH.301.11028.0045 at 0045.
22 Exhibit 4-0001, 'Submission of the Truth, Justice and Healing Council to the Royal Commission, Issues Paper No. 2', 30 September 2013, Case Study 4, CTJH.0001.002.0001 at 0123–0124.
23 Exhibit 4-0001, 'Submission of the Truth, Justice and Healing Council to the Royal Commission, Issues Paper No. 2', 30 September 2013, Case Study 4, CTJH.0001.002.0001 at 0124.
24 Exhibit 4-0001, 'Submission of the Truth, Justice and Healing Council to the Royal Commission, Issues Paper No. 2', 30 September 2013, Case Study 4, CTJH.0001.002.0001 at 0124.
25 Exhibit 4-0001, 'Submission of the Truth, Justice and Healing Council to the Royal Commission, Issues Paper No. 2', 30 September 2013, Case Study 4, CTJH.0001.002.0001 at 0125.
26 Exhibit 31-0001, 'Statement of Bishop Geoffrey Robinson', Case Study 31, CTJH.303.01002.0002_R at 0002_R.
27 Transcript of GJ Robinson, Case Study 31, 24 August 2015 at 16023:36–38.
28 Exhibit 31-0002, 'ACBC Meeting Minutes', 27 November – 1 December 1989, Case Study 31, CTJH.301.02001.1537.
29 Exhibit 31-0002, 'Protocol for Dealing with Allegations of Criminal Behaviour', 30 November 1989, Case Study 31, CTJH.301.02002.0001 at 0005.
30 Transcript of GJ Robinson, Case Study 31, 24 August 2015 at 16025:24–33.
31 Exhibit 31-0002, 'ACBC Meeting – Special Issues Committee Report', 7 May 1990, Case Study 31, CTJH.301.11002.0071.
32 Exhibit 31-0002, 'ACBC Meeting Minutes', 8 May 1990, Case Study 31, CTJH.301.02001.1562 at 1575; Exhibit 4-0001, 'Submission of the Truth, Justice and Healing Council to the Royal Commission, Issues Paper No. 2', 30 September 2013, Case Study 4, CTJH.0001.002.0001 at 0074; Exhibit 31-0002, 'Protocol for Dealing with Allegations of Criminal Behaviour', 30 November 1989, Case Study 31, CTJH.301.02002.0001.

33 Exhibit 4-0001, 'Submission of the Truth, Justice and Healing Council to the Royal Commission, Issues Paper No. 2', 30 September 2013, Case Study 4, CTJH.0001.002.0001 at 0124–0125.
34 Exhibit 31-0002, 'Protocol for Dealing with Allegations of Criminal Behaviour', 30 November 1989, Case Study 31, CTJH.301.02002.0001 at 0005.
35 Exhibit 31-0002, 'Protocol for Dealing with Allegations of Criminal Behaviour', 30 November 1989, Case Study 31, CTJH.301.02002.0001 at 0005.
36 Exhibit 31-0002, 'Protocol for Dealing with Allegations of Criminal Behaviour', 30 November 1989, Case Study 31, CTJH.301.02002.0001 at 0005.
37 Exhibit 31-0002, 'Protocol for Dealing with Allegations of Criminal Behaviour', 30 November 1989, Case Study 31, CTJH.301.02002.0001 at 0007.
38 Exhibit 31-0002, 'Protocol for Dealing with Allegations of Criminal Behaviour', 30 November 1989, Case Study 31, CTJH.301.02002.0001 at 0011–0012.
39 Exhibit 31-0002, 'Protocol for Dealing with Allegations of Criminal Behaviour', 30 November 1989, Case Study 31, CTJH.301.02002.0001 at 0013.
40 Exhibit 31-0002, 'Letter from Dr Nicholas Tonti-Filippini to Bishop Mulkearns', 1 August 1990, Case Study 31, CTJH.301.11015.0143.
41 Transcript of GJ Robinson, Case Study 31, 24 August 2015 at 16025:24–33, 16026:21–26.
42 Exhibit 4-0001, 'Submission of the Truth, Justice and Healing Council to the Royal Commission, Issues Paper No. 2', 30 September 2013, Case Study 4, CTJH.0001.002.0001 at 0075.
43 Transcript of BJ Lucas, Case Study 14, 24 June 2014 at 7803:42–46; Transcript of JJ Usher, Case Study 44, 21 September 2016 at 21436:11–34; Exhibit 13-0030, 'Statement and Annexures of Father Brian Lucas', Case Study 13, CTJH.500.23001.0001_R at 0002_R.
44 Exhibit 50-0006, 'Letter from Bishop Power to Father Lucas', 12 November 1991, Case Study 50, CTJH.301.11012.0099.
45 Exhibit 31-0002, '16 ACBC, Special Issues Committee, Protocol for Dealing with Allegations of Criminal Behaviour', 1 April 1991, Case Study 31, CTJH.0001.001.0312; Exhibit 8-0017, 'Australian Catholic Bishops Conference Minutes April 1991', 23 April 1991, Case Study 8, CTJH.301.02001.1643 at 1654.
46 Exhibit 31-0002, '16 ACBC, Special Issues Committee, Protocol for Dealing with Allegations of Criminal Behaviour', 1 April 1991, Case Study 31, CTJH.0001.001.0312 at 0321.
47 Exhibit 4-0001, '15 ACBC, Special Issues Committee, Protocol for Dealing with Allegations of Criminal Behaviour', 1 April 1992, Case Study 4, CTJH.0001.001.0295 at 0299–0300.
48 See, for example, Exhibit 50-0006, 'Letter from Father Usher to Father Lucas', 2 May 1995, Case Study 50, CTJH.301.11012.0076; Exhibit 50-0006, 'NSW Professional Standards Reference Group – Minutes of Meeting', 31 May 1995, Case Study 50, CTJH.301.11012.0069.
49 Exhibit 4-0001, '15 ACBC, Special Issues Committee, Protocol for Dealing with Allegations of Criminal Behaviour', 1 April 1992, Case Study 4, CTJH.0001.001.0295 at 0300.
50 Exhibit 4-0001, '15 ACBC, Special Issues Committee, Protocol for Dealing with Allegations of Criminal Behaviour', 1 April 1992, Case Study 4, CTJH.0001.001.0295 at 0305–0306.
51 Transcript of BJ Lucas, Case Study 44, 20 September 2016 at 21425:33–35.
52 Exhibit 35-0028, 'Statement of Archbishop Denis Hart', Case Study 35, STAT.0782.001.0001_R at 0011_R.
53 Exhibit 35-0028, 'Statement of Archbishop Denis Hart', Case Study 35, STAT.0782.001.0001_R at 0012_R.
54 Transcript of GT Murphy, Case Study 28, 10 December 2015 at 14502:24–27.
55 Transcript of GT Murphy, Case Study 28, 10 December 2015 at 14504:7–14505:7.
56 Exhibit 26-0002, 'Document entitled Protocol Pastoral action in response to allegations of sexual abuse by people who work on behalf of the Church in Queensland', 1 June 1994, Case Study 26, CTJH.200.02095.0009 at 0012.
57 Exhibit 26-0002, 'Pamphlet entitled Pastoral action in response to allegations of sexual abuse by people who work on behalf of the Church in Queensland', 1 June 1994, Case Study 26, CTJH.200.02101.0664.
58 Exhibit 26-0002, 'Document entitled Protocol Pastoral action in response to allegations of sexual abuse by people who work on behalf of the Church in Queensland', 1 June 1994, Case Study 26, CTJH.200.02095.0009 at 0012.
59 Transcript of B Heenan, Case Study 26, 17 April 2015 at 7626:22–28.
60 Exhibit 4-0001, 'Submission of the Truth, Justice and Healing Council to the Royal Commission, Issues Paper No. 2', 30 September 2013, Case Study 4, CTJH.0001.002.0001 at 0077.
61 Exhibit 50-0004, 'The Catholic Church: Then and Now, Submission in connection with Case Study 50: Final hearing into Catholic Church authorities in Australia', 22 December 2016, Case Study 50, SUBM.2463.001.0001_R at 0036_R.
62 Exhibit 50-0006, 'Report – Catholic Church Insurances Limited – Visit to United States of America and Canada – 10-21 September 1992 – Special Issues Investigation', Case Study 50, CTJH.301.11018.1825_R.
63 Exhibit 44-0011, 'Address by Father John Usher "Sexual Exploitation – a paradoxical triangle"', 25 October 1992, Case Study 44, IND.0533.001.0002 at 0004; see also Exhibit 44-0011, 'Address given by Father John Usher "Violence and the Church – it's time to talk"', 21 October 1992, Case Study 44, IND.0533.001.0005_R.
64 Exhibit 35-0048, 'Report On Matters Discussed At the Meeting of the Special Issues Committee of the Australian Catholic Bishop's Conference', 16 November 1992, Case Study 35, CTJH.301.11014.0575 at 0578.
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205 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 14: The response of the Catholic Diocese of Wollongong to allegations of child sexual abuse, and related criminal proceedings, against John Gerard Nestor, a priest of the Diocese*, Sydney, 2014, p 19.
206 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 14: The response of the Catholic Diocese of Wollongong to allegations of child sexual abuse, and related criminal proceedings, against John Gerard Nestor, a priest of the Diocese*, Sydney, 2014, p 22.
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209 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 14: The response of the Catholic Diocese of Wollongong to allegations of child sexual abuse, and related criminal proceedings, against John Gerard Nestor, a priest of the Diocese*, Sydney, 2014, p 27.
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213 Transcript of GJ Robinson, Case Study 31, 24 August 2015 at 16055:28–30.
214 Exhibit 31-0001, 'Statement of Bishop Geoffrey Robinson', Case Study 31, CTJH.303.01002.0002_R at 0003_R.
215 Note the letter is not in evidence before the Royal Commission. However the letter was referred to in correspondence from the Prefect of the Congregation for Divine Worship and the Discipline of the Sacraments dated 17 May 1997. See Exhibit 50-0006, 'Letter from Cardinal Jorge Medina Estevez to Cardinal Edward Bede Clancy', Case Study 50, CTJH.301.13004.0012.
216 Exhibit 50-0006, 'Letter from Cardinal Jorge Medina Estevez to Cardinal Edward Bede Clancy', Case Study 50, CTJH.301.13004.0012.
217 Exhibit 50-0006, 'Letter from Cardinal Jorge Medina Estevez to Cardinal Edward Bede Clancy', Case Study 50, CTJH.301.13004.0012.
218 Exhibit 50-0006, 'Letter from Cardinal Jorge Medina Estevez to Cardinal Edward Bede Clancy', Case Study 50, CTJH.301.13004.0012.
219 Exhibit 31-0002, 'Letter from Cardinal Clancy to Pope John Paul II', Case Study 31, CTJH.301.11003.1173.
220 Transcript of GJ Robinson, Case Study 31, 24 August 2015 at 16045:18–46.

221 Transcript of GJ Robinson, Case Study 31, 24 August 2015 at 16045:35–46.
222 Transcript of GJ Robinson, Case Study 31, 24 August 2015 at 16045:33–35.
223 This letter is not in evidence before the Royal Commission. However, it was referred to in a letter from the Vatican Secretary of State dated 23 April 1999. See Exhibit 50-0006, 'Letter from Cardinal Angelo Sodano to Cardinal Edward Bede Clancy', Case Study 50, CTJH.301.13004.0025.
224 Exhibit 50-0006, 'Letter from Cardinal Dario Castrillon Hoyos to Cardinal Edward Bede Clancy', Case Study 50, CTJH.301.13004.0024.
225 Episcopal conferences invited were Antilles, Australia, Canada, England and Wales, New Zealand, Scotland, South Africa, and the United States of America. See Exhibit 50-0006, 'Letter from Cardinal Dario Castrillon Hoyos to Cardinal Edward Bede Clancy', Case Study 50, CTJH.301.13014.0008_E at 0009_E. See also Exhibit 50-0006, 'Letter from Archbishop Francis Carroll to Cardinal Dario Hoyos Castrillon', Case Study 50, CTJH.301.13004.0041.
226 In relation to the Vatican representatives present, see Transcript of GJ Robinson, Case Study 31, 24 August 2015 at 16049:25–16050:46.
227 Exhibit 50-0006, 'Letter from Cardinal Dario Castrillon Hoyos to Cardinal Edward Bede Clancy', Case Study 50, CTJH.301.13014.0041 at 0041.
228 Exhibit 31-0002, 'Letter from Cardinal Clancy to Cardinal Hoyos', Case Study 31, CTJH.301.11004.0055.
229 Exhibit 50-0006, 'Letter from Cardinal Dario Castrillon Hoyos to Cardinal Edward Bede Clancy', Case Study 50, CTJH.301.13014.0008_E at 0008_E.
230 Exhibit 31-0002, 'Meeting between representatives of Nine Bishops' Conferences and the heads of several Roman Dicasteries – Report of ACBC', Case Study 31, CTJH.303.01001.0001 at 0003–0005. See also Exhibit 31-0002, 'Some Personal Observations by Bishop Robinson on the Meeting of a number of Vatican Officials', Case Study 31, CTJH.303.01001.0006 at 0009 on the concept of 'unacceptable risk'. See also Exhibit 31-002, 'Appendix II – "Meeting with Vatican Officials on the subject of Sexual Abuse"', 14 May 2000, Case Study 31, CTJH.301.11003.1050_E at 1051_E on the concept of 'prescription'.
231 Exhibit 31-0002, 'Meeting between representatives of Nine Bishops' Conferences and the heads of several Roman Dicasteries – Report of ACBC', Case Study 31, CTJH.303.01001.0001 at 0004.
232 Exhibit 31-0002, 'ACBC Meeting Minutes', Case Study 31, CTJH.301.02001.2816 at 2823.
233 Exhibit 31-0002, 'Some Personal Observations by Bishop Robinson on the Meeting of a number of Vatican Officials', Case Study 31, CTJH.303.01001.0006 at 0008.
234 Exhibit 31-0002, 'Some Personal Observations by Bishop Robinson on the Meeting of a number of Vatican Officials', Case Study 31, CTJH.303.01001.0006 at 0008.
235 Exhibit 31-0002, 'Some Personal Observations by Bishop Robinson on the Meeting of a number of Vatican Officials', Case Study 31, CTJH.303.01001.0006 at 0010.
236 Transcript of GJ Robinson, Case Study 31, 24 August 2015 at 16051:36–47.
237 Exhibit 31-0002, 'Letter from Archbishop Francis Carroll to Archbishop Mario Pompedda', Case Study 31, CTJH.301.11004.0027.
238 Exhibit 31-0002, 'Letter from Archbishop Francis Carroll to Archbishop Mario Pompedda', Case Study 31, CTJH.301.11004.0027 at 0027.
239 Exhibit 31-0002, 'Letter from Archbishop Francis Carroll to Archbishop Mario Pompedda', Case Study 31, CTJH.301.11004.0027 at 0027–0029.
240 Exhibit 31-0002, 'Enclosure 1 – "Prescription in Canon Law"', Case Study 31, CTJH.301.11004.0030 at 0030.
241 Exhibit 50-0006, 'Letter from Archbishop Francis Carroll to Cardinal Dario Hoyos Castrillon', Case Study 50, CTJH.301.13004.0041.
242 Exhibit 50-0006, 'Letter from Archbishop Francis Carroll to Cardinal Dario Hoyos Castrillon', Case Study 50, CTJH.301.13004.0041 at 0041.
243 Exhibit 31-0002, 'National Committee for Professional Standards Report – "Towards Healing and the CDF document of 18th May 2001"', Case Study 31, CTJH.301.11003.1286 at 1286.
244 Exhibit 31-0002, 'Bishops' Committee for Professional Standards Report – ACBC Plenary meeting 9 – 18 May 2000', Case Study 31, CTJH.301.11003.1036_E at 1039_E.
245 Exhibit 4-0001, 'Professor Patrick Parkinson, Review of Towards Healing – Report for the National Committee for Professional Standards', Case Study 4, USYD.9100.01002.0049 at 0057–0058.
246 P Parkinson, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues paper No 11: The Catholic Church*, July 2016, pp 5–6.
247 Exhibit 4-0001, 'Professor Patrick Parkinson, Review of Towards Healing – Report for the National Committee for Professional Standards', Case Study 4, USYD.9100.01002.0049 at 0063.
248 Exhibit 31-0002, 'The CDF Document of 18th May 2001', Case Study 31, CTJH.301.11003.1291 at 1291–1292.
249 Exhibit 4-0001, 'Towards Healing: Principles and Procedures in Responding to Complaints of Abuse Against Personnel of the Catholic Church in Australia. Second publication, First revision.', Case Study 4, CTJH.0001.001.0073 at 0083.
250 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 14: The response of the Catholic Diocese of Wollongong to allegations of child sexual abuse, and related criminal proceedings, against John Gerard Nestor, a priest of the Diocese*, Sydney, 2014, p 27.
251 Exhibit 31-0002, 'Letter from Bishop Robinson to Bishop Finnigan', Case Study 31, CTJH.301.11004.0574 at 0575.
252 Exhibit 14-0002, 'Letter from Archbishop Carroll, president of the Australian Catholic Bishops Conference, to Cardinal Pompedda, Prefect of the Supreme Tribunal of the Apostolic Signatura, re comments made in the Congregation for Clergy's decree', Case Study 14, CTJH.301.05001.0003.

253 Exhibit 14-0002, 'Letter from Archbishop Carroll, president of the Australian Catholic Bishops Conference, to Cardinal Pompedda, Prefect of the Supreme Tribunal of the Apostolic Signatura, re comments made in the Congregation for Clergy's decree', Case Study 14, CTJH.301.05001.0003 at 0003.
254 Exhibit 14-0002, 'Letter from Archbishop Carroll, president of the Australian Catholic Bishops Conference, to Cardinal Pompedda, Prefect of the Supreme Tribunal of the Apostolic Signatura, re comments made in the Congregation for Clergy's decree', Case Study 14, CTJH.301.05001.0003 at 0004.
255 Exhibit 14-0002, 'Letter from Archbishop Carroll, president of the Australian Catholic Bishops Conference, to Cardinal Pompedda, Prefect of the Supreme Tribunal of the Apostolic Signatura, re comments made in the Congregation for Clergy's decree', Case Study 14, CTJH.301.05001.0003 at 0005.
256 Exhibit 14-0003, 'Norms of the 'Motu Proprio' Sacramentorum Sanctitatis Tutela', 30 April 2001, Case Study 14, IND.0043.001.0068 at 0069.
257 The Dublin Archdiocese Commission of Investigation, *The Commission of Investigation Report into the Catholic Archdiocese of Dublin,* Minister for Justice and Equality, Dublin, 2009, p 64.
258 Exhibit 50-0004, 'Report of Dr Rodger Austin', Case Study 50, CTJH.304.90001.0020 at 0062.
259 Exhibit 31-0002, 'National Committee for Professional Standards Report – "Towards Healing and the CDF document of 18th May 2001"', Case Study 31, CTJH.301.11003.1286 at 1286.
260 Exhibit 31-0002, 'Bishop's Committee for Professional Standards Report – ACBC Plenary Meeting 6 – 14 May 2002', Case Study 31, CTJH.301.11003.1282 at 1283; Exhibit 31-0002, 'National Committee for Professional Standards Report – "Towards Healing and the CDF document of 18th May 2001"', Case Study 31, CTJH.301.11003.1286 at 1286.
261 Exhibit 31-0002, 'Bishop's Committee for Professional Standards Report – ACBC Plenary Meeting 6 – 14 May 2002', Case Study 31, CTJH.301.11003.1282 at 1282.
262 Exhibit 31-0002, 'National Committee for Professional Standards Report – "Towards Healing and the CDF document of 18th May 2001"', Case Study 31, CTJH.301.11003.1286 at 1287.
263 Exhibit 31-0002, 'National Committee for Professional Standards Report – "Towards Healing and the CDF document of 18th May 2001"', Case Study 31, CTJH.301.11003.1286 at 1287. Note the CDF document also establishes 18 as the relevant age, rather than 16. The report noted: 'This means that if, before 18th May 2001, the victim was 16 at the time of the offence, permanent penalties, especially dismissal from the clerical state, could not be applied for this offence alone'.
264 Exhibit 31-0002, 'National Committee for Professional Standards Report – "Towards Healing and the CDF document of 18th May 2001"', Case Study 31, CTJH.301.11003.1286 at 1287–1289.
265 Exhibit 31-0002, 'National Committee for Professional Standards Report – "Towards Healing and the CDF document of 18th May 2001"', Case Study 31, CTJH.301.11003.1286 at 1289.
266 Exhibit 31-0002, 'National Committee for Professional Standards Report – "Towards Healing and the CDF document of 18th May 2001"', Case Study 31, CTJH.301.11003.1286 at 1290.
267 Exhibit 31-0002, 'The CDF Document of 18th May 2001', Case Study 31, CTJH.301.11003.1291 at 1293.
268 The National Review Board for the Protection of Children and Young People, *A report on the crisis in the Catholic Church in the United States*, United States Conference of Catholic Bishops, Washington DC, 2004, p 47.
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270 Exhibit 50-0004, 'Kieran Tapsell, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, Issues paper No 11: Catholic Church Final Hearing, 2016', Case Study 50, SUBM.2398.001.0001 at 0127–0128.
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274 Exhibit 31-0002, 'Minutes of the Meeting of the National Committee for Professional Standards', Case Study 31, CTJH.300.02001.0033.
275 Exhibit 31-0002, 'Minutes of the Meeting of the National Committee for Professional Standards', Case Study 31, CTJH.300.02001.0033 at 0036.
276 Exhibit 50-0006, 'ACBC – Minutes of Meeting', Case Study 50, CTJH.301.02001.3116_R at 3124_R.
277 Exhibit 31-0002, 'Circular letter from Cardinal William Levada', Case Study 31, USYD.9150.01003.0007; Exhibit 31-0002, 'Circular letter from Cardinal William Levada', Case Study 31, USYD.9150.01003.0008.
278 Father F Lombardi, *The significance of the publication of the new 'Norms concerning the most serious crimes'*, 2010, www.vatican.va/resources/resources_lombardi-nota-norme_en.html, (viewed 27 July 2017).
279 Exhibit 31-0002, 'Circular letter from Cardinal William Levada', Case Study 31, USYD.9150.01003.0007; USYD.9150.01003.0008.
280 Exhibit 31-0002, 'Circular letter from Cardinal William Levada', Case Study 31, USYD.9150.01003.0007; USYD.9150.01003.0008 at 0008.
281 Exhibit 31-0002, 'Circular letter from Cardinal William Levada', Case Study 31, USYD.9150.01003.0007.
282 Exhibit 31-0002, 'Circular letter from Cardinal William Levada', Case Study 31, USYD.9150.01003.0007.
283 Exhibit 31-0002, 'Circular letter from Cardinal William Levada', Case Study 31, USYD.9150.01003.0007.
284 Exhibit 50-0006, 'Letter from Father Brian Lucas to Cardinal William Levada', Case Study 50, CTJH.301.13003.0005.
285 Exhibit 50-0006, 'Letter from Father Brian Lucas to Cardinal William Levada', Case Study 50, CTJH.301.13003.0005.
286 Exhibit 31-0002, 'Letter from Cardinal Levada to Archbishop Wilson', Case Study 31, CTJH.049.01001.0008.

287 Exhibit 31-0002, 'Letter from Cardinal Levada to Archbishop Wilson', Case Study 31, CTJH.049.01001.0008 at 0008.
288 Exhibit 31-0002, 'Letter from Cardinal Levada to Archbishop Wilson', Case Study 31, CTJH.049.01001.0008 at 0008.
289 Exhibit 31-0002, 'Letter from Cardinal Levada to Archbishop Wilson', Case Study 31, CTJH.049.01001.0008 at 0009.
290 See Exhibit 31-0002, 'Letter from Apostolic Nuncio to Archbishop Denis Hart', Case Study 31, CTJH.304.07001.0027.
291 Exhibit 31-0002, 'Letter from Apostolic Nuncio to Archbishop Denis Hart', Case Study 31, CTJH.304.07001.0027 at 0027.
292 Exhibit 31-0002, 'Letter from Apostolic Nuncio to Archbishop Denis Hart', Case Study 31, CTJH.304.07001.0027 at 0029.
293 Exhibit 31-0002, 'Letter from Apostolic Nuncio to Archbishop Denis Hart', 22 February 2013, Case Study 31, CTJH.304.07001.0027 at 0027.
294 Exhibit 31-0002, 'Letter from Apostolic Nuncio to Archbishop Denis Hart', Case Study 31, CTJH.304.07001.0027 at 0028.
295 Exhibit 31-0002, 'Letter from Apostolic Nuncio to Archbishop Denis Hart', Case Study 31, CTJH.304.07001.0027 at 0028–0029.
296 Exhibit 4-0001, 'Towards Healing: Principles and Procedures in Responding to Complaints of Abuse Against Personnel of the Catholic Church in Australia. Fourth publication, third revision.', Case Study 4, CTJH.0001.001.0005 at 0030.
297 Exhibit 50-0009, 'Statement of Archbishop Coleridge', Case Study 50, CTJH.500.90001.0768_R at 0771_R.
298 Exhibit 50-0006, 'Letter from Archbishop Denis Hart to Monsignor Luis-Miguel Munoz Cardaba', Case Study 50, CTJH.301.13010.0001.
299 Exhibit 50-0004, 'Towards Healing: Principles and procedures in responding to complaints of abuse against personnel of the Catholic Church in Australia', Case Study 50, WEB.0179.001.0067.
300 Exhibit 50-0004, 'Towards Healing: Principles and procedures in responding to complaints of abuse against personnel of the Catholic Church in Australia', Case Study 50, WEB.0179.001.0067 at 0090, 0099.
301 Exhibit 50-0006, 'ACBC Meeting Minutes', Case Study 50, CTJH.301.02001.2559_R at 2566_R.
302 Exhibit 50-0006, 'Towards Understanding: A Study of factors specific to the Catholic Church which might lead to sexual abuse by priests and religious', Case Study 50, CTJH.301.11031.0066.
303 Exhibit 50-0006, 'ACBC Meeting Minutes', Case Study 50, CTJH.301.02001.2762_R at 2768_R.
304 Exhibit 50-0006, 'Towards Understanding: A Study of factors specific to the Catholic Church which might lead to sexual abuse by priests and religious', Case Study 50, CTJH.301.11031.0066 at 0074, 0088.
305 Exhibit 50-0006, 'Towards Understanding: A Study of factors specific to the Catholic Church which might lead to sexual abuse by priests and religious', Case Study 50, CTJH.301.11031.0066 at 0109.
306 Exhibit 50-0006, 'Towards Understanding: A Study of factors specific to the Catholic Church which might lead to sexual abuse by priests and religious', Case Study 50, CTJH.301.11031.0066 at 0125.
307 Exhibit 50-0006, 'NCPS Meeting Minutes', Case Study 50, CTJH.300.01001.0133_R at 0135_R.
308 Exhibit 50-0006, 'NCPS Meeting Minutes', Case Study 50, CTJH.300.01001.0142.
309 Exhibit 50-0006, 'Congregation of Christian Brothers, An Initial Report on Child Sexual Abuse', Case Study 50, CTJH.056.18003.0001 at 0004.
310 See, for example, Exhibit 50-0006, 'Working Party re Therapy Centre and On-going Counselling for Priests, Religious and Church Workers who are perpetrators of Sexual Abuse & Misconduct Meeting Minutes', Case Study 50, CTJH.301.11011.0631; Exhibit 50-0006, 'Report of Matters Discussed at the Meeting of the Special Issues Committee', Case Study 50, CTJH.301.11003.2267; Exhibit 50-0006, 'Report of Matters Discussed at the Meeting of the Special Issues Committee', Case Study 50, CTJH.301.11011.0628; Exhibit 50-0006, 'Report of Matters Discussed at the Meeting of the Special Issues Committee', Case Study 50, CTJH.301.11003.2259; Exhibit 31-0002, 'Report of Matters Discussed at the Meeting of the Bishops' Committee for Professional Standards', Case Study 31, CCI.0257.00007.0318; Exhibit 31-0002, 'Report on Matters Discussed at Bishops' Committee for Professional Standards', Case Study 31, CTJH.301.11014.0233.
311 Exhibit 31-0002, 'Media release by ACBC on "plan of action" for dealing with sexual abuse', Case Study 31, CTJH.301.11003.0592.
312 Exhibit 8-0017, 'Australian Catholic Bishops Conference Minutes April 1996', Case Study 8, CTJH.301.02001.2289 at 2339; Transcript of GJ Robinson, Case Study 31, 24 August 2015 at 16072:29–31.
313 Exhibit 4-0001, 'Submission of the Truth, Justice and Healing Council to the Royal Commission, Issues Paper No. 2', 30 September 2013, Case Study 4, CTJH.0001.002.0001 at 0033.
314 Exhibit 31-0001, 'Statement of Bishop Geoffrey Robinson', Case Study 31, CTJH.303.01002.0002_R at 0013_R.
315 Exhibit 50-0006, 'ACBC Meeting Minutes', April 1997, Case Study 50, CTJH.301.02001.2475_R at 2481_R.
316 Exhibit 4-0001, 'Submission of the Truth, Justice and Healing Council to the Royal Commission, Issues Paper No. 2', 30 September 2013, Case Study 4, CTJH.0001.002.0001 at 0033.
317 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 11: Congregation of Christian Brothers in Western Australia response to child sexual abuse at Castledare Junior Orphanage, St Vincent's Orphanage Clontarf, St Mary's Agricultural School Tardun and Bindoon Farm School*, Sydney, 2014, p 44; Transcript of GA Robinson, Case Study 50, 13 February 2017 at 25268:8–9; Transcript of GJ Robinson, Case Study 31, 24 August 2015 at 16040:26–29.
318 Transcript of GA Robinson, Case Study 50, 13 February 2017 at 25299:6–10.
319 Transcript of GJ Robinson, Case Study 31, 24 August 2015 at 16040:26–33.
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321 Transcript of GA Robinson, Case Study 50, 13 February 2017 at 25303:8.
322 Transcript of GA Robinson, Case Study 50, 13 February 2017 at 25302:41–46, 25269:3–11.

323 Exhibit 31-0002, 'Encompass Australasia Report to Bishops', November 2007, Case Study 31, CTJH.301.11001.0200 at 0202; Exhibit 4-0001, 'Submission of the Truth, Justice and Healing Council to the Royal Commission, Issues Paper No 2', 30 September 2013, Case Study 4, CTJH.0001.002.0001 at 0033.
324 Exhibit 31-0002, 'Encompass Australasia Report to Bishops', November 2007, Case Study 31, CTJH.301.11001.0200 at 0203.
325 Exhibit 8-0017, 'Australian Catholic Bishops Conference Minutes April 1996', 17 April 1996, Case Study 8, CTJH.301.02001.2289 at 2335–2336.
326 Exhibit 41-0002, 'Draft of Integrity in Ministry Policy', Case Study 41, CTJH.059.02017.0001 at 0009.
327 Exhibit 50-0006, 'NCPS Meeting Minutes', 5 August 1998, Case Study 50, CTJH.300.01001.0067 at 0071.
328 Exhibit 4-0001, 'Integrity in Ministry: A Document of Principles and Standards for Catholic Clergy & Religious in Australia', 1 June 1999, Case Study 4, CTJH.0001.001.0183 at 0188.
329 Exhibit 4-0001, 'Integrity in Ministry: A Document of Principles and Standards for Catholic Clergy & Religious in Australia. Reprinted in April 2010', June 2004 (Reprinted April 2010), Case Study 4, CTJH.0001.001.0146 at 0151.
330 Exhibit 4-0001, 'Integrity in Ministry: A Document of Principles and Standards for Catholic Clergy & Religious in Australia. Reprinted in April 2010', June 2004 (Reprinted April 2010), Case Study 4, CTJH.0001.001.0146 at 0152–0153.
331 Exhibit 4-0001, 'Integrity in Ministry: A Document of Principles and Standards for Catholic Clergy & Religious in Australia. Reprinted in April 2010', June 2004 (Reprinted April 2010), Case Study 4, CTJH.0001.001.0146 at 0159–0160.
332 Exhibit 4-0001, 'Integrity in Ministry: A Document of Principles and Standards for Catholic Clergy & Religious in Australia. Reprinted in April 2010', June 2004 (Reprinted April 2010), Case Study 4, CTJH.0001.001.0146 at 0170.
333 Exhibit 4-0001, 'Integrity in the Service of the Church', September 2011, Case Study 4, CTJH.0001.001.0127 at 0130–0131.
334 Exhibit 4-0001, 'Charter of National Committee for Professional Standards, amended in 2003 and November 2008', Case Study 4, CTJH.0001.001.0410.
335 Exhibit 4-0001, 'Submission of the Truth, Justice and Healing Council to the Royal Commission, Issues Paper No. 2', 30 September 2013, Case Study 4, CTJH.0001.002.0001 at 0096.
336 Exhibit 4-0001, 'Submission of the Truth, Justice and Healing Council to the Royal Commission, Issues Paper No. 2', 30 September 2013, Case Study 4, CTJH.0001.002.0001 at 0029.
337 Exhibit 4-0001, 'Submission of the Truth, Justice and Healing Council to the Royal Commission, Issues Paper No. 2', 30 September 2013, Case Study 4, CTJH.0001.002.0001 at 0030.
338 Exhibit 50-0004, 'The Catholic Church: Then and Now, Submission in connection with Case Study 50: Final hearing into Catholic Church authorities in Australia', 22 December 2016, Case Study 50, SUBM.2463.001.0001_R at 0091_R.
339 Exhibit 50-0004, 'The Catholic Church: Then and Now, Submission in connection with Case Study 50: Final hearing into Catholic Church authorities in Australia', 22 December 2016, Case Study 50, SUBM.2463.001.0001_R at 0092_R.
340 Exhibit 50-0004, 'The Catholic Church: Then and Now, Submission in connection with Case Study 50: Final hearing into Catholic Church authorities in Australia', 22 December 2016, Case Study 50, SUBM.2463.001.0001_R at 0092_R.

13.8 Catholic Church responses to alleged perpetrators during and after the development of national procedures

> Whatever promises may be made, whatever statements may be made, the capacity of the Church to respond appropriately to this problem of child sexual abuse depends upon the willingness and capacities of individual leaders to do the right thing. That is a very diverse group, with very diverse levels of capacity and willingness, and that has been part of the problem, I think, over the last 20 or 30 years.[1]
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> **Professor Patrick Parkinson AM, professor of law, University of Sydney**

As discussed in Sections 13.5 and 13.7, before the early 1990s individual bishops and religious superiors in Australia exercised almost complete autonomy in how they responded to alleged perpetrators of child sexual abuse within their dioceses and religious orders. By the late 1980s, leaders of the Catholic Church in Australia had become increasingly aware of the issue of child sexual abuse within the Catholic Church and had begun to formally discuss the importance of taking consistent and coordinated action to respond to victims and alleged perpetrators of child sexual abuse. At that time, some bishops and leaders of Catholic Church authorities had known of allegations of child sexual abuse for many years.

This section examines how the development of national protocols by the Catholic Church in Australia, as well as other changes in the understanding of child sexual abuse which were taking place, affected responses to alleged and convicted perpetrators of child sexual abuse. In Section 13.11, 'Contributing factors in the Catholic Church' we consider the various factors which influenced these responses to alleged perpetrators, and in Chapter 21, 'Improving responding and reporting by religious institutions', we discuss current practices and make recommendations aimed at improving the way all institutions in Australia, including Catholic Church institutions, respond the complaints of child sexual abuse.

13.8.1 Dissemination of the early protocols

Notes taken by a representative of Catholic Church Insurance Limited (CCI) at a meeting of the Australian Catholic Bishops Conference (ACBC) Special Issues Committee held on 31 August 1990 reveal that the committee members agreed that they still had work to do in educating bishops about the Catholic Church's *Protocol for dealing with allegations of criminal behaviour* (1990 Protocol). The notes record that, while the 1990 Protocol was operating in theory at that time, the practice was a little different. The notes state that Father Brian Lucas had mentioned receiving a telephone call from a bishop 'who was in a distressed state' about an allegation that had been made against one of his priests. The bishop had been aware that there was some kind of protocol but did not know its content.[2]

Similarly, records of a meeting of the Special Issues Committee on 16 November 1992 state that 'The extent of distribution of the Protocol is a major problem at the present time'.[3] This is consistent with the finding of an independent committee appointed in 1996 by Bishop Michael Malone of the Diocese of Maitland-Newcastle that, while it was apparent that the former bishop and clergy of that diocese were aware of the revised *Protocol for dealing with allegations of criminal behaviour* (1992 Protocol), almost no one in the diocese had a real working knowledge of its contents.[4]

During *Case Study 4: The experiences of four survivors with the Towards Healing process (The Towards Healing process)*, the Marist Brothers Provincial, Brother Alexis Turton, told us that he could not recall having seen the 1992 Protocol until close to the public hearing in 2013.[5] Similarly, in *Case Study 26: The response of the Sisters of Mercy, the Catholic Diocese of Rockhampton and the Queensland Government to allegations of child sexual abuse at St Joseph's Orphanage, Neerkol (St Joseph's Orphanage, Neerkol)*, Bishop Brian Heenan of the Diocese of Rockhampton and Sister Berneice Loch rsm, Institute Leader, Institute of Sisters of Mercy Australia and Papua New Guinea, gave evidence that they were aware of the existence of the early protocols. However, until November 1996 Sister Loch had not organised any training about their implementation or about responding to allegations of child sexual abuse generally.[6]

13.8.2 The role of Father Brian Lucas and Father John Usher

In Section 13.7 we noted that Fathers Brian Lucas and John Usher played an important role in the period leading up to the development of the early protocols. Father Lucas was a trained lawyer and Father Usher was the Director of the Catholic welfare agency Centacare. Both were members of the Special Issues Resource Group (or 'advisory committee') in New South Wales. In the early 1990s, Father Lucas and Father Usher provided assistance to bishops and religious leaders when complaints were made about priests or religious in their dioceses or congregations. It is not always clear whether their involvement in these cases was because the processes set out in the early protocols were being followed or because they were acting in another, perhaps more informal, capacity.

Father Lucas told us that Father Usher generally had principal responsibility for dealing with victims, while he attended the meetings with the alleged perpetrators.[7] Father Lucas has said that his role in matters involving allegations of child sexual abuse was 'to get some fellow who was problematic to face what had gone on and to deal with him in the proper way'.[8] He told us that, when he interviewed alleged perpetrators, 'This was a conversation with a view to persuading a person in this situation, if possible, to face what he had done and resign'.[9] He also said, 'The interview represented an opportunity to assist the priest in facing the truth of what had occurred, and if possible, facilitate his permanent removal from ministry through a voluntary process'.[10]

In *Case Study 14: The response of the Catholic Diocese of Wollongong to allegations of child sexual abuse, and related criminal proceedings, against John Gerard Nestor, a priest of the Diocese (Catholic Diocese of Wollongong)*, Father Lucas stated that:

> The conversation with a priest in these circumstances was to entice him, for example, to make some admission of criminal conduct … The outcome of that admission would be a report back to the bishop to say he has agreed to resign.[11]

In 1993, Father Lucas was asked by the Bishop of Wollongong, Bishop William Murray, to interview Father John Gerard Nestor due to rumours, complaints and unease about his conduct at children's camps.[12] In relation to Bishop Murray's request, Father Lucas told us that:

> My understanding was to have a confidential conversation with this priest to see, in light of what had been alleged, if it was possible to extract from him some agreement as to the behaviour. As it was presented to me, there was some allegation and denial. My task was to see if I could work through that impasse, which was a common problem of allegation and denial, to see whether, in a confidential conversation with this priest, we could move him beyond that denial, if that was possible.[13]

Father Lucas reported back to Bishop Murray afterwards that Father Nestor had denied the allegations but that Father Lucas felt a general discomfort about this denial.[14] Father Nestor continued in ministry before going overseas to study in 1994. In 1996, he returned to Australia and was appointed assistant priest in the Parish of Kiama in New South Wales. He then moved to the Parish of Fairy Meadow. In 1996 and 1997, further complaints were made about his conduct with children.[15] In Sections 13.8.7 and 13.8.9 we discuss the further efforts made by the Diocese of Wollongong to remove him from ministry.

Father Lucas also told us that it was his 'usual practice' not to take notes during or after interviewing a priest or religious about allegations of child sexual abuse.[16] He explained that he adopted this approach in order to:[17]

- maintain the assurance of confidentiality he had given to the cleric
- help the cleric being interviewed to talk openly and frankly about his conduct
- where relevant, help the cleric to reveal his offences.

Father Lucas said that, given that he had told the cleric that what he said would be confidential and that no records of the interview would be made, the cleric's right to silence would be undermined if he recorded or subsequently disclosed what was said in the interview.[18]

When asked by Counsel Assisting whether the purpose of this practice 'was to ensure that there was no written record of any admissions of criminal conduct in order to protect the priests and the church', Father Lucas agreed that this 'would be an outcome'. He explained that the context was 'either there be no conversation at all' with the 'opportunity perhaps for someone to move on and resign' being lost. He continued:

> In terms of taking a written record, I have explained the position: in speaking to a priest in these circumstances, it was my view that he would not be forthcoming if notes were taken, and I considered it to be unfair to take a note afterwards that he didn't have the opportunity to adhere to.[19]

We found that when interviewing a cleric or religious about allegations of child sexual abuse before a formal Catholic Church process had commenced against that person, Father Lucas should have made a contemporaneous record of the details of what was said in the interview.[20] Father Lucas was also criticised in the report of the Special Commission of Inquiry into Matters Relating to the Police Investigation of Certain Child Sexual Abuse Allegations in the Catholic Diocese of Maitland-Newcastle (Special Commission of Inquiry) for not making notes during such interviews.[21]

In 1993, Father Lucas was called upon by the Marist Brothers Provincial, Brother Turton, to meet with Brother John (Kostka) Chute, against whom an allegation of child sexual abuse had been made. Brother Turton told us that it was his 'common practice at the time to take any complaint that might be a special issues matter' to Father Lucas or Father Usher.[22] Father Lucas told us that he took no notes of this meeting,[23] but a record made by Brother Turton states that 'the outcome of this was certain admissions from many years back in the past, but no awareness of anything serious more recently'.[24] As discussed further below, Brother Chute was not removed from teaching at the school. He was returned to teaching at Marist College, subject to supervision, therapy and an undertaking that he would not be alone with children.[25]

Father Lucas told us that he and Father Usher had been involved in a few other cases around this time, mainly involving Christian Brothers.[26]

Documents relating to CCI's determination of prior knowledge in the case of Brother William Obbens include a Special Issues Incident Report.[27] It recorded that, in 1989, Father Lucas and Father Usher interviewed Brother Obbens after an allegation was made that he had 'sexually interfered' with a student, and 'allegations and admissions' were made in relation to a number of other boys at a Christian Brothers school in New South Wales.[28] Brother Obbens 'admitted the essential truth of the allegations' in this interview and, in June 1989, pleaded guilty to a charge in relation to one of the complaints. Brother Obbens was moved to administrative duties at the Province Office in Strathfield and attended 'therapy' sessions with Father Usher.[29]

In January 1992, Father Lucas and Father Usher were asked by the Christian Brothers provincial to interview the parents of a boy who 'indicated that Brother L [Brother John Roberts[30]] had behaved inappropriately with him and one of his friends', according to documents provided to us by CCI.[31] Brother Roberts was a teacher at the boy's school at the time.[32] They also interviewed Brother Roberts, who 'agreed with the substantial truth of the allegations'. In early 1992, Brother Roberts was removed from school teaching and undertook counselling.[33]

Bishop Geoffrey Robinson, retired Auxiliary Bishop, Archdiocese of Sydney, told us that, while Father Lucas never had the power that Monsignor Tom Wallace had previously had to 'get rid of the problem' of individual priests when allegations of physical and possibly sexual abuse had been made against them (see Section 13.5, 'Catholic Church responses to alleged perpetrators before the development of national procedures'), he had, to some degree, replaced Monsignor Wallace. He recalled that Father Lucas was very good at speaking to priests and religious against whom allegations had been made and getting them to make admissions, privately, following which the relevant bishop or religious leader could take action to remove them.[34] Father Lucas told us that, 'If there was an admission, there was a consequence … every priest I dealt with who made some admission of criminal behaviour stood down'.[35]

Father Lucas gave a 'very, very rubbery estimate' that, by the middle of 1992, he had met with 35 alleged perpetrators, comprising mostly religious brothers and very few diocesan priests.[36] Bishop Robinson told us that, as far as he knew, Father Lucas mainly operated in the New South Wales dioceses, but he was also sometimes called in to other dioceses.[37] Father Usher told us that in the early period he 'probably spoke to about 12 different parties, mainly to religious leaders and to victims who were referred to [him]'. He said that he did not see many 'perpetrators'.[38]

13.8.3 Reporting to police

In Section 13.5 we noted that, in the decades prior to the development of the national protocols, Catholic Church authorities did not report serious allegations of child sexual abuse by priests and religious to the police.

It is evident that the issue of reporting of allegations of child sexual abuse to the police and other civil authorities remained a fraught one through the 1990s. The prevailing view was that it was for victims to decide whether or not to involve those authorities. This was expressed to us by Father Lucas during *Case Study 13: The response of the Marist Brothers to allegations of child sexual abuse against Brothers Kostka Chute and Gregory Sutton (Marist Brothers)* when he said, 'The question of informing the police was taken for granted as a matter for the victim, except in circumstances where the mandatory reporting provisions applied'.[39] We discuss the extent to which Catholic Church authorities in Australia encouraged and supported survivors to report to police in this period below in Section 13.9, 'Catholic Church responses to victims and survivors after the development of national procedures'.

In 2014, the Special Commission of Inquiry made a number of findings about failures on the part of senior Catholic Church officials in the Diocese of Maitland-Newcastle and Father Lucas, from 1993 to 1999, to report Father Denis McAlinden to the police.[40]

Legal obligations to report to police

As discussed in Chapter 16 of our *Criminal justice* report, 'Failure to report offences', the common law offence of misprision of felony criminalised the failure to report a crime. The policy rationale was that serious crimes should be reported to criminal justice authorities rather than being regarded as private matters that could be concealed from the public. By the introduction of the Catholic Church's 1990 Protocol, the common law offence of misprision of felony had been abolished in all Australian jurisdictions, with the exception of South Australia (abolished on 1 January 1995) and New South Wales. In New South Wales, misprision of felony was replaced in 1990 by the statutory offence of 'concealing serious indictable offence', making it an offence to conceal any material information about a serious crime. The common law offence may still be relevant if it was alleged to have been committed prior to its abolition in the relevant jurisdiction.[41]

The offence set out in section 316(1) of the *Crimes Act 1900* (NSW) requires knowledge or belief that an offence has been committed – a mere suspicion is not enough.[42] We discuss section 316(1) in further detail in Chapter 16 of our *Criminal justice* report.[43] Notably, in 1997 the law was amended to provide that people practicing or following certain professions, callings or vocations could not be prosecuted without the approval of the Attorney-General, with a regulation made in 1998 that included members of the clergy in this category.[44] The offence of concealing a serious indictable offence has been controversial and appears to have been used to prosecute concealment of child sexual abuse offences in a very limited number of cases.[45]

According to media reports, Father Tom Brennan was the first Australian Catholic priest to be charged with a concealment offence in relation to child sexual abuse perpetrated by another priest. On 30 August 2012, Father Brennan was reportedly charged with two counts of misprision of felony. The charges related to his alleged failure to report alleged child sexual assault by Father John Denham against two students at St Pius X, Adamstown, in the late 1970s, when Father Brennan was the school principal. Father Brennan was charged with misprision of felony because the alleged offences took place in the late 1970s, before the offence was replaced by section 316(1) of the *Crimes Act 1900* (NSW). He was also reported to have been charged with assault, as he allegedly caned the two boys after they reported being sexually assaulted by Father Denham.[46]

Father Brennan passed away on 30 September 2012 before entering a plea or facing court in relation to the charges. He had earlier been convicted, in 2009, of making a false statement to police in which he denied any knowledge of Father Denham's offences of child sexual abuse.[47]

Media reports indicated that, on 28 December 2012, Father Lewis Fenton became the second Australian Catholic priest to be charged with concealing child sexual abuse. Father Fenton was reported to have also been charged with the common law offence of misprision of felony because the alleged offence took place in the mid-1980s. He was also charged with one count of accessory before the fact.[48]

These charges related to allegations that Father Fenton concealed knowledge that a nine-year-old boy had been sexually assaulted by a local man, Mr Frank Tully, after disclosures were made to him. Magistrate Robert Stone dismissed the charges against Father Fenton, as he could not be satisfied the victim had disclosed the abuse. Magistrate Stone found there was evidence that the abuse had occurred.[49]

On 17 March 2015 the Archbishop of the Catholic Archdiocese of Adelaide, Philip Wilson, was charged with concealing a serious indictable offence under section 316(1) of the *Crimes Act 1900* (NSW). Archbishop Wilson is reported to be the highest-ranking Catholic Church official in the world to be charged with concealing child sexual abuse perpetrated by another priest. It is alleged that between 2004 and 2006 Archbishop Wilson failed to tell police of alleged disclosures made to him by two alleged victims of Father James Patrick Fletcher in 1976, when Archbishop Wilson was a junior priest.[50]

According to media reports, after three unsuccessful attempts in the Newcastle Local Court, New South Wales Supreme Court and New South Wales Court of Appeal to have the charge quashed or permanently stayed, Archbishop Wilson was due to appear in the Newcastle Local Court in late November 2017 to face the charge. He has pleaded not guilty.[51]

We discuss reporting offences more broadly in Chapter 16 of our *Criminal justice* report.[52] We outline our recommendations aimed at improving reporting to external authorities by religious institutions and their personnel in Chapter 21 of this volume.

The early protocols and reporting to police

The early protocols did not specifically mandate reporting allegations of child sexual abuse to the police or other civil authorities. Under the 1990 Protocol, the regional 'advisory committees' responsible for assisting bishops and religious superiors in evaluating complaints of child sexual abuse were to make contact with departmental officers 'if appropriate'.[53] 'Departmental officers' were defined as including police and state child welfare officers.[54] The 1990 Protocol provided that a 'value to be promoted' in dealing with allegations of criminal behaviour was that bishops and major superiors 'must not obstruct or pervert the process of civil law'.[55] However, this appeared alongside the obligation of bishops and religious superiors to 'safeguard the good name of the Church as a whole and act to prevent or remedy scandal'.[56]

Among the criticisms of the 1990 Protocol expressed by ACBC researcher and consultant ethicist Dr Nicholas Tonti-Filippini in a letter to Bishop Ronald Mulkearns in August 1990 was that the 1990 Protocol was not clear about the statutory obligations under civil law for individuals within the Catholic Church who became aware of allegations of abuse. He wrote:

> In the section entitled 'Values to be Promoted' the welfare of complainant, victim or accused is mentioned … and not obstructing the process of civil law is mentioned … However the value of seeking to ensure that a criminal is brought to justice is not mentioned.
>
> It is of the utmost importance that the criminal behaviour by a person in a position of trust within the Church be subject both to the civil law and to canon law. In no way can one be seen to substitute for the other. For the sake of the Church, reasonable suspicion of a crime must be reported to the authorities. Any attempt to contain it within an in-house investigation and management risks bringing the Church into disrepute.[57]

Under the 1992 Protocol, the regional 'advisory committees' became 'Special Issues Resource Groups', which retained an advisory and investigatory role in dealing with allegations of child sexual abuse.[58] However, the provision in the 1990 Protocol requiring the advisory committees to make contact with police and child welfare officers where 'appropriate' did not appear in the 1992 Protocol.

In 1995, the Crime Prevention Committee for the Parliament of Victoria, which had conducted an Inquiry into Sexual Offences Against Children and Adults, reported that it was concerned by 'the number of cases which come to the attention of the clergy outside the confessional and which are never reported to the relevant authorities'. It stated that 'the protocols which religious organisations adhere to should include the immediate notification to police of sexual assault'.[59]

Father Lucas told us that he neither encouraged nor discouraged those victims he met with to report their experience of abuse to the police, as he did not think it was appropriate to put any sort of pressure on them.[60] He did not report any allegations of child sexual abuse that he became aware of to the relevant police agencies himself.[61]

In two of our case studies, we found that Catholic Church authorities did not report allegations of child sexual abuse to the police during the operation of the early national protocols. As set out in Section 13.4, there is no doubt that a number of Catholic Church leaders in Australia were aware of allegations against individuals in their dioceses and orders. It is evident that, despite the new protocols, in some cases they did not report repeated allegations of child sexual abuse by particular priests and religious going back many years.

In the *Marist Brothers* case study, we found that the Marist Brothers did not report any allegations of child sexual abuse involving Brother Chute to the police in the period from 1962 to 1993.[62] The response of the Marist Brothers to allegations of abuse involving Brother Chute before the development of national protocols is discussed in Section 13.5. During the public hearing, survivor Mr Damian De Marco gave evidence that, in about September 1993, he heard that Brother Chute was still teaching at Marist College Canberra. Mr De Marco stated that he told the headmaster at the time, who was a Christian Brother, that Brother Chute had tried to molest him when he was a child, and he threatened to go to the police with his allegations.

Mr De Marco also met with the provincial, Brother Turton, and indicated that he had been 'molested' or 'sexually assaulted'. He said that he told Brother Turton that Brother Chute 'had trapped me at the back of the storeroom and had tried to get his hands down my pants and had prevented me from getting away when I was trying to get away'.[63] Mr De Marco told us that neither Brother Turton nor the headmaster discussed with him referring the matter to the police.[64]

In the *St Joseph's Orphanage, Neerkol* case study, we heard that in June and July 1993 survivor AYB wrote two letters to Bishop Heenan, the Bishop of Rockhampton, informing him that she had been sexually abused by a priest as a child. AYB did not disclose in her letters the identity of the offending priest. Bishop Heenan did not respond to the first of AYB's letters because he 'may have been occupied with other ministries'.[65] At a meeting in February 1994, AYB advised Bishop Heenan for the first time that the person who had abused her as a child was Father Reginald Durham. At the time of AYB's disclosure in February 1994, Father Durham was the administrator of Neerkol parish.[66] Bishop Heenan gave evidence that during the meeting AYB also informed him that the sexual offending commenced when she was a young child and that it occurred many times over many years. Bishop Heenan gave evidence that he did not inform the police of AYB's allegation because he believed AYB had 'great affection' for Father Durham and did not wish any harm to come to him. He also understood that AYB's family had a close pastoral relationship with Father Durham.[67]

Bishop Heenan accepted that it would have been appropriate to report AYB's allegations to the police in 1994 and then leave the decision to the police and AYB as to whether any criminal charges would be instituted; or to encourage AYB to report the allegations to the police herself. Bishop Heenan told us that his desire to protect the reputation of the Catholic Church was 'there somewhere' but was not a primary reason for not reporting the matter to police. We found that Bishop Heenan placed other children at risk of sexual abuse by failing to place any restrictions on Father Durham's contact with children and by failing to report the matter to the police following receipt of AYB's complaint.[68]

Towards Healing, the Melbourne Response and reporting to police

Like the earlier protocols, neither Towards Healing (1996) nor the Melbourne Response required Catholic Church personnel to report all complaints of child sexual abuse to the police. Catholic Church authorities continued to view it as a matter for victims to decide whether or not to involve the police.

Under Towards Healing (1996) and subsequent versions, Catholic Church personnel responsible for receiving or assessing complaints had a role to play in encouraging complainants to report allegations of sexual abuse to the police. Bishop Robinson told us that, during the development of Towards Healing (1996), there was an awareness within the Catholic Church that 'the

majority of complainants' did not wish to go to the police,[69] and 'all those people who were afraid of the criminal courts would have nowhere to go and would be denied any form of justice'. He said that 'the Church had an obligation to try to fill this gap'. He also said, 'It was quickly decided that we would try to refer as many complainants as possible to the police'.[70]

Bishop Robinson also told us that during the development of Towards Healing (1996) he was aware of the legal obligation in New South Wales to refer all criminal offences to the police, 'whether the complainant wanted this or not'; however, he was not aware that the same legal obligation did not exist in most other states at this time. It was his belief that the Child Protection Unit of the NSW Police Force was informed of 'every complaint' that came to the attention of the New South Wales Professional Standards Office.[71] He said:

> It was agreed with that unit that we would refer the name of every accused person and give an account of the substance of the complaint, though we would not include the name of the complainant without that person's consent.[72]

Under Towards Healing (1996), if a complaint raised issues of a criminal nature the contact person was to tell the complainant of their right to take the matter to the police and provide assistance to do so, if desired.[73] If the complainant decided not to take the matter to the police, that was to be recorded in writing and signed by them.[74] Towards Healing (1996) further required that 'State or Territory law regarding the reporting of knowledge concerning a criminal offence must be observed'.[75]

These provisions were slightly altered in 2000 and 2010, with Towards Healing (2010) stating in paragraph 37.4 that:

> 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.[76]

In its written submission to *Issues paper 2: Towards Healing*, the Truth, Justice and Healing Council (the Council) informed us that, as at 30 September 2013, the usual steps under the Towards Healing process include that, if the complainant declines to go to the police, the Director of Professional Standards should make a non-identifying report to the police.[77] We discuss the experiences of survivors being encouraged to report to police under Towards Healing in Section 13.9.

With respect to the Melbourne Response, at the time of the *Case Study 16: The Melbourne Response (Melbourne Response)* report, there was no express requirement in the Independent Commissioner's terms of appointment that they encourage complainants to report to the police. Nevertheless, both Independent Commissioners, Mr Peter O'Callaghan QC and

Mr Jeffrey Gleeson QC, told us that they have a practice of informing complainants of their continuing and unfettered right to report to police.[78] We discuss the experience of survivors being encouraged to report to police under the Melbourne Response further below in Section 13.9.

Mr O'Callaghan QC and Mr Gleeson QC told us that, if complainants under the Melbourne Response did not want to make a report to the police, the Independent Commissioners were bound by confidentiality, and their terms of appointment prevented them from reporting the alleged abuse to the police unless required to do so by law. Mr O'Callaghan QC told us he only reported complaints to the police if the victim wanted to go to the police. He said that, unless the victim consented to him reporting the complaint or the name of the offender to the police, he was bound by confidentiality.[79] This position changed in 2014, following a change in the law in Victoria on the obligation to report knowledge of a sexual offence against a child under the age of 16 to the police. This is discussed in further detail in Section 13.9 and in Chapter 16 of our *Criminal justice* report.[80]

13.8.4 Temporary leave from ministry

The 1990 Protocol set up an internal Catholic Church process for investigating allegations of criminal behaviour involving a priest or religious. It granted bishops and religious superiors 'the right to make their own investigation and act in accordance with their own judgment'.[81] Allegations of child sexual abuse were to be referred to an 'advisory committee consisting of personnel who are skilled in the management of allegations of criminal behaviour',[82] who would evaluate the complaint.[83] The 1990 Protocol stated that, once the advisory committee had reported back to the Catholic Church authority 'that there appears to be substance to the complaint', the 'usual procedure' should be for the alleged perpetrator to be requested to take leave from active duties while the allegations were being investigated. The 1990 Protocol also recognised the potential for 'scandal' in circumstances where an alleged perpetrator was not removed from ministry and was 'subsequently found to have offended'.[84]

Subsequent versions of the 1990 Protocol, adopted by the ACBC in 1991 and 1992, progressively strengthened the provisions for placing alleged perpetrators on temporary leave for the period that allegations were investigated and the complaints were resolved. In the 1992 Protocol, this type of leave was referred to as 'administrative leave'.[85] The 1992 Protocol set out the arrangements that 'must be made' for alleged perpetrators placed on administrative leave, including making sure that they reside in a 'secure place' and that they 'ought not undertake any public function since this might create greater scandal if he is subsequently found to have offended'.[86]

The protocols made it clear that granting of administrative leave was to be standard procedure upon receipt of complaints and that it did not imply an admission of guilt.[87] Alleged perpetrators were to remain on administrative leave for the period that allegations were investigated and

until the complaint was resolved,[88] whether by way of civil law processes, such as a criminal conviction; the finalisation of a Catholic Church investigation; or an admission of guilt by the accused.[89] The 1992 Protocol also provided that, if an alleged perpetrator refused to take administrative leave or was otherwise uncooperative, action could be taken 'in accordance with' the provisions of canon 1319.[90]

Towards Healing (1996) largely replicated provisions of the earlier protocols in providing that, after receiving a complaint, the contact person or any assessors appointed could recommend to the Catholic Church authority that the alleged perpetrator be 'asked to stand aside from a particular office or from all offices held in the Church'. This was to be understood as administrative leave.[91] Similar provisions are contained in subsequent versions of Towards Healing.[92]

Administrative leave equates to being stood down on full pay, as an alleged perpetrator receives their normal remuneration and other entitlements for the duration of their time on leave.[93] Towards Healing (1996) provided that, while on administrative leave, clerics or religious should be given a suitable place to live and some useful activity.[94]

Alleged perpetrators who were not placed on leave

It is apparent that senior Catholic Church officials were aware that some alleged perpetrators of child sexual abuse remained in active ministry, even after the formulation of national protocols which required their removal and the investigation of the allegations against them. The records of a meeting of the ACBC Special Issues Committee on 16 November 1992 stated that:

> there are serious 'time bombs' ticking away in a number of Dioceses at the present time. It is very important that the alleged offender be given every opportunity to provide all the facts and be questioned very fully by an expert investigator.[95]

When questioned about this document during the *Case Study 35: Catholic Archdiocese of Melbourne (Catholic Archdiocese of Melbourne)* public hearing, Bishop Peter Connors, former Vicar General and Auxiliary Bishop of the Archdiocese of Melbourne, agreed that the reference to 'time bombs' could only be understood to refer to dioceses where there were priests operating who had had serious allegations brought against them or where the Catholic Church had accepted they were sexual offenders.[96]

In Section 13.5 we discussed the response of the Archdiocese of Melbourne to complaints about the conduct of Father Peter Searson in the 1980s. Further complaints about him were made into the 1990s. In 1991, Vicar General Monsignor Hilton Deakin and Archbishop Thomas Francis Little were informed that there was a police investigation regarding Father Searson and an allegation of sexual interference with a former student of Holy Family Primary School in Doveton. New complaints of his sexually inappropriate behaviour with children were reported to the director of the Catholic education office (CEO), the vicar general and the archbishop in 1992. These complaints were not investigated and they were not referred to the police.[97] Father Searson continued in ministry.

In 1993 there was an allegation that Father Searson had confronted two girls at the church doors, produced a knife, held it to the chest of one of the girls and told her not to go any further 'or it will go through you'. Father Searson admitted that the allegation was true but said it was a joke. CEO director Monsignor Thomas Doyle; the new vicar general Monsignor Gerald Cudmore and the archbishop's secretary were informed. The allegation was reported to Archbishop Little, [redacted]. Father Searson was interviewed by police, but no charges were laid. In our report on the *Catholic Archdiocese of Melbourne* we agreed with Archbishop Denis Hart, who told us the archdiocese was not excused from acting because the police did not proceed with charges. We found that the absence of criminal proceedings was not a justification for inaction by the archdiocese.[98]

[redacted] We found that Archbishop Little failed to take any effective action against Father Searson immediately following the knife incident.[99]

Shortly after the 1993 knife incident, the CEO sought legal advice regarding Father Searson from Mr Richard West of Minter Ellison lawyers. The advice was that a number of Father Searson's actions could have constituted physical assaults, tax offences and offences regarding cruelty to animals. Mr West's advice also stated:

> There is one further matter which I think is of concern which emerges largely by inference from the file and a number of references contained in it. That is the suggestion that Father Searson has been engaged in conduct of an improper sexual nature with children. …
>
> None of these comments in themselves disclose any evidence which would justify a charge against Father Searson in relation to sexual offences. However, the fact that over the years a number of suggestions have been made from a number of different people that there is something untoward about Father Searson's behaviour with children is, in my view, sufficient to warrant some form of investigation of his conduct in view of his position of responsibility to the children in his Parish.[100]

The advice was provided to the vicar general, Monsignor Cudmore, and we found it was likely Archbishop Little was informed about it. Contrary to legal advice, no investigation of the allegations regarding Father Searson's inappropriate sexual conduct with children, or review of his position, was carried out at that time. No reasonable explanation for that failure emerged from the evidence. We found that, assuming the archbishop was informed, this was an example of institutional paralysis in the face of clear warnings about the need to act.[101]

Father Searson remained at Doveton parish until 1997. In October 1996, parents made a complaint to the CEO that Father Searson had physically assaulted two altar boys. The matter was referred to the Independent Commissioner, Mr O'Callaghan QC, for investigation. In March 1997, Archbishop Pell placed Father Searson on administrative leave and rescinded his faculties. Father Searson did not return to ministry.[102]

In the same case study, we examined the response of the Archdiocese of Melbourne to allegations of sexual abuse by Father David Daniel. We found that in May 1991 Auxiliary Bishop Eric Perkins, Archbishop Little and Monsignor Deakin knew of a complaint that Father Daniel had made sexual advances towards BTH, a young adult male with whom he had developed a relationship of trust as an adolescent. BTH was interviewed by a representative of the archdiocese and deemed truthful. Monsignor Deakin nevertheless closed the complaint without further action or any assessment of the risk posed by Father Daniel to children.[103]

We found that the decision to take no further action and consider the matter closed was wrong. It occurred in 1991, which was when the issue of child sexual abuse by Catholic clergy and religious was a matter that had been considered nationally by the ACBC and protocols had been developed which were directed to responding appropriately to survivors who reported such allegations.[104]

In February 1994, Father Ernie Smith wrote a letter to Monsignor Cudmore (who had taken over the role of vicar general from Monsignor Deakin). Father Smith wrote that BTG had disclosed to him that she and others suspected that some years earlier something had happened between Father Daniel and four children aged between 11 and 13 at the time. BTG also expressed current concerns about another two boys, aged 14 and seven, because they often spent time at the presbytery with Father Daniel and sometimes stayed overnight.[105]

On 7 June 1994, Monsignor Cudmore interviewed Father Daniel, who denied the allegations. Archbishop Hart said that the matters raised in Father Smith's letter were extremely serious and warranted immediate action. He accepted there was some delay in managing the complaint. He stated that Father Daniel should have been placed on administrative leave and his faculties should have been withdrawn when the complaint was received in February 1994. Father Daniel's later criminal conviction included an offence against a 14-year-old boy in November 1994. As Archbishop Hart stated, 'Tragically, it seems the last offence … would never have happened if appropriate action had been taken after the information given by Fr Ernie Smith in February 1994'.[106]

We found that the response to BTG's complaint was appalling, with tragic consequences. We found that delay in acting on the complaint was unacceptable. No report was made to the police.[107]

In the *Marist Brothers* case study, we found that the Marist Brothers continued to appoint Brother Chute to teaching positions despite knowledge at a senior level of allegations of child sexual abuse over the period from 1962 to 1993.[108] The response of the Marist Brothers to allegations of sexual abuse involving Brother Chute before the development of national protocols is discussed in Section 13.5.

As noted above, around September 1993, Mr De Marco discovered that Brother Chute was still teaching at Marist College Canberra and made a complaint to the headmaster, Brother Wade, that Brother Chute had sexually abused him in 1981. The complaint was passed on to the provincial, Brother Turton, who met with Mr De Marco in September 1993. Mr De Marco told us that he 'came away from the meeting with the promise that [Brother Chute] would not be returned to the school … and I was under the impression from what Turton told me that he would never be going back to the school'.[109] In a file note of the conversation, Brother Turton described the abuse of Mr De Marco by Brother Chute as 'inappropriate' but 'not extreme' and 'not even genital'. We found that, in using these words, Brother Turton minimised the sexual aspect of Brother Chute's conduct.[110] Brother Turton also recorded that 'it was not the sort of difficulty that demanded [Brother Chute] come out of the school'. According to the same file note, Brother Turton then arranged a meeting with Brother Chute and Father Lucas, as discussed above, the outcome of which 'was certain admissions many years back in the past, but no awareness of anything more serious recently'.[111] Brother Turton wrote:

> there is no concern … [or] danger in [Brother Chute] continuing to teach, although the teaching will be from Grade 9 and above. The only difficulties in the past have been with younger boys … [Brother Chute] acknowledged the closeness and the hugging.[112]

According to Brother Turton's file note, Brother Chute continued teaching at Marist College Canberra, subject to supervision, therapy and an undertaking not to be alone with children.[113] Brother Turton eventually removed Brother Chute from Marist College Canberra towards the end of December 1993, after receiving a further complaint alleging behaviour of a sexualised nature.[114] In 2008, Brother Chute was convicted of sexually abusing six students at Marist College Canberra in the period from 1985 to 1989.[115]

As discussed above, in the *St Joseph's Orphanage, Neerkol* case study, the retired Bishop of Rockhampton, Bishop Heenan, told us that in early 1994 he had accepted the truthfulness of victim AYB's allegations of sexual abuse by Father Durham. This included sexual offending that commenced when AYB was a young child and that occurred many times over many years.[116] Bishop Heenan agreed that AYB had asked him to stop Father Durham from exercising his ministry to her family so that Father Durham would stop hearing confession from, and giving holy communion to, members of her family. Bishop Heenan accepted that he did not limit Father Durham's ministry in the way that AYB requested.[117]

Rather, Bishop Heenan allowed Father Durham to remain at the Neerkol presbytery, where he would continue to have contact with children.[118] In his statement, Bishop Heenan told us that he did not believe any further action was required against Father Durham because of Father Durham's old age, Bishop Heenan's mistaken belief that the offending was confined to AYB, the isolated location of Neerkol and the fact that the orphanage no longer housed children.[119] Bishop Heenan agreed that his decision to allow Father Durham to remain in his job as an administrator and reside at the presbytery showed a lack of understanding of child sexual abuse and placed other children at risk of sexual abuse. Bishop Heenan agreed it was an inadequate response to the allegations.[120]

In or around April 1996, Bishop Heenan was informed by the vicar general of the diocese of child sexual abuse allegations that another victim, AYP, had made against Father Durham. Father Durham continued to serve as the administrator of the Neerkol parish, live at the Neerkol presbytery and carry out his ministry as would a parish priest. In this role he had ongoing contact with parishioners and children. At a meeting with Father Durham at Neerkol presbytery in May 1997, Bishop Heenan instructed him that he was not to approach young children or schools. Aside from this direction, Bishop Heenan did not take any further action against Father Durham, even after Father Durham was interviewed by police about AYP in September 1997. During the *St Joseph's Orphanage, Neerkol* public hearing, Bishop Heenan said he believed that Father Durham complied with the restrictions placed upon him. However, he did not monitor or supervise the restrictions – instead, he relied on Father Durham to obey his direction.[121] Bishop Heenan was asked by Senior Counsel Assisting whether it caused him any concern that Father Durham was still practising as a priest during this period or was at least involved with families and parishioners. He responded, 'Well, all I can say is it didn't concern me sufficiently to make me do something about his ministry. I regret that'.[122]

On 6 February 1997, the Queensland Police Service charged Father Durham with 40 sexual offences against six complainants, including AYB, AYE and AYP.[123] Bishop Heenan wrote to Father Durham informing him that as a result of the charges he now required Father Durham to resign from his position as administrator of the Neerkol parish as soon as possible and leave the presbytery at Neerkol. Bishop Heenan also recommended that Father Durham take an extended leave of absence. He emphasised that it was essential that Father Durham not be seen to continue with his ministry.[124]

Sick leave and study leave

In Section 13.5, we discussed the earlier practice of putting alleged perpetrators on forms of temporary leave, such as 'sick leave', following allegations of child sexual abuse. In one case study, we heard of this practice continuing in the early 1990s. Documents provided by CCI also indicate that another alleged perpetrator was put on 'sick leave' in 1990. We do not doubt that

there were other cases where this occurred. In addition, we are satisfied that this practice was motivated, at least in part, by a desire to protect the reputation of the alleged perpetrator and the Catholic Church more generally and was a way of concealing from others that allegations of child sexual abuse had been made.

As mentioned in Section 13.8.2 above, in 1993 Father Lucas interviewed Father Nestor at the request of Bishop Murray, following complaints about Father Nestor's conduct at children's camps. In May 1994, Bishop Murray refused Father Nestor permission to organise another camp for children in the Diocese of Wollongong. Bishop Murray told Father Nestor that, 'In view of the present "witch hunting" mentality of our local media, I think it would be advisable to forego this proposal for this occasion'.[125] There was some evidence that Bishop Murray initially refused a request from Father Nestor to study overseas and that Father Nestor had sent Bishop Murray a letter stating why he should reconsider this decision. Bishop Murray had then granted Father Nestor's request and gave him permission to attend a two-year course at the Family campus of the John Paul II Institute for Studies on Marriage and the Family in Washington in the United States.[126] During the *Catholic Diocese of Wollongong* public hearing, Counsel Assisting put the proposition to Father Graham Schmitzer, the chancellor and private secretary to Bishop Murray in the 1990s, that Father Nestor was sent overseas to 'get him out of the way or allow the dust to settle'. Father Schmitzer responded that he would not have been surprised if that were true.[127]

In another case, CCI determined that the Diocese of Sale had knowledge of Father Daniel Hourigan's propensity to offend in 1986.[128] A report prepared for Bishop Jeremiah Coffey, the Bishop of Sale from 1989 to 2008, said that in June 1989 Bishop Coffey was told by his predecessor, Bishop Eric D'Arcy, about 'very serious allegations made against Father Dan Hourigan'.[129] In a subsequent interview, Bishop Coffey told CCI's investigators that he put Father Hourigan on sick leave in 1990:

> when I became Bishop of Sale and discovered that Dan Hourigan wasn't terribly well and I knew about his activities, I took action. You have to be careful, you can't just whip a fellow out, unless you get advice. I can do it now when I get advice, I get counsellors and different people to advise me and I do it. But what I did with Dan Hourigan was that he was unwell and the doctor rang me and said 'He can't keep going'. I brought him out of [his parish], he went to hospital and had two bypasses …
>
> So I brought him back here to Sale as a parish Priest on sick leave. The name is important, because if I sacked him, every Priest in the Diocese would know and they would say he is entitled to his good name, so I called him a Parish Priest on sick leave with no official appointment. I sat down here and kept an eye on him all the time; I watched him out the window when he was talking to young people …[130]

Father Hourigan was subsequently appointed back into a position in ministry. In August 1990, the Administrator of the Cathedral at Sale appointed Father Hourigan as the chaplain to senior boys and girls at a school in the diocese.[131] Bishop Coffey referred to this appointment in his subsequent interview:

> the Administrator here made him Chaplain to [the school]. That shows the ignorance that we had; Monsignor Allman was of the old school and he thought he was doing the right thing and he knew all about it. I had to tell the Principal and the Vice Principal of the [school] and we couldn't pull him out straight away, so we left him there from September till November.[132]

In another interview, Bishop Coffey told CCI's investigators that, 'As far as we know, nothing happened, but as soon as we could get him out quietly at the end of the term we did'.[133] In 1994, Father Hourigan was placed on administrative leave and his faculties were withdrawn.[134]

Administrative leave

Some alleged perpetrators were placed on administrative leave and temporarily required to stand down from positions in ministry, particularly following the introduction of Towards Healing (1996) and the Melbourne Response. In the *Melbourne Response* public hearing, we heard that a priest who is placed on administrative leave is not permitted to say mass publicly or celebrate ceremonies, such as weddings or funerals, but can say mass privately.[135] Cardinal Pell told us that local Catholic Church authorities may deal with priests administratively. This includes placing a priest on administrative leave, an action that can be taken by local Catholic Church authorities independently of the Holy See.[136]

In 1994, Father Anthony Mannix, the Provincial of the Vincentian Fathers, wrote to CCI concerning allegations that had been made against Father Charles Barnett.[137] Later, Father Mannix told CCI that 'in line with the Protocol, the priest [Father Barnett] resigned from his office of parish priest, formally requesting leave from the Congregation and the ministry'.[138] From October 1995, Father Barnett was in Indonesia, where he remained until 2009.[139] In 1997, a canonical application was made for Father Barnett's dismissal, and this application was granted in 2001.[140] He was convicted in 2010 after pleading guilty to five offences relating to the sexual abuse of four victims between 1977 and 1994.[141]

In the *Melbourne Response* public hearing, the Independent Commissioner Mr O'Callaghan QC gave evidence that whenever a complaint has been made about a priest he has recommended to the Archbishop of Melbourne that, pending the determination of the matter, the priest be placed on administrative leave. He told us that, in all such cases, his recommendation has been followed.[142]

In the *Catholic Archdiocese of Melbourne* case study, we received evidence that two alleged perpetrators within the Archdiocese of Melbourne were placed on administrative leave in 1997, soon after the Melbourne Response came into force. These were Father Searson (discussed above) and Father Wilfred Baker.[143] During the public hearing, Monsignor Doyle agreed that the action of suspending Father Searson in March 1997 was the sort of decisive action for which some Catholic Church officials within the Melbourne archdiocese had been waiting a decade.[144]

In the *Catholic Diocese of Wollongong* case study, it was apparent that placing an alleged perpetrator on administrative leave was not effective in preventing his continued access to children. In late April 1996, an allegation of child sexual abuse was made against Father Nestor involving the abuse of a 15-year-old boy in 1991. After obtaining advice from Father Lucas and the Bishop-Elect, Monsignor Wilson, the administrator of the diocese, Father Paul Ryan, instructed Father Nestor to stand aside from the exercise of any public ministry. Shortly after this, Father Nestor was arrested and charged. Father Nestor remained on administrative leave during the police investigation and criminal proceedings that followed. During this time, Bishop Wilson refused a request by Father Nestor to undertake employment outside the Catholic Church because he considered that this would be inconsistent with Father Nestor being on administrative leave.[145]

Father Nestor was initially found guilty of aggravated indecent assault but appealed the conviction and was granted bail. During the period of the appeal, Father Ryan's instruction that Father Nestor stand down from public ministry still applied. The new Bishop of Wollongong, Bishop Wilson, received four further complaints against Father Nestor during the period pending his appeal and shortly afterwards. We found that these complaints justified serious reservations and concern about the danger that Father Nestor posed to children and his suitability for ministry.[146]

In October 1997, Father Nestor successfully appealed his criminal conviction. Despite his acquittal, the Diocese of Wollongong had concerns about Father Nestor's suitability for ministry, and Bishop Wilson decided that a formal Towards Healing assessment should commence to determine whether Father Nestor would be suitable for any future appointment. During this assessment process, Bishop Wilson made a personal request and later a formal decree that Father Nestor not exercise public ministry. We found that Bishop Wilson's request to Father Nestor to remain on administrative leave after his acquittal was a justified act to protect children from possible sexual abuse by Father Nestor.[147]

However, Father Nestor disobeyed his bishop by performing mass on more than one occasion and preaching the homily, breaking his agreement to stand aside from public ministry. As a result, in August 1998 Bishop Wilson gave Father Nestor a formal decree under canon 273 'to cease functioning publicly as a priest in any place until I give you permission to do so'.[148] This is discussed further below in Section 13.8.7.

Documents relating to the Society of St Gerard Majella (Society), which were tendered during *Case Study 50: Institutional review of Catholic Church authorities (Institutional review of Catholic Church authorities)*, indicate that in April 1993 a number of religious brothers in the Society wrote to Father Rodger Austin, a canon lawyer, alleging that they had been sexually abused by senior brothers in the Society: Brother John Sweeney (the founder of the Society and superior general until 1991), Brother Stephen Robinson (superior general from 1991 to 1993) and/or Brother Joseph Pritchard.[149] Later that month, Father Austin met with Bishop Bede Heather, the Bishop of the Diocese of Parramatta, which was the diocese with responsibility for oversight of the Society. Father Austin provided Bishop Heather with the letters he had received alleging sexual abuse.[150]

On 3 May 1993 Bishop Heather wrote to Brother Pritchard saying he had 'taken canonical advice' and asking him to 'agree voluntarily not to exercise any public priestly ministry in this diocese or elsewhere' until the allegations against him had been investigated. Bishop Heather stated, 'You may celebrate Mass privately or within your own Society'. Brother Pritchard signed his agreement to this.[151] On 4 May 1993, Bishop Heather established a Special Enquiry to investigate the allegations as well as other issues.[152] On 4 May 1993 Bishop Heather directed the superior general, Brother Robinson, not to take any action in relation to any member of the Society until the Special Enquiry had reported and the bishop had made any decisions he considered appropriate.[153]

Days later, on 11 May 1993, following a further allegation of prolonged sexual abuse (of an adult) by Brother Robinson, the bishop wrote to Brother Robinson suspending him from the office of superior general for the duration of the Special Enquiry.[154] Bishop Heather also asked him, in almost identical terms to those used with Brother Pritchard, to agree to refrain from priestly ministry until the investigation had concluded, to which Brother Robinson agreed.[155]

A fuller narrative about the Society is contained in Appendix D.

13.8.5 Counselling and other forms of treatment

> I think we [as bishops] did fail because we weren't aware of the significance of what was taking place, particularly in the life of the victim, nor understanding the seriousness of the issues in the perpetrator. There was a time when there was a view that a person could correct it or, with psychological help, overcome it. We've come to realise now, no, that's not possible ...[156]
>
> **Archbishop Julian Porteous, Archbishop of Hobart**

As discussed in Section 13.5, in the decades prior to the development of national procedures, individual Catholic Church authorities referred alleged perpetrators of child sexual abuse for counselling or forms of treatment following allegations of child sexual abuse. This approach appears to have continued into the early 1990s. However, by the mid-1990s there had been a shift in understanding about the purpose of treatment and the prospects of reassigning alleged perpetrators to positions in ministry following periods of counselling or treatment.

The 1990 Protocol provided that, when a Catholic Church authority informed 'an accused' of a complaint against him, he 'should immediately be referred to an appropriate person or facility for assessment', and that 'Future management and therapeutic intervention will depend largely on the circumstances of the complaint'.[157] These provisions were replicated in the revised protocols circulated in 1991 and 1992.[158] It is apparent that treatment was considered an important part of the response to alleged perpetrators of child sexual abuse. However, the early protocols contained no provisions about whether such alleged perpetrators should be returned to positions in active ministry following periods of counselling or other forms of treatment.

Towards Healing (1996) contained references to treatment with respect to responses to those found to be 'guilty of abuse' and as among the 'preventive strategies' to be implemented.[159] Similar references are included in the revised versions of Towards Healing.

Referrals for treatment

Our case studies show that during this time period Catholic Church leaders continued to refer alleged perpetrators for treatment conducted by a small network of psychologists and psychiatrists connected to the Catholic Church, as well as to priests who had trained in psychology or psychiatry.

Treatment providers engaged by Catholic Church authorities in the early 1990s included Dr Alex Blaszczynski, who specialised in the area of sexual paraphilias and compulsive sexual behaviour. In a police statement from May 2016, Dr Blaszczynski said that clients were referred to him through Carrol & O'Dea solicitors, the lawyers acting for particular Catholic Church authorities, or directly from senior members of the Catholic Church.[160]

Father Baker and Father Daniel were referred to Father Peter Cantwell for treatment in 1991 and 1995 respectively. Father Cantwell was a psychologist available to the Archdiocese of Melbourne to treat priests.[161] Archbishop Hart told us that Father Cantwell was often used for consultations about difficulties that priests were having or personality problems, including drinking.[162]

Between 1990 and 1992, some alleged perpetrators attended counselling with Father Usher during his time as the Director of Centacare. According to CCI documents, this included Brother Obbens and Brother Roberts of the Christian Brothers.[163]

As discussed in Section 13.5, the preference for treatment conducted within the structures of the Catholic Church served to blur the distinction between clinical and spiritual treatment. It is also consistent with a desire to deal with the problem of child sexual abuse 'in-house' and to protect the reputation of the alleged perpetrator and the Catholic Church more broadly. This was specifically identified in the 1990 Protocol under the heading 'Responsibilities of Bishops, Major Superiors and Superiors', which stated that:

> Bishops have duties and responsibilities to their priests, religious and all of Christ's faithful. They have a responsibility to protect the good reputation of individuals and the image of the Church as a whole.[164]

In the *Catholic Archdiocese of Melbourne* case study we found that a priest who was treating Father Daniel in relation to allegations of child sexual abuse considered the 'public implications', meaning reputational damage to the Catholic Church, of returning Father Daniel to ministry to be a serious concern.[165] On 8 April 1995, Father Cantwell wrote a letter to Archbishop Little referring to his two sessions with Father Daniel and said the following:

> In my view, the possible public implications of these issues are serious … As [REDACTED] will be around for the foreseeable future, any return to public ministry by David is overshadowed by the likelihood of public action ...
>
> For the above reasons David feels that to undertake active ministry in the near future would be 'absolutely crazy', for medical but especially for legal reasons. He therefore wishes to retire from active ministry.[166]

There is no reference in Father Cantwell's letter to the risk that Father Daniel may have posed to children or young adults. During Archbishop Hart's testimony, Senior Counsel Assisting asked for his view of Father Cantwell's letter. The following exchange occurred:

> Q. … Stopping there, it seems, does it not, from this correspondence, that at least this treater, Reverend Dr Peter Cantwell, had the concerns of the reputation of the church uppermost in his mind when advising on his treatment of a priest?
>
> A. I think he wanted to take all of the circumstances aboard, and would have had the mentality of the time, I think; I think that's all I could say.
>
> Q. When you say 'the mentality of the time', what are you referring to?
>
> A. I would be referring to a very high level of concern for the welfare of the Church.
>
> Q. And the reason for not returning this man to ministry, is that the reputation of the Church would suffer because he was a known abuser?
>
> A. Correct.[167]

We found that Father Cantwell's letter is consistent with a culture in the Catholic Church of protecting priests and the Church's reputation.[168]

During the early to mid-1990s, some alleged perpetrators were sent overseas to undertake specialised residential treatment programs, particularly at facilities established by religious orders and congregations of Catholic priests.

In his private hearing, the transcript of which was tendered during the *Case Study 28: Catholic Church authorities in Ballarat (Catholic Church authorities in Ballarat)* public hearing, Mr Daniel Torpy, psychologist and former priest in the Diocese of Ballarat, said that in the early 1990s he believed 'There was a chance' that paedophilia could be effectively treated by institutes of this kind.[169] He said that as of 1992:

> I was still aware that there were these places that were developing in the [United] States, where obviously they had a much longer history, and greater advice may have come from experts within that area – that this may have been an area that could be utilised by priests who had offended sexually.[170]

Their close affiliation with the Catholic Church raises questions about the treatment that was offered to alleged perpetrators of child sexual abuse at these facilities. The Commission of Inquiry into Sexual Abuse of Minors in the Roman Catholic Church in the Netherlands reported in 2011 that 'It is doubtful whether these centres were actually equipped to treat individuals who had sexually abused minors'.[171]

Father Gerald Ridsdale of the Diocese of Ballarat undertook treatment at Villa Louis at Jemez Springs in New Mexico, United States, between December 1989 and September 1990.[172] This facility was run by the Servants of the Paraclete – a religious order whose mission was to 'provide treatment programs of a therapeutic and spiritual nature for priests and Brothers in personal difficulty … [including in] the area of sexual misconduct with children and minors'.[173] A letter dated 17 August 1989 from the Superior General of the Servants of the Paraclete to Bishop Mulkearns of the Diocese of Ballarat described the treatment services offered at Jemez Springs and the prospects of returning those who had been treated to ministry. The letter stated that:

> Starting in the late 1970s, we have developed strong therapeutic programs of a psychiatric and psychological nature with the spiritual component being integral …
>
> As you know, resources and treatments are available today which in many cases can alleviate and heal much of the personal pain and humiliation due to sexual and personality difficulties. The collective help we can together provide these men in turn serves to protect the people and in many cases, returns to the parishes priests who are significantly more effective and compassionate.[174]

In a report written in May 1993, following three interviews with Father Ridsdale, psychiatrist Professor Richard Ball noted:

> The help which he received in New Mexico was wide ranging. I went into it in some detail, none of it so far as I can make out was behavioural, there was limited specific attention to sexual matters, much exploration and such monitoring as occurred was only by self-report, (this admittedly is often all there is). The attempt to help may have been genuine, well motivated and relatively intensive; it may have helped. All we have to go on is the claim by Father Ridsdale that it was so. As already indicated to you from the Catholic Health Services senior office in Rome, there is some disquiet about the particular unit where he was treated.[175]

In a written response to questions from us, the Marist Brothers told us that:

> In the late 1980s and 1990s, it was the practice of the Sydney Province to send members of the Order who had acknowledged allegations of abuse against them to specialist treatment centres in the United States of America (St Luke Institute at Maryland) and in Canada (Southdown Institute at Aurora, Ontario).[176]

The Southdown Institute was a specialist Catholic treatment centre that worked specifically with sex offenders, with a treatment program that included assessment by a psychiatrist, a psychologist, a spiritual counsellor and an alcohol counsellor.[177] In the *Marist Brothers* case study, we heard that Brother Gregory Sutton participated in a program at the Southdown Institute between August 1989 and July 1990, following allegations of sexual offending during the 1980s.[178]

Marist Brother GLW participated in two periods of residential treatment at the Southdown Institute in 1986[179] (recorded in an appointment history as 'Studies'[180]) or 1988,[181] and in 1990 (recorded in an appointment history as 'Personal Renewal').[182] A Special Issues Allegation Report provided to CCI by the Marist Brothers said that, following these periods of residential treatment, the therapists' advice was that 'there was no sexual dysfunction' and 'problems were not in any sexual area or such things as paedophilia'.[183] The report said that, after Brother GLW's treatment in 1990, 'Again there was full clearance to teach, but a strong recommendation for a supportive community with ongoing therapy and spiritual direction'.[184] He then returned to teaching in June 1990 at a Marist Brothers school in Queensland and later at a high school in New South Wales.[185] He was totally withdrawn from any contact with young people after further allegations of abuse were made in 1992.[186]

The Christian Brothers told us that in the early to mid-1990s the order referred two alleged perpetrators to the St Luke Institute in Maryland, United States. The institute was founded by Reverend Michael Peterson MD – a priest who had trained as a psychiatrist before entering the priesthood.[187] During the *Institutional review of Catholic Church authorities* public hearing, Dr Gerardine Robinson, clinical psychologist and former Clinical Director of Encompass

Australasia, gave evidence that the St Luke Institute initially operated as a hospital for treating clergy with alcohol and substance abuse problems. With the increased interest in psychosexual disorders during the late 1980s and early 1990s, its programs expanded and it became a dual treatment centre for clergy with psychosexual disorders and other addictions.[188]

In the *Catholic Church authorities in Ballarat* case study, we heard that Brother BWX of the Christian Brothers was sent to the St Luke Institute in 1994 for treatment for 'child abuse incidents'.[189] Documents relating to CCI's determinations of prior knowledge indicate that two other Christian Brothers – Brother Obbens and Brother Rex Elmer – were sent to the St Luke Institute in 1994 and 1995 respectively.[190] Brother Obbens had earlier received counselling from Father Usher, after pleading guilty in 1989 to a charge of indecent assault of a student under his care.[191]

As discussed in more detail in Section 13.7, Encompass was a facility established in 1997 to provide specialised treatment for priests and religious with 'psycho-sexual disorders' in Australia. In his evidence during the *Catholic Diocese of Wollongong* public hearing, Archbishop Wilson said:

> The information that I had about Encompass indicated that when people went there, there was engagement with them in terms of psychiatry, psychology, physical health, their spiritual life – you know, their relationship with God – and so there were people employed there who ran that program who were trained as psychiatrists and psychologists, and so on. In each area that they engaged with these people, there was somebody with the appropriate expertise.[192]

Similarly, Bishop Robinson, who was formerly the Chair of the Board of Directors of Encompass, told us:

> we set up a best-practice – what we were hearing by then was that sending them to an individual psychiatrist was not good enough; it needed to be a professional program run by a whole group of people. So Encompass had several psychologists, but it also had other forms of therapy there, including, you know, such things as art therapy, which has a real place in the treatment of people, because often, through something like art, they will betray a lot of things they'll never betray in words; so it was an attempt at best practice.[193]

The Christian Brothers told us that 'it became standard practice for Christian Brothers Leadership Teams to use Encompass Australasia's services for those Brothers who had been accused of offending sexually'.[194] They provided a list of 21 brothers who were referred to Encompass.[195] The Marist Brothers told us that they had referred five brothers to Encompass.[196] Documents provided by CCI indicate that Father Francis Klep of the Salesians of Don Bosco was sent to Encompass in 1997 and that Brother Roberts and Brother GLX of the Christian Brothers were referred to Encompass in 2000.[197]

Treatment and continued ministry

In its 2004 report for the United States Conference of Catholic Bishops, the National Review Board for the Protection of Children and Young People noted that:

> Moreover, psychologists and psychiatrists told the Board that, since the mid to late 1980s, it generally has been understood that men who have engaged in frequent sexual abuse of minors can be treated but not cured. But many Church leaders continued to rely on reports of successful treatment as a license to return priests to ministry.[198]

In 2011, a study titled *The causes and context of sexual abuse of minors by Catholic priests in the United States, 1950–2002* was published by researchers at the John Jay College of Criminal Justice for the United States Conference of Catholic Bishops. It found that the 1980s was the peak decade for referrals of alleged perpetrators for treatment. After the 1990s, referrals for treatment declined, reflecting growing concerns within the Catholic Church in the United States about recidivism. The report commented that the experience of reoffending following treatment prompted clinicians to anticipate and develop 'after care' programs. However, the negative impact of a reassigned priest who had reoffended had already been felt in many dioceses.[199]

In late 1992, *The Cardinal's commission on clerical sexual misconduct with minors: report to Cardinal Joseph Bernardin* was published in the United States. This report had been commissioned after new allegations were made against a priest in Chicago who had been reassigned to parish ministry following treatment.[200] It found that 'There is no completely successful treatment for paedophilia or ephebophilia'.[201] It stated that members of an advisory committee that had been established in 1985 to rehabilitate priests in order to return them to ministry 'now think they were overly compassionate and optimistic about the extent to which therapy could lessen the risks of future misconduct and additional victims'.[202] It recommended that under no circumstances should priests who have offended against children be reassigned to parish ministry or any kind or ministry which would give them access to children.[203] However, the report did contemplate a return to restricted ministry provided strict conditions were put in place, including regular supervision.[204]

This view appears to have filtered through to the leaders of the Catholic Church in Australia. In late 1992, Father Lucas visited the United States and Canada and reported back to the ACBC Special Issues Committee. Minutes of a meeting of the Special Issues Committee on 16 November 1992 record that it agreed that 'the prognosis for offenders to be returned to any form of active ministry as a Priest is not good'.[205]

This was reiterated in January 1993, in a *Draft discussion paper re 'therapeutic' interventions for victims of child sexual assault, perpetrators and alleged offenders* provided by Father Usher for the 'Special Issues Sub-Committee'.[206] In the paper, Father Usher referenced developments and findings from overseas and wrote that:

> any prognosis for 'a cure' for people who admit to acts of sexual misconduct in relation to children and young people is remote. Overseas and local clinical experience indicates that the possibility of any offender returning to fill active ministry is unlikely.
>
> Arrangements whereby such offenders return to some form of 'special ministry' in the Church under supervision is a possibility and there are models of such arrangements in the process of development in Canada and the United States of America.[207]

This understanding appears to have been communicated more widely to bishops across Catholic Church authorities in Australia. In the *Catholic Archdiocese of Melbourne* public hearing, Bishop Connors gave evidence that:

> By 1993, all Bishops were well informed, because of discussions at the Bishops Conference, bringing them up-to-date with what was happening in the United States, and that was made very clear to us, a paedophile is always a paedophile, they really can't be cured.[208]

However, Bishop Robinson gave evidence that until the mid-1990s some bishops within the Catholic Church held on to the belief that priests who had been convicted or who had admitted to child sexual abuse could be returned to positons in active ministry following periods of treatment. He acknowledged that this was a point of contention and explained that:

> They believed that a good psychiatrist could if not totally cure a person, then at least bring them to a point where they would not offend again, and I believe that a number of psychiatrists gave those assurances to bishops. In other words, it's not true to say that every bishop was acting totally irresponsibly in cases where, you know, a reputable psychiatrist had assured them, 'This man can be returned to ministry'. I would have shared those beliefs for quite a number of years …
>
> other bishops … were coming at different paces. There was always this loyalty to priest question that was there and, you know, things changed there. Psychiatrists wouldn't have been making the same claims any longer by the mid 1990s.[209]

In *Case Study 43: The response of Catholic Church authorities in the Maitland-Newcastle region to allegations of child sexual abuse by clergy and religious (Catholic Church authorities in Maitland-Newcastle)*, we received evidence that, by July 1993, the Marist Brothers Provincial, Brother Turton, had received three historical complaints of possible child sexual abuse involving Brother Patrick Butler (Brother Patrick)[210] and a recent report about Brother Patrick 'patting' and sometimes 'squeezing' the bottoms of two boys.[211]

One month later, Brother Turton wrote to Brother Patrick and enclosed an enrolment form for the Crossroads program at Baulkham Hills in New South Wales.[212] Brother Turton explained to us that the Crossroads program was typical of programs run by the Catholic Church around the world, often referred to as 'mid-life programs' or 'life review programs'. He said that, after a certain number of years in ministry, people would go to such courses as a break or as a 'chance

to look at their life'. Counsellors were available to those who wanted to talk through particular issues.[213] Brother Turton said he had encouraged Brother Patrick to get into counselling, and he saw Crossroads as a chance to do that. He said the complaints that had come to his attention were part of the reason he did this, and he said this to Brother Patrick. He agreed that Brother Patrick's attitude to counselling could be described as resistant.[214]

In September 1994, after spending a year in the Crossroads program, Brother Patrick returned to a 'remedial teaching' position at Marist College Ashgrove. He remained in this role until his retirement in 2001.[215] Brother Turton gave evidence that he did not recall receiving any report from the operators of the Crossroads program.[216] In 2001, a Year 7 boarding student at Marist College Ashgrove made a complaint against Brother Patrick. Brother Patrick was charged with one count of indecent dealings with a child.[217] However, in 2003 the judge ordered that there was no case to answer, meaning that Brother Patrick was determined to be not guilty.[218]

By 1997, following the introduction of Towards Healing and the establishment of Encompass, attitudes towards treatment within the Catholic Church in Australia appear to have shifted from a belief that treatment could 'cure' offending priests and religious to an understanding that, at best, treatment could reduce the risk of offending and serve a rehabilitative purpose.

This was reflected in the procedures of Towards Healing (1996), which referred to 'spiritual and psychological assistance' and 'suitable therapists and treatment programs' as part of the 'preventive strategies' for child sexual abuse.[219] It provided that 'Church personnel who feel that they might be in danger of committing sexual abuse' were to be offered treatment 'before the problem becomes unmanageable and they offend'.[220] Additionally, the principles of Towards Healing (1996) specifically referred to the issue of reassignment of alleged perpetrators following treatment. It stated that 'Serious offenders will not be given back the power they have abused. Those who have made the best response to treatment recognise this themselves and no longer claim a right to return to ministry'. It stated that the community expects the Catholic Church to ensure that offenders 'seek professional help in overcoming their problems'.[221]

In its 2013 submission to *Issues paper 2: Towards Healing*, the Council told us that, at the time Encompass was established, there was a 'widely held view … that psychiatric or psychological treatment was appropriate and effective for people with "psycho-sexual disorders", and that such therapy could be an important component for rehabilitation'.[222]

Similarly, Bishop Robinson stated that:

> the view that I came to have was that if you send me one offender, I cannot give you any guarantee that that person will be cured. Never use the word 'cured'. I can't give you a guarantee they will never offend again. If you send me 100 offenders, I can give you a guarantee that if you give them treatment similar to Encompass's, the number of future offences will be not merely diminished, it will be drastically diminished.[223]

By this time it was accepted, at least among the treatment providers at Encompass, that there was no chance of returning to ministry any alleged perpetrator who had been referred for treatment. During the *Institutional review of Catholic Church authorities* hearing, the following exchange took place between the Chair and the former Clinical Director of Encompass, Dr Gerardine Robinson:

> CHAIR: When they had been through your processes [at Encompass], did you then certify back to the Church, 'This man is cured and can go back into ministry'?
>
> DR ROBINSON: Never, not a child offender.[224]

The awareness among Catholic Church leaders that alleged perpetrators could never be returned to active ministry following treatment may have acted as a disincentive for bishops and religious superiors to utilise treatment as a response to alleged perpetrators of child sexual abuse. A report from Encompass to the ACBC dated November 2007 stated:

> A not infrequent but disturbing response to a recommendation for intensive therapy has been a decision by a Church Authority to deny an offender the opportunity of participating in the Banksia program [at Encompass] on the grounds that the offender will not return to public ministry. Untreated offenders are at serious risk of re-offending …
>
> If the Church is to address the issue of sexual abuse by its members, its Religious Leaders and Bishops have no alternative but to take serious steps to implement credible procedures of Risk Management and Prevention. Integral to such procedures is the provision of intensive therapeutic intervention for known offenders and those at risk of offending whether or not there is any hope of their return to public ministry.[225]

Similarly, Dr Robinson told us that:

> I also think that, at the time, the bishops and major superiors thought the problem was over. Add to that the fact that I think there were some who thought why would one put money into treating offending clergy if they were no more useful in ministry.[226]

As discussed in Section 13.7, Encompass ceased to operate in 2008 due to its 'grave financial situation'.[227]

We received limited evidence about the more recent practices of Catholic Church authorities in referring alleged perpetrators for treatment following allegations, admissions or convictions for child sexual offences. Dr Robinson told us that the closure of Encompass in June 2008 'left a big hole' in terms of treatment options for offending priests and religious within the Catholic Church in Australia. According to the Council's 2013 submission to *Issues paper 2: Towards Healing*, following the closure of Encompass:

> the NCPS [National Committee of Professional Standards] still responds to requests from Catholic Church Authorities (or from clergy or religious themselves) for information about 'best practice' programs for the treatment of clergy or religious who suffer from disorders, including psycho-sexual disorders, or who are in need of a vocational or other assessment. Individuals are now referred to private external services.[228]

In the *Marist Brothers* public hearing, the Marist Brothers told us that the provincial and the province professional standards officer rely on Vitality Psychology and Consulting Services Pty Ltd to make a risk assessment on living and work arrangements for a Marist Brother who is the subject of a complaint of child sexual abuse.[229] Similarly, the Christian Brothers told us that they use Vitality Psychology and Consulting Services Pty Ltd 'where necessary'. They explained that treatment is a part of their current practice when a brother has admitted to or been the subject of credible allegations of child sexual abuse. They further explained that following the immediate removal of the brother from any duties where he would have any contact with or unsupervised access to minors, brothers are referred to a treatment program to reduce the risk of recidivism.[230]

13.8.6 Appointments to positions with limited access to children

In Section 13.5 we noted that bishops and religious leaders in Australia could and did remove alleged perpetrators from their positions and appoint them to other roles with limited or no access to children or youth, such as in adult education, aged care, administration or general duties.

This was also a response utilised by Catholic Church authorities overseas. The 2003 report of the public inquiry established by the Attorney-General of Massachusetts to investigate allegations of child sexual abuse by priests of the Archdiocese of Boston discussed the practice of transferring priests to 'supposedly "restricted" ministerial positions'. It noted, however, that these types of transfers 'did not ensure the protection of children'. It observed that, by the 1990s, 'the Archdiocese began to take steps to limit abusive priests' exposure to children by restricting their residential and ministerial assignments, even after they had completed in-patient psychiatric treatment programs'.[231] According to the report, in 1993 the archdiocese became more selective about where it transferred 'abusive priests':

> For example, beginning in 1993, the Archdiocese no longer transferred abusive priests outside of the Archdiocese. Additionally, in most instances the Archdiocese stopped transferring abusive priests to other parishes and placed them in ministerial assignments where it was believed they would have reduced exposure to young children.
>
> These 'restricted ministries' included assignments to hospitals, nursing homes, prisons, social service programs for adults and elders, and administrative positions in the Chancery.[232]

In Australia, the national protocols were not explicit about the use of these measures in cases involving alleged perpetrators or offenders convicted of child sexual abuse. Under the 1990 Protocol, a bishop or religious superior was to consider whether to 'reassign' an alleged perpetrator when legal proceedings appeared unlikely or an alleged perpetrator was not committed for trial or was tried and acquitted. In cases involving admissions or proven guilt, bishops and religious superiors were to consider 'whether steps should be taken to impose a canonical penalty and what should be done to remedy any scandal'.[233] This could include processes for laicisation or dismissal, discussed in Section 13.8.9 below. The 1990 Protocol provided that, 'In making these decisions, the bishop or major superior must give first priority to preventing, as far as possible, any future risk to others, especially children'.[234] Some of these provisions also appeared in the 1991 and 1992 Protocols.[235]

Similarly, Towards Healing (1996) contained no explicit reference to restrictions on ministry. It simply stated that, 'If Church authorities are satisfied that an accused is guilty of sexual abuse, they shall take such action as the situation and the seriousness of the offence demand'.[236] The Catholic Church authority was to 'meet with the offender to discuss honestly and openly the offender's future options'.[237] Towards Healing (1996) also contained provisions envisaging the laicisation or dismissal of offending priests and religious from the priesthood or religious life.

In *The Towards Healing process* case study, we heard that Brother Raymond Foster was withdrawn from ministry in August 1994 after the provincial, Brother Turton, became aware that police had spoken with Brother Foster in relation to a complaint of child sexual abuse. Brother Turton gave evidence that after transferring Brother Foster to the Marist Community residence in Eastwood, New South Wales, where he was allocated general duties, he directed Brother Foster not to be associated with children. Brother Turton said that he may have also told the person in charge in Eastwood about the charges Brother Foster was facing but that he could not be sure. He said that 'there was no other plan made out at that stage'.[238] Brother Foster was later moved to the Marist Centre in Mittagong, New South Wales, and worked in the administration wing before committing suicide in March 1999 on the morning he was to be extradited to face the charges.[239]

In another case, while sentencing Christian Brother Rex Elmer in 1998, a judge said that Brother Elmer had been recalled to Australia from his position teaching at a school in Africa in 1993 after complaints about him surfaced.[240] A Special Issues Incident Report provided by the Christian Brothers to CCI in 1994 also said, 'Brother removed from ministry with boys in accordance with policy regarding any substantial allegations'.[241] Brother Elmer was subsequently appointed to an administrative position as a clerk at the main provinciate of the Christian Brothers in Parkville, Victoria.[242]

Similarly, a 1994 Special Issues Allegation Report by the Marist Brothers said that Brother GLW was 'totally withdrawn from any contact with young people' after allegations of sexual abuse were made by two students in 1992.[243] The report said that Brother GLW was appointed to positions in curriculum design and adult education and was restricted from teaching non-adults after this time.[244]

As discussed in Section 13.4, CCI determined that the Archdiocese of Sydney had knowledge of Father Robert Francis Flaherty's propensity to offend by 29 November 1972.[245] Following this, Father Flaherty was appointed to various parishes across New South Wales until at least 1994.[246] In 1996, NSW Police interviewed Father Flaherty in relation to allegations of sexual abuse, which he denied.[247] The Archdiocese of Sydney told CCI in 2015:

> Notwithstanding this, the Archdiocese considered it appropriate in terms of risk management to remove Flaherty from any full time parish ministry. He was appointed to a role ministering to a number of nursing homes (where he did not have direct unsupervised contact with children) until he retired in September 2010.[248]

A document provided by the Christian Brothers to CCI regarding Brother Roberts said that in 1992 a complaint was made by parents that 'Brother [Roberts] had behaved inappropriately' with two students.[249] A letter from a psychiatrist who assessed Brother Roberts said that, following this complaint, he was removed from school teaching and direct contact with young people.[250] From 1992 until 1995, Brother Roberts held various appointments, including to the Australian Conference of Leaders of Religious Institutes in New South Wales.[251] Following his conviction in 1994 for child sexual offences which occurred at a Christian Brothers school in Sydney in the 1970s,[252] Brother Roberts was in teaching positions in adult education in Villawood Immigration Detention Centre and then in Burwood in New South Wales.[253] Brother Roberts disclosed during an Encompass assessment in 2000 that he had sexual contact with adult women who were his students during the time he was employed in adult education.[254] In 2001, he was appointed to the provincial administration in Balmain and was subsequently working in administrative roles.[255]

Alleged perpetrators could also be sent overseas to positions where they would not have direct access to children. CCI determined that the Salesians had knowledge of Father Klep's propensity to offend by 31 May 1986.[256] In December 1994, Father Klep was convicted of the indecent assault of two victims.[257] In April 1998, he was appointed to the Moamoa Theological College in Samoa.[258] In a press release, Father Ian Murdoch, the provincial from 2000 to 2002, said:

> Moa Moa Theological College in Samoa (where Father Klep is currently stationed) is certainly not a glamorous location. It is a teaching institution working with adult seminarians and adult catechists. The college is not part of any local parish. It does not encompass any school for minors or any youth centre. Father Klep's activities there are administrative in nature.[259]

In 2004, Father Klep was deported from Samoa to Australia, where he was convicted in 2005 of sexual offences committed against 11 victims between 1973 and 1979 at a Salesian school in Victoria.[260] CCI's lawyers told CCI that Father Klep did not disclose his 1994 conviction on his visa application for Samoa.[261]

13.8.7 Removal from ministry

> In dealing with allegations of paedophilia, a bishop can remove a priest's 'faculties' reasonably easily, and without much fuss. The canonical process of laicization, however, involves to-and-fro communications with the Vatican – a process which is more complex, more formal, and the end-result, more or less the same. Why, therefore, go through the torture of a canonical process if the same practical result can be achieved more quickly, with less people involved, less scandal, less heartache all-round?[262]
>
> **Dr Christopher Geraghty, retired judge of the District Court of New South Wales, former priest and seminary lecturer**

The 1990 Protocol provided minimal guidance to Catholic Church authorities as to what action they should take with respect to an alleged perpetrator following completion of the investigatory stage. It stated that:

> Where it appears that legal proceedings are unlikely the bishop or major superior must personally consider whether it is prudent to reinstate the accused, reassign him, provide psychological therapy, or institute a canonical process for the imposition of a penalty.[263]

It then stated that, if there was no committal for a civil trial or if the priest or religious was acquitted in a civil trial, the bishop or major superior must still consider these matters. If the priest or religious pleaded guilty to criminal charges or was convicted, 'the bishop or major superior should carefully consider, in the light of any criminal penalty, whether steps should be taken to impose a canonical penalty and what should be done to remedy any scandal'. This required consideration of canon 1395 and the possibility of laicisation or dismissal.[264]

These provisions were largely replicated in the 1991 Protocol.[265] However, the reference to recourse to canonical penalties was removed from the 1992 Protocol. Under the 1992 Protocol, if legal proceedings appeared unlikely, or an alleged perpetrator was not committed for trial or was tried and acquitted, a bishop or religious superior was only to consider 'whether it is prudent to cease the period of administrative leave, reassign the accused or provide him with psychological therapy'. Similarly, where an accused's guilt was admitted or proved, the bishop or religious superior was to 'consider, in the light of any criminal penalty, what action should be taken in regard to the accused and what should be done to remedy any scandal'.[266]

In paragraph 9, titled 'Outcomes related to the accused', Towards Healing (1996) provided that, when complaints were not resolved following civil law processes or a Catholic Church assessment, 'the Church authority must decide whether it is appropriate for the accused to continue in ministry or return to ministry while the doubt remains'.[267] It also made reference to the risk of 'scandal' or of abuse to others, stating that priests or religious were to take administrative leave until the matter was resolved.[268]

Towards Healing (1996) advised that, when Catholic Church authorities were satisfied that an accused was guilty of sexual abuse, they were to 'take such action as the situation and the seriousness of the offence demand'.[269] It stated further:

> in the case of a cleric or religious, it means that they will never be given back the power they have abused, and it can include a request that the person concerned apply to return to the lay state, or even the commencement of a canonical penal process in accordance with canons 1717–1731.[270]

In Section 13.8.9 below we discuss what we learned with respect to the application of canon law penalties in cases of child sexual abuse from the early 1990s.

As discussed in Sections 13.2 and 13.5, canon law contains provisions enabling bishops to withdraw the faculties of priests in circumstances involving allegations or convictions for child sexual abuse. The withdrawal of faculties has the effect of removing an alleged perpetrator or convicted offender from positions in ministry, although they retain their status as a priest. While it appears that withdrawal of faculties was considered to be a 'censure' rather than a 'penalty' under canon law and could not be imposed as a permanent measure, it may have been used in some cases to remove offending priests from ministry as an alternative to the more difficult process of laicisation or dismissal, discussed below.

As mentioned in Section 13.8.4 above, in May 1993 the Bishop of Parramatta, Bishop Heather, established a Special Enquiry in part to investigate allegations of sexual abuse which had been made against senior brothers in the Society of St Gerard Majella (the Society), being Brothers Sweeney, Robinson and Pritchard.[271] In addition to being brothers in the Society, all three were ordained as priests.[272]

The Special Enquiry concluded that all the allegations it had received against the three brothers of 'sexual impropriety' (which the authors said was a term used synonymously with sexual abuse) were substantiated.[273] The allegations related to multiple incidents and multiple victims, and the incidents of abuse spanned from the late 1960s to the early 1990s. It is apparent from the Special Enquiry's report and its appendices that some of the victims alleged they were under 18 years old at the time the abuse started.[274] The Special Enquiry also explicitly stated that Brother Sweeney had 'perform[ed] acts' with 17–26-year-olds.[275]

The Special Enquiry recommended that Bishop Heather have Brother Robinson resign as superior general of the Society and that he should withdraw all faculties from Brothers Sweeney, Pritchard and Robinson and forbid them from exercising any priestly ministry.[276]

Following the report of the Special Enquiry, in September 1993 Bishop Heather made a number of determinations in relation to each of the brothers the subject of the substantiated complaints.[277]

In relation to Brother Pritchard, who in April 1993 had been convicted of indecently assaulting a 17-year-old, the bishop urged him to 'seek a Decree of Laicisation and Dispensation from religious vows'.[278] Bishop Heather determined that Brother Pritchard should 'in the meantime refrain from all exercise of priestly ministry, including the private celebration of Mass'. The bishop stated that he was imposing the prohibition on priestly ministry 'because of the high probability' that Brother Pritchard 'has incurred an irregularity on the grounds of psychological infirmity', referencing canons 1041.1 and 1044.2.[279] Brother Pritchard had been diagnosed in July 1993 with 'Biological Depression'.[280]

In relation to Brother Robinson, Bishop Heather determined he would be asked to resign as superior general (and removed if unwilling) and be forbidden to hold any office in the Society 'until I or my successor determine otherwise'. He directed that Brother Robinson was not to exercise his priestly ministry 'for the present' but noted that this 'may be reviewed after six months'.[281] Bishop Heather also noted that Brother Robinson had been undergoing therapy and determined that 'Brother Stephen is to continue in therapy until convincing evidence is offered of deep and lasting rehabilitation'.[282]

A year later, in September 1994, Brother Robinson was employed at St John's Riverstone, a primary school. He wrote a letter to Bishop Heather thanking him for assisting him in getting the appointment.[283] Bishop Heather later wrote that Brother Robinson was teaching there.[284]

In relation to Brother Sweeney, in September 1993 Bishop Heather allowed him to continue in priestly ministry, despite the Special Enquiry's finding that the allegations against him were substantially true.[285] Bishop Heather noted that, in coming to this decision, he took into account Brother Sweeney's record of pastoral care in the Parish of Greystanes; his 'position and record … as Founder of the Society'; and the 'absence of any allegation of impropriety outside the Society of St Gerard Majella'.[286] However, Bishop Heather did forbid Brother Sweeney from holding any office in the Society 'until such time as I or my successor determine otherwise' and directed:

> In accordance with CIC Canon 277 I require Brother John Sweeney to take all prudent measures for the observance of chastity required of a religious and a cleric. In particular I forbid him to give counsel to any individual Brother of the Society except in a place where their relationship is public and visible.[287]

However, five months later, following a subsequent, separate investigation of a new allegation of child sexual abuse that had been made against Brother Sweeney, Bishop Heather informed him that he expected him to take leave from the Society for at least 12 months and to refrain from exercising any public priestly ministry.[288]

A fuller narrative about the Society is contained in Appendix D.

In another case, in July 1993, the vicar general of the Archdiocese of Melbourne wrote to Father Kevin O'Donnell, who was later convicted on multiple counts of indecent assault of children, informing him that he no longer had any faculties or priestly ministry in the archdiocese. The letter specified that Father O'Donnell could celebrate Mass privately 'in circumstances which could not lead anyone to conclude that you have any priestly appointment' and required that he advise any clergy who requested assistance that he was not available for priestly ministry.[289]

Similarly, in 1996, after Father Victor Rubeo had pleaded guilty to two counts of indecent assault of two boys, the acting vicar general of the Archdiocese of Melbourne wrote to him, stating that Father Rubeo no longer had 'any faculties or priestly ministry' in the archdiocese at that time. The letter also stated that Father Rubeo could celebrate Mass privately 'in circumstances which could not lead anyone to conclude that you have any current priestly appointment'.[290]

In the *Catholic Diocese of Wollongong* case study we found that Bishop Wilson sought advice from several sources, including the Congregation for the Doctrine of the Faith (CDF), the Congregation for the Clergy and specialists in canon law, before having Father Nestor subjected to an assessment under Towards Healing.[291] Archbishop Wilson explained that, at the time he sought this advice, there was great confusion among canon lawyers about the proper procedures to follow in these sorts of cases.[292]

During the period covered by the *Catholic Diocese of Wollongong* case study (1996–2009), there was confusion in both the Holy See and the wider Catholic Church about who in the Holy See had jurisdiction in cases involving allegations of child sexual abuse by clergy.[293] As discussed in Section 13.7, in 1998, after Towards Healing assessors found that the complaints against Father Nestor could be sustained on the balance of probabilities, Bishop Wilson issued two decrees to him. The first required him to undergo a full appraisal by Encompass and the second restricted him from celebrating the liturgy publicly.[294]

Father Nestor then applied to the Congregation for the Clergy to have at least Bishop Wilson's first decree set aside.[295] The Congregation for the Clergy eventually upheld Father Nestor's appeal and found that the Towards Healing assessment and Bishop Wilson's subsequent decree had failed to comply with the proper canon law processes.[296] The Congregation for the Clergy required that Father Nestor be restored immediately to full exercise of his priestly ministry, even though senior leadership in Australia believed that substantial doubts remained about his suitability for ministry.[297]

The Congregation for the Clergy's decree was eventually overturned in 2006 by the Apostolic Signatura, following an appeal by the Diocese of Wollongong.[298] The Apostolic Signatura found that the Congregation for the Clergy was not competent to hear the matter and that it had erred in finding that Bishop Wilson's decree was penal in nature.[299] It noted that changes in canon law that occurred after the Congregation for the Clergy's decree (the 2001 motu proprio, discussed in Section 13.2) meant that it was the CDF that had 'exclusive competence' in determining the matter.[300] As discussed in Section 13.8.9, Nestor was ultimately dismissed from the priesthood in October 2008.

In the *Catholic Archdiocese of Melbourne* case study, we heard that Father Searson's faculties were rescinded at the same time that he was placed on administrative leave in 1997. This action followed a recommendation by Independent Commissioner Mr O'Callaghan QC to then Archbishop George Pell. Archbishop Pell commenced the canonical process to remove Father Searson's faculties in 1998.[301] Similarly, in 1997 Archbishop Pell placed Father Baker on administrative leave and rescinded his faculties following a recommendation from Mr O'Callaghan QC.[302] In February 1994, Father Nazareno Fasciale's faculties were withdrawn after he had been allowed to resign, ostensibly on health grounds.[303]

In the *Melbourne Response* case study, Archbishop Hart told us that every priest against whom an Independent Commissioner has made a finding has had their faculties removed. He also said that, as well as withdrawing a priest's faculties, Catholic Church authorities are able to impose additional conditions, including prohibiting that priest from being in the presence of children without another adult and imposing a reporting obligation on that priest in relation to their living arrangements or movements. He described this as a 'penal precept'.[304]

Archbishop Hart explained in evidence that this action can be taken independently of 'Rome'; however, he has typically taken this action alongside a referral for dismissal, as discussed in Section 13.8.9 below. He said:

> I have the power to – provided the gravity of the matter is established according to Canon Law, I have the power to impose a penal precept, and it may be in the case, as I have done, of someone who is elderly, but I make sure that they – particularly if there's a matter of sexual abuse, I have referred the matter to Rome and they have said to me, 'Look, you are to impose a penal precept', and the typical penal precept that I impose is at all times I have to know where the person is living. Secondly, that they are not to be in the presence of children without someone else in loco parentis. Thirdly, if they travel or go on holidays at any time, we are to know where they are and what they are doing so that we can notify the relevant Bishop of their status and of where they are travelling. They are the main sorts of things.[305]

13.8.8 Resignation or retirement from the priesthood

As discussed above, during the early 1990s, Father Lucas and Father Usher were asked to conduct interviews with alleged perpetrators of child sexual abuse with the aim of persuading them to admit to the allegations that had been made against them and to agree to resign from ministry.

In the *Catholic Archdiocese of Melbourne* case study, we found that there was a prevailing culture of secrecy within the archdiocese, led by Archbishop Little, in relation to complaints. Complaints were dealt with in a way that sought to protect the archdiocese from scandal and liability and prioritised the interests of the Catholic Church over those of the victims. This included the archbishop disguising the fact that priests had resigned because they were accused of child sexual abuse by attributing their resignations solely to ill health.[306]

Father Fasciale was permitted to resign in 1993 on health grounds. However, we found that Father Fasciale did not resign solely because of his health. His resignation was also a result of complaints that he had sexually abused children in the 1950s and 1960s and because assurances had been given to the complainants that he would no longer minister.[307] Father Desmond Gannon tendered his resignation in 1993. We found that the vicar general, Monsignor Cudmore, told Father Gannon there would be a public acknowledgement of his retirement due to sickness.[308] Father Daniel was permitted to resign in 1995 on grounds of ill health. However, we found that the true reason for his resignation was that complaints had been made against him of child sexual abuse and other sexual misconduct with adults.[309]

Other priests were bestowed with honorific titles, such as Pastor Emeritus, at the time of their resignation despite being the subject of accusations or having made admissions of child sexual abuse. The honorific title of Pastor Emeritus makes the retired priest eligible for remuneration and allowances from the Priests' Retirement Foundation.[310]

Archbishop Little appointed Father Gannon as Pastor Emeritus following his resignation in 1993. We found that, by this time, Father Gannon had admitted to engaging in sexually inappropriate behavior with several children, and this was known to Archbishop Little.[311]

On 24 May 1993, Archbishop Little instructed Monsignor Cudmore to respond to Father Gannon's resignation letter and appoint him as Pastor Emeritus, advising, 'the more quickly he is appointed Pastor Emeritus the better'. At Archbishop Little's request, a letter was written to Father Gannon backdated to 7 May 1993 which said that Archbishop Little accepted Father Gannon's resignation and appointed him Pastor Emeritus. Archbishop Little also thanked Father Gannon for his service with 'zeal and love over 37 years' and wrote that Father Gannon had 'always given the highest standard of pastoral care'.[312]

Bishop Connors told us that appointing Father Gannon Pastor Emeritus was a 'way of concealing the true situation' and 'kind of a cover up' of the true reasons for Father Gannon's resignation, being sexual misconduct with minors. Archbishop Hart gave evidence that the title of Pastor Emeritus is honorific and to apply it to Father Gannon was 'Quite inappropriate'. He accepted it permitted Father Gannon to be thought of in the community as a priest of good standing.[313]

Indeed, some months after Father Gannon's resignation, the president of the Macleod Parish Pastoral Council (where Father Gannon had been the parish priest) wrote to Father Gannon. The president noted that Father Gannon's devotion to the parish sapped his health to the extent that his early retirement was necessary and recorded that parishioners had made a donation of $3,500 to Father Gannon as a 'token of their appreciation'. When asked whether the pastoral council letter suggested that parishioners were not informed of the conduct giving rise to Father Gannon's resignation, Archbishop Hart agreed. Archbishop Hart said it was a 'serious deception of people'. We found that Father Gannon's resignation on health grounds was done to conceal the fact that he was resigning because he had admitted to sexually

inappropriate behaviour with minors. It was a serious deception and misled the parishioners of Macleod. We found that Archbishop Little's instruction to appoint Father Gannon as Pastor Emeritus was wrong. It conveyed, falsely, that Father Gannon was a priest in good standing.[314]

In April 1995, Father Gannon was convicted of nine counts of indecent assault. He was convicted of further offences in 1997, 2000 and 2003. In 2009, he was further charged and convicted of five counts of indecent assault on a male person, sentenced to a term of imprisonment and registered as a sex offender.[315]

On 18 March 1993, Father Ronald Pickering wrote to Archbishop Little requesting that he be permitted to retire prematurely. He wrote that he had found himself unable to cope with the pressures and stresses of ministry and wished to relocate to Hobart. Father Pickering's doctor wrote a medical certificate in support of his application.[316] In addition to requesting permission to retire early Father Pickering also requested that the archbishop appoint him Pastor Emeritus.[317]

About a week later, on 26 March 1993, Archbishop Little wrote to Father Pickering and 'reluctantly' granted his request for early retirement. He appointed Father Pickering as administrator at Gardenvale until 30 June 1993 and informed him that his request for appointment as Pastor Emeritus would be discussed at the next meeting of the Personnel Advisory Board. In the letter Archbishop Little wrote:

> I must say that the letter came as a surprise to me. You have given your heart and soul to the pastoral care of the parish of Gardenvale for some thirteen years now. The people there know you, respect you, and marvel at the ways in which with brilliant vocabulary and imaginative description you have shared with them your faith.[318]

We found that the letter was clearly inappropriate in light of Archbishop Little's knowledge of complaints and concerns that Father Pickering had sexually abused children.[319]

Father Pickering was not due to retire until the end of June 1993. However, he left Gardenvale prematurely in about mid-May and travelled to the United Kingdom.[320] In June 1993 Father Pickering wrote to Monsignor Cudmore and raised his earlier request to Archbishop Little that he be appointed Pastor Emeritus. Father Pickering also requested that he be paid the same allowance that retired priests in the archdiocese received.[321] As discussed below, while Archbishop Little did not appoint Father Pickering Pastor Emeritus, he sought and obtained approval from the Priests' Retirement Foundation to pay entitlements to Father Pickering as though he were Pastor Emeritus.[322]

13.8.9 Laicisation, dispensation and dismissal

> Diocesan bishops and their auxiliaries were clearly victims of the iron grip of Rome upon their powers to govern their own dioceses. Canon law made it difficult enough to suspend offending priests, and even to place precautionary limitations upon their faculties or their access to young people. That law made it nigh on impossible for bishops to remove offending priests from the priesthood permanently.[323]
>
> **Dr Michael Leahy, political and educational philosopher and former priest**

In Section 13.5 we noted that, prior to the 1990s, it was apparent that Catholic Church authorities in Australia did not utilise the canon law processes for involuntary dismissal in cases involving child sexual abuse.

The processes available for the involuntary dismissal of a priest or religious found to have committed child sexual abuse were also not frequently used during the 1990s and early 2000s. The reasons for this are discussed further below and in Section 13.11.6. They appear to have been utilised increasingly since changes to Vatican procedures during the 2000s. However, some Catholic Church authorities in Australia, particularly religious congregations, have preferred to keep offending priests or religious within the structures of the Catholic Church rather than to dismiss them. We discuss this practice and make recommendations with respect to dismissal in Chapter 21.

Use of canon law procedures

In the course of our *Melbourne Response* case study, the Archdiocese of Melbourne provided us with data indicating that before 2001 only two priests from the archdiocese had been returned to the lay state for reasons relating to child sexual abuse.[324] The data we collected from 92 Catholic Church authorities in Australia which reported having received one or more claims of child sexual abuse indicated that, of the 572 identified priests who were subject to claims of child sexual abuse made between 1 January 1980 and 28 February 2015, 63 of them were referred to the Holy See under canon law processes.[325] Of those 63 priests, the result of the referral was (voluntary) laicisation in 42 per cent of cases and (non-voluntary) dismissal in 13 per cent of cases. In 24 per cent of cases the matter was still pending, while in 18 per cent the cases were dealt with in some other way, and in 3 per cent no action was recorded.[326] Of the canonical applications to the Holy See for non-ordained religious against whom allegations of child sexual abuse have been made, 95 per cent were dispensed from vows, and only 3 per cent were dismissed.[327]

The reluctance of Catholic Church leaders to engage with canonical disciplinary processes may have been caused, in part, by confusion about those processes, as well as by a view that the Holy See tended to resolve matters in favour of offending priests. It may also have been due to the fact that formal canonical disciplinary processes took considerable time.

Following his conviction on charges relating to the sexual abuse of children in 1978 and the withdrawal of his faculties, in 1984 Father Michael Glennon tendered his resignation and wrote that he wished to apply for laicisation. However, Archbishop Hart told us that Father Glennon subsequently refused to apply for laicisation and instead his faculties were withdrawn more formally and 'permanently'. In 1990, Archbishop Little made a first application to the Congregation for the Clergy for a decree of dismissal with respect to Father Glennon. Archbishop Hart told us that the reason that the petition was submitted some six years after Father Glennon's faculties had been formally withdrawn was that he refused to apply for laicisation and the archdiocese had to obtain advice on whether it was possible for the bishop to be a petitioner. In September 1994, Archbishop Little renewed the petition for dismissal, with further argument in support, but this was unsuccessful.[328]

A third petition made by Archbishop Pell to the CDF in 1998 was ultimately successful and resulted in Glennon's dismissal. We found that it was not clear why the 1998 petition was successful but the two previous petitions were not.[329] It took eight years from the time of the archdiocese's first petition, and 20 years from his first conviction, for Glennon to be dismissed from the priesthood. We further found that there was a lack of clarity as to the application of canon law in response to each of the three petitions regarding Father Glennon.[330]

In 2009, following its investigation into the handling of allegations and suspicions of child sexual abuse against clergy in the Archdiocese of Dublin from 1975 to 2004, the Dublin Archdiocese Commission of Investigation commented on the confusion surrounding the applicable rules of canon law and stated that it was 'very concerned about the lack of precision in canon law about the power of bishops to exercise control over offending priests'.[331] It also concluded that:

> The Church authorities failed to implement most of their own canon law rules on dealing with clerical child sexual abuse … In particular, there was little or no experience of operating the penal (that is, the criminal) provisions of that law … For many years offenders were neither prosecuted nor made accountable within the Church.[332]

Tendency to favour the rights of priests

Some Catholic bishops appear to have shared the view that it was difficult to have a priest dismissed from the clerical state, as the authorities in the Holy See tended to act in favour of offending priests when considering applications for their removal. We heard that this was particularly the case before 2001, at which time petitions for dismissal were ultimately sent to the Congregation for the Clergy. In some cases from this earlier time period, this difficulty may have contributed to delays in seeking laicisation.

In the *Melbourne Response* public hearing, Archbishop Hart told us that he found from 'bitter experience' that it was extremely difficult to have a priest dismissed against his will.[333] Archbishop Hart told us that the Congregation for the Clergy 'were very conscious of the rights of individual priests and very conscious therefore of the relevant procedure'.[334] He said:

> I think the difficulty would be, particularly with the Congregation for Clergy, with the serious concentration on procedure. If every 'I' wasn't dotted and 'T' crossed in the way that they wanted, then there was a leaning in favour of a priest who might have been accused of something.[335]

Archbishop Hart told us that, at the time of the first petition to have Father Glennon dismissed in 1990, the Holy See was 'concerned with some of the ways in which it [the petition] was presented and they declined to act'.[336] He thought the reason the Holy See declined the petition was that Father Glennon had refused to 'petition himself'. He said, 'the attitude of the Congregation for the Clergy at that time was … very much to be sensitive to the particular priest rather than what the Bishop was trying to do'.[337]

In some cases, Australian Catholic bishops may have avoided initiating canon law processes for the dismissal of offending priests for the very reason that the application for dismissal could be challenged or rejected by the authorities in the Vatican.

During the *Catholic Archdiocese of Melbourne* hearing, Archbishop Hart told us that while Archbishop Little was the Archbishop of Melbourne between 1974 and 1996, he looked for some solution other than taking disciplinary action in the form of removing a priest, 'because the removal involved a canonical process which could be vitriolic and could be challenged'.[338] The following exchange took place between Archbishop Hart and Senior Counsel Assisting:

> Q. But that couldn't possibly be the case, could it? The system would be entirely dysfunctional if one didn't take action because someone might not like it and appeal to a higher authority?
>
> A. I'd have to say that Archbishop Little didn't like confrontation and, therefore, the thought of forcing a man out from an appointment might force him to leave the priesthood and that, he found, terribly distasteful.[339]

Bishop Deakin, former Vicar General and Auxiliary Bishop of the Archdiocese of Melbourne, said Archbishop Little was worried about having 'egg all over his face',[340] and it was his 'considered opinion' that:

> one of things that motivated Archbishop Little about what to do … on paedophilia … was his fear of the reach of Roman canon law; knowing that, if a priest possibly was found guilty, he would appeal to Rome, and the Roman authorities … would find in favour of the priest and against the Bishop.[341]

During the hearing, Bishop Connors was asked about the canonical process for the removal of a priest in the context of the allegation that Father Searson pointed a gun at parishioners. The following exchange took place between Bishop Connors and Senior Counsel Assisting:

> Q. So, are we to understand that the problems with the church in managing its priests extend to the possibility that, when a priest points a gun at parishioners, the Bishop couldn't act to have him removed?
>
> A. Well, there is a process in the code of canon law for the removal of a parish priest.
>
> Q. We understand that. What I'm asking you is, is it the position that that process is so difficult that the Bishop may not be able to remove from a parish a priest who is pointing a gun at parishioners?
>
> A. If the Bishop were to go through the process to remove the parish priest, a parish priest can then make an appeal against the decision of the Bishop to the authorities in Rome.
>
> Q. So, are you telling me that it's possible that the system would work so that the priest could not be removed?
>
> A. It's possible that the appeal would be accepted by the authorities in Rome and the priest would have to be reinstated.
>
> Q. You understand that that would be unacceptable to many, many people, don't you?
>
> A. I understand that, it certainly would be unacceptable.[342]

The case of Father Nestor, discussed above, also appears to illustrate that the Congregation for the Clergy may have tended to favour priests who appealed against a decision that adversely affected them, even in cases where dismissal was not sought. When Father Nestor applied to the Congregation for the Clergy to have Bishop Wilson's first decree set aside, the Congregation for the Clergy 'strongly urged' Bishop Wilson to seek a pastoral resolution of the matter with Father Nestor.[343] Archbishop Wilson gave evidence that he understood that the Congregation for the Clergy tended to support priests because they were responsible for the care of clergy.

He explained that, at that time, especially in the United States, when bishops were trying to deal with cases involving sexual abuse, the Congregation for the Clergy would make 'things difficult for them', giving instructions to the bishops that the priests be allowed back into ministry.[344]

Bishop Robinson told us that, in refusing to give Father Nestor a new appointment, Bishop Peter Ingham 'was putting his job on the line'.[345] He said, 'Had push come to shove, the Congregation would have insisted that he do it or else resign'.[346] He continued:

> Bishops will, on occasions, disobey a Cardinal Prefect of a Congregation. They won't disobey a Pope and that's the ultimate gun that the people in Rome have … Had that Cardinal in Rome … gone to the Pope and got the Pope to order [Bishop Ingham], I think [Bishop Ingham] would have found himself in an impossible position. You know, he did not want to give Nestor a job of any description, but he would have found it impossibly difficult to say no to a Pope.[347]

In the *Catholic Archdiocese of Melbourne* case study we received evidence that in January 2011, Archbishop Hart submitted a canonical application to the Congregation of the Doctrine of the Faith recommending that Father Gannon be laicised because of his 'evil acts'. The application referred to evidence from BTP and other victims. In a response in October 2011, a cardinal of the CDF advised Archbishop Hart that, due to Father Gannon's 'advanced age and his feebleness', he would be permanently removed from public ministry and from any contact with minors, with his faculties to remain suspended. The cardinal also asked Archbishop Hart to issue a penal precept, which he did.[348] In his statement, Archbishop Hart said that 'This involved a necessary rejection of my application that Father Gannon be dismissed from the clerical state'.[349] The cardinal wrote that Father Gannon's failure to abide by the imposed disciplinary measures could result in a penalty, such as his dismissal from the clerical state.[350]

On 18 December 2012, Archbishop Hart wrote to the CDF and asked for a reassessment of the adequacy of measures in place. He wrote:

> I am concerned the good name of the Church, and the strong and energetic efforts that are being made within the Archdiocese of Melbourne to protect children, could be damaged unless Reverend Desmond Gannon is laicised.[351]

However, Father Gannon was not laicised.[352] He died on 12 April 2015.[353]

Delays in making applications for dismissal

Delays on the part of some Catholic bishops to initiate canon law disciplinary proceedings have resulted in child sexual offenders remaining in positions within the Catholic Church for an extended period of time after the date that their guilt had been admitted or established. There continued to be delays even after 2003, when a bishop could apply to the CDF for a dismissal by administrative decree.

In May 1997, Father Baker was placed on administrative leave and his faculties were rescinded by Archbishop Pell. In 1999, Father Baker pleaded guilty and was convicted of 16 counts of indecent assault and one count of gross indecency with a male person between 1960 and 1979.[354] Following Father Baker's release from prison in 2002, he was removed from ministry but remained a priest of the archdiocese without his faculties.[355] Archbishop Hart applied for his laicisation in 2010. Baker was dismissed by papal decree in 2012. [redacted]

[redacted]

In another case from the Archdiocese of Melbourne, Father Rubeo pleaded guilty in 1996 to two counts of indecent assault. His faculties were removed in August 1996.[358] Almost 14 years later, in 2010, Archbishop Hart made a decision to proceed with an application to the CDF for recommendation to the Holy Father that a dispensation from the obligations of the clerical state be granted to Father Rubeo. Archbishop Hart gave evidence that he felt it was important to refer Father Rubeo's matter to 'Rome' to ensure that they were aware of his convictions. He said that he sent copies of the court decisions involving Father Rubeo to 'Rome'. Later that same year, police charged Father Rubeo with an additional 30 counts of indecent assault. On 31 August 2011, Archbishop Hart forwarded a petition to the CDF seeking Father Rubeo's dismissal. On 16 December 2011, the day he was due in court for the committal hearing, Father Rubeo died. Archbishop Hart gave evidence that Father Rubeo died before the CDF had determined the petition.[359]

In *The Towards Healing process* case study, we heard that in 1998 Father Francis Derriman was convicted of two counts of indecent dealing against Mrs Joan Isaacs and sentenced to one year imprisonment, to be suspended after serving four months.[360] We found that the Catholic Church knew of his conviction in 1998. The Archbishop of Brisbane, Archbishop Mark Coleridge, did not commence the canonical process to dismiss Father Derriman until November 2013, 15 years after his conviction.[361] During the public hearing, Archbishop Coleridge told us that this was ultimately a failure of oversight by the former Archbishop of Brisbane, Archbishop John Bathersby, and that:

> It was … extremely difficult to move against a priest who had abandoned ministry, without his consent. This was changed in the early 2000s when the Holy See changed its own provisions, where now it is far easier to dismiss a priest against his will … That would be one of the factors that would explain why there was such a failure to move, to have him dismissed from the clerical state.[362]

Another example of delay is provided by the case of Brother Pritchard, who was a brother in the Society and also an ordained priest.

In April 1993 Brother Pritchard was convicted of indecently assaulting a 17-year-old naval cadet.[363] Later in 1993, the Special Enquiry set up by the Bishop of Parramatta, Bishop Heather, found allegations against Brother Pritchard of child sexual abuse to be substantiated.[364] Bishop Heather urged Brother Pritchard to 'seek a Decree of Laicisation and Dispensation from religious vows', as his 'real chance of leading a normal religious and clerical life in the future is very poor'.[365] Bishop Heather determined that Brother Pritchard should 'in the meantime refrain from all exercise of priestly ministry, including the private celebration of Mass'. Bishop Heather also determined that Brother Pritchard should not live 'for the present' in a community of the Society.[366]

In 1994, when Bishop Heather informed the brothers that the Society was in the process of dissolution and asked each of the remaining members to indicate their intentions, Brother Pritchard formally declared his intention to seek dispensation from his vows in the Society. However, he explicitly stated that he was not requesting a dispensation from the obligation of the priesthood and asked to be placed 'under the special care of the Bishop of Parramatta'.[367]

In April 1995, Brother Pritchard was charged with 14 counts of indecent assault, three counts of buggery and two counts of sexual intercourse without consent.[368] Three of the counts related to victims who were under 18 years of age at the time.[369]

On 11 August 1995, after advice from the Congregation for Institutes of Consecrated Life and for Societies of Apostolic Life in Rome, Bishop Heather granted Brother Pritchard dispensation from all his vows and obligations as a brother in the Society. The bishop noted that the 'obligation of celibacy arising from the priesthood remains'.[370]

On 18 August 1997, Brother Pritchard pleaded guilty to four charges of sexual offences in respect of four complainants, including the indecent assault of a 16-year-old.[371] Brother Pritchard also asked that a further four sexual offences (against persons aged 18 or over), for which he admitted guilt, be taken into account for the purposes of sentencing.[372] On 12 November 1997, he was sentenced to a total of six years' imprisonment with a non-parole period of four years for his offending over a 19-year period, which related to eight different complainants, all of whom were aged between 16 and 21 years.[373]

It was only on 25 June 2013 that (then) Bishop of Parramatta, Anthony Fisher, petitioned the pope to dismiss Brother Pritchard from the clerical state, given the convictions against him in 1993 and 1997 for sexual assault, including with victims under 18 years of age.[374] Pope Francis dismissed Pritchard from the clerical state by decree dated 13 December 2013, noting 'if there is a danger of abusing minors, the Ordinary can divulge the fact of the dismissal and even the canonical reasons'.[375]

A discussion of the Society is contained in Appendix D.

Delays in the process

The response of the Holy See to applications from Australian Catholic bishops for dismissal of offending priests and religious, as well as for voluntary laicisation or dispensation, often involved significant delays. As a result, some child sexual offenders formally remained in positions within the Catholic Church for an extended period of time while applications for their dismissal or laicisation/dispensation were being considered by the authorities in the Holy See. As discussed above, in the case of Father Glennon, it took eight years from the time of the Archdiocese of Melbourne's first petition in 1990, and 20 years from his first conviction, for Glennon to be dismissed from the priesthood.[376]

In May 1997, the Prefect of the Congregation for Divine Worship and the Discipline of the Sacraments wrote to the ACBC acknowledging a letter dated 21 January 1997 in which the ACBC 'expressed the concern of members of the conference regarding perceived delays in the granting of dispensations from the obligations of the Priesthood, including celibacy'. In the letter of reply, the prefect of the congregation wrote that, for cases prepared in accordance with the relevant 'Norms' and where the decision was affirmative, dispensations were granted on average within four months. The letter stated that the reason for delays was that the congregation 'has not found the case well instructed and has needed to request further documentation'. In addition, the correspondence noted that, in situations where a priest had not yet reached 40 years of age, consideration of the request was deferred, 'as a precautionary measure … insisted upon to sustain an esteem for priestly celibacy, to correct the erroneous impression that dispensations may be easily obtained, and to preclude creating scandal amongst the clergy or the faithful'.[377]

In 2004, the National Review Board for the Protection of Children and Young People established in 2002 by the United States Conference of Catholic Bishops observed that 'The Vatican did not recognize the scope or gravity of the problem facing the Church in the United States despite numerous warning signs; and it rebuffed earlier attempts to reform procedures for removing predator priests'.[378] It continued:

> Beginning in the 1980s, a number of influential bishops in the United States began asking the Vatican to institute an expedited administrative process for the removal of priests who had sexually abused minors. This request was due, in part, to a deficiency in the canonical system, which allowed dismissal from the clerical state as a penalty for the sexual abuse of a minor, but only after a lengthy process …
>
> These requests for an expedited process were not granted, largely out of concern that such a process would prejudice the rights of the accused priests, even though the bishops who had made the request were careful to restrict it to those situations where the priest's guilt already had been established in an impartial and objective forum, such as a state criminal trial or civil litigation where the priest had been afforded full defense rights.[379]

Archbishop Hart told us that Pope John Paul II tried to 'smarten up things' and then, in 2010, Pope Benedict XVI introduced a much more summary process for the dismissal of a priest 'with that precise objective'.[380] He explained the objective was to make the process quicker and more effective.[381]

Following the 2001 and 2003 changes to the canon law procedures, there was some improvement in the timeliness of consideration of applications for dismissal by the Holy See. In the case of Father Nestor, the Bishop of Wollongong submitted documentation to the CDF for guidance in accordance with the applicable canon law process on 10 September 2008.[382] Two weeks later, on 26 September 2008, the CDF decided to dispense with the requirement for a penal judicial process and requested the pope to dismiss Father Nestor from the clerical state. Pope Benedict XVI issued the decree of dismissal on 17 October 2008.[383]

Since 2010, bishops in Australia have made increasing numbers of applications to the authorities in the Vatican for the laicisation or dismissal of offending priests. While giving evidence in 2014 during the *Melbourne Response* public hearing, Archbishop Hart told us that, at that time, the case of every living priest within the Archdiocese of Melbourne who had been convicted of sexual misconduct had been referred to 'Rome' with a recommendation that they be returned to the lay state.[384]

Archbishop Hart also said that when the Archdiocese of Melbourne seeks to have a priest dismissed it sends a petition to the CDF, which reviews the materials sent. He said that it often takes six months to receive a reply.[385] When asked during the *Catholic Archdiocese of Melbourne* public hearing about the efficacy of this system of referral to the CDF in protecting citizens against sexual abuse by priests, Archbishop Hart said that he believed the system was designed to protect people but that, 'I do think that we would certainly be encouraging these things to be dealt with in Rome more quickly. I'm sympathetic to the situation'.[386]

In the *Institutional review of Catholic Church authorities* public hearing, Ms Teresa Devlin, the Chief Executive Officer of the National Board for Safeguarding Children with the Catholic Church in Ireland, told us that, in her experience, petitions for the dismissal of priests who have been accused of child sexual abuse that are sent to the CDF often take between two and three years.[387] She said:

> [The CDF] hear cases from every country in the world. They understand the gravity of these situations, so they all read every single case that is presented, and they deliberate between them. So it takes a very, very, very long time. And that is not justice for anybody.[388]

Ms Devlin said that she advises bishops or provincials to, 'Go there. Physically take yourself to Rome and sit outside their door and ask them to expedite this case'. She gave evidence that 'on some occasions that actually works'.[389]

Archbishop Coleridge of the Archdiocese of Brisbane told us that he had met with the CDF in Rome on two occasions but that he 'had no power to expedite' their processes.[390] Archbishop Coleridge said that since the commencement of the Royal Commission he had petitioned the Holy See to have all 'living offender priests dismissed from the clerical state'.[391] This involved the cases of eight priests incardinated into the Archdiocese of Brisbane who had been convicted of child sexual offences. He had petitioned the CDF to place the matters of these eight priests before the pope, seeking their extrajudicial dismissal from the clerical state. He told us that 'The CDF declined to proceed in that fashion in five of the matters'. He said:

> It is fair to say that I have been disappointed in the responses from the Holy See which, in all but one case, has directed that I issue a Penal Precept to the priest requiring that he live a life of prayer and penance.[392]

Archbishop Coleridge told us that he dispatched a petition for dismissal of Father Derriman, who had been convicted in 1998 of child sexual abuse, to the Holy See on 30 April 2014. He said:

> It was a concern to the Archdiocese of Brisbane and in particular to me that the Vatican processes were delayed and that the Holy See had not made a decision in relation to my petition to dismiss Derriman from the clerical state. My concerns increased when I received news first of the dismissal of two of my petitions, and then the dismissal of a further three of my petitions.[393]

On 11 October 2016, he received a letter advising that the pope had decided to dismiss Father Derriman from the clerical state.[394]

13.8.10 Supervision of alleged perpetrators within the Catholic Church

Some Catholic Church authorities have not initiated canonical processes for the removal of offending priests or religious from the priesthood or religious life, based on a view that retaining them within their communities is a way of supervising and monitoring their behaviour.

In *The Towards Healing process* public hearing, the Marist Brothers Provincial, Brother Jeffrey Crowe, told us that the involuntary removal of a brother was at the initiative of the provincial and his local council, who would decide whether, according to canon law, that person should no longer be a brother. The documentation was then sent to 'Rome' for consideration. He said, 'For a brother to be dismissed is a process, which would involve quite a bit of paperwork'.[395] In his evidence during *The Towards Healing process* public hearing, Brother Crowe told us:

> If you dismiss, the person is on his own. If you find a way of having the person in a supervised situation, then you are reducing the risk, because you can control the person's access to children, and so on – you are reducing the risk to children; so that's the prime concern.[396]

The Marist Brothers told us that between 1 July 1970 and 30 June 2013 no canonical measures were taken in relation to members of the order in Australia as a consequence of an allegation of, or conviction for, child sexual abuse. According to the Marist Brothers, only one of their members, Brother Ross Murrin, has been asked to resign from the order following a conviction for child sexual abuse.[397] However, in *The Towards Healing process* case study report, we noted that Brother Murrin still remained a Marist Brother at the date of publication, in January 2015.[398]

Similarly, the Christian Brothers told us that there were a number of brothers who had been the subject of complaints, criminal charges or convictions who had remained members of the order. They said:

> The reasons for this are numerous and multifaceted. Influencing factors include the offender's prospects of rehabilitation (including the undertaking and success of low recidivist rates in programmes such as Encompass), the offender's realistic ability to return to living as a lay person, the validity or otherwise of the complaints and the supervision which the Christian Brothers provide for rehabilitating offenders.[399]

This position within the Christian Brothers may have changed recently. During the *Case Study 11: Congregation of Christian Brothers in Western Australia response to child sexual abuse at Castledare Junior Orphanage, St Vincent's Orphanage Clontarf, St Mary's Agricultural School Tardun and Bindoon Farm School* public hearing, the provincial, Brother Julian McDonald, said that a resolution was made in 2014 at the Christian Brothers Congregation Chapter that after 31 March 2014, brothers with established allegations of abuse will usually be dismissed from the congregation. Brother McDonald said that the intention of the resolution is to capture brothers subject to recent rather than historical allegations of abuse.[400]

In relation to the appropriateness of action taken by leaders of Catholic Church authorities to keep alleged perpetrators and offenders within the structures of the Catholic Church, one relevant factor is whether it is possible to adequately monitor or supervise a child sexual offender and thereby prevent further abuse of children.

On this point, during the *Institutional review of Catholic Church authorities* public hearing, Dr Thomas P Doyle OP, an American Dominican priest, canon lawyer and survivor advocate, spoke about a priest in the United States whose faculties were withdrawn and who was ultimately convicted of child sexual offences and sentenced to 20 years' imprisonment. He was released from prison after 10 years and subsequently reoffended. Dr Doyle said that the Catholic Church did not take responsibility for supervising this priest. In response to the question by Senior Counsel Assisting whether the Catholic Church currently takes responsibility for supervising offending priests, Dr Doyle said:

> Well, they say they do, but the supervision, from my experience – now, let me just backtrack and say I have been involved directly with this issue for 33 years. I've been involved in actual cases in a number of ways throughout the United States and in several

> other countries, so I've seen the promises that, 'Father will be under strict supervision. He will have three men who will be his support team.' Sometimes that is actually done. I know of a few cases where it actually is done the right way. But for the most part, oftentimes you find that the men on the support team don't even know they're there, and this all comes out when the man reoffends. So in general, I think you cannot presume that the supervision will be done in a competent, effective manner.[401]

According to Bishop Robinson, as well as documentary records, from around 1999 the ACBC and the National Committee for Professional Standards (NCPS) began discussing the issue of what should be done with priests who had been convicted of child sexual offences and who had completed a custodial sentence.[402] The minutes of an NCPS meeting in September 2001 state that:

> Any actions taken in regard to/with the offender need to provide protection from future abuse, support and care for the offender, acknowledge the issues contained in canon law and respect the rights of the individual. The Church Authority needs to be able to show that they sought professional advice and treatment and put in place a structure to protect all parties. There is a need to be able to answer these two questions – Did you follow your own procedures? Did you act in accord with natural justice?[403]

The NCPS formulated a memorandum of understanding, to be signed by a priest or religious and the relevant Catholic Church authority, which Bishop Robinson told us 'attempted to deal with the question of what to do with offenders after they had come out of prison or treatment or even after they had admitted their offence'.[404] He stated further:

> It was felt that it was not enough to expel all of them from the priesthood and then leave them to fend for themselves. It was felt that the Church would prevent more future offences if it retained some control over them and could insist on conditions.[405]

Evidence relating to this issue and our findings are included in our report on the *Catholic Church authorities in Maitland-Newcastle* case study. As discussed in Section 13.4, due to ongoing criminal proceedings here we do not refer to this evidence or our findings in that report.

We did not receive evidence concerning the use of memoranda of understanding in other cases.

13.8.11 Support provided to alleged perpetrators and convicted offenders

Catholic Church authorities in Australia have provided forms of financial and moral support for alleged and convicted perpetrators of child sexual abuse. The provision of such support can be deeply hurtful for victims and survivors of child sexual abuse within the Catholic Church, although it may sometimes be appropriate and may indeed be required by canon law.

The early protocols stated that bishops and major superiors were to have regard for the welfare of an accused perpetrator when dealing with allegations of criminal behaviour.[406] Towards Healing (1996) provided that Catholic Church authorities were to ensure the availability of a support person for accused perpetrators who would represent their needs.[407] Towards Healing (1996) and the earlier protocols also recognised the right of the accused to obtain independent legal advice.[408] However, they did not contain specific provisions about other forms of support that Catholic Church authorities were required to provide to accused priests or religious during the investigation of a complaint of child sexual abuse or in circumstances where guilt was admitted or had been proved.

Financial support

Under canon law, bishops and religious superiors have a responsibility to support priests and religious within their dioceses and religious congregations.[409] We heard from senior Catholic Church officials that it is appropriate to provide financial support to priests and religious even in circumstances when they are accused or convicted of child sexual abuse.

Father Nestor was provided financial remuneration by the Diocese of Wollongong in the period leading up to his criminal trial in 1996 and pending his appeal. Archbishop Wilson told us that:

> I knew that the responsibility of a bishop was to ensure that if a priest was in a situation like Father Nestor, the normal patterns of support, the financial support he received in order to live properly, had to be continued because there was some thought by people, not just in these circumstances but in others, that if a priest was in this situation, the bishop would then cut off his responsibilities to him. But I was very aware, and it comes up a number of times throughout this process, very aware, that my responsibility under the law was to make sure that his rights as a priest in terms of remuneration and support were continued.[410]

In some cases, financial support was provided to alleged perpetrators in the form of funding their legal defences in criminal proceedings.

In the *St Joseph's Orphanage, Neerkol* case study, we heard that the Diocese of Rockhampton paid for Father Durham's legal costs in criminal proceedings where he was subsequently convicted of child sexual offences.[411] The former Bishop of Rockhampton, Bishop Heenan, gave evidence that this kind of support was based on the fact that:

> a priest is dependent on the diocese for his sustenance, for his support, for his accommodation, for support in his ministry. So, in my understanding, that didn't change or that doesn't change when a priest offends or goes away from his ministry; he still deserves the support of the diocese because he doesn't have other means to support himself.[412]

Similarly, in the *Marist Brothers* public hearing, the former provincial, Brother Turton, gave evidence that funding a legal defence can be considered an extension of the canonical obligation to support a religious brother 'since brothers get no salary'.[413]

In the Victorian parliamentary Inquiry into the Handling of Child Abuse by Religious and other Non-government Organisations report *Betrayal of trust: Inquiry into the handling of child sexual abuse by religious and other non-government organisations*, the inquiry reported that the Christian Brothers spent almost $1 million defending Brother Robert Best through criminal trials and pleas in 2010 and 2011. In those proceedings, Brother Best was found guilty of child sexual offences against 11 victims.[414] He was convicted of further child sexual offences against 20 victims in 2017.[415] In providing a rationale for the decision to pay the legal costs for accused brothers, then Executive Officer for Professional Standards, Brother Brian Brandon, said:

> There are issues around struggles about legal aid and its capacity to provide support for justice in the criminal defence system … we determined, as we generally do, to pay for the criminal defence of those within our family, and we try to do it as economically as we can.[416]

However, not all Catholic Church authorities are willing to provide financial support in the form of funding a legal defence for alleged offenders.

In the *Catholic Diocese of Wollongong* case study, Archbishop Wilson told us that 'it was always understood' that the finances of the Diocese of Wollongong would not be used to pay the legal fees for an accused priest in a criminal trial for child sexual offences.[417] Similarly, Cardinal Pell gave evidence of the position taken by the Archdiocese of Sydney in the *Case Study 8: Mr John Ellis's experience of the Towards Healing process and civil litigation* public hearing that 'in Sydney, we certainly don't pay the legal defences for any priest that is accused'.[418]

We heard about three cases within the Archdiocese of Melbourne where financial support was provided to alleged perpetrators in circumstances where they were not entitled to such support or where efforts were made to conceal from the public that they were receiving support of this kind.

As discussed above, in 1995, Father Daniel was permitted to resign on the grounds of 'ill health' in circumstances where he was the subject of allegations of child sexual abuse. In May 1995, Archbishop Little wrote to the secretary of the Priests' Retirement Foundation asking that Father Daniel be considered as if he were a 'Retired Priest'. Archbishop Hart gave evidence that this was a way of fulfilling the obligation on every bishop to provide basic necessities for priests. We found that treating Father Daniel as eligible for financial support from the Priests' Retirement Foundation as if he were a retired priest conveyed to others that he was in good standing, when this was not the case.[419]

The Archdiocese of Melbourne also continued to support Father Pickering financially through stipend payments from the Priests' Retirement Foundation until mid-2002, even though his faculties had been withdrawn in 1994 and he had suddenly left Australia for the United Kingdom in 1993 after having his request for early retirement approved, as discussed above. This took place despite the fact that the Priests' Retirement Foundation Charter indicated that, to be an eligible priest, the priest must not have been subject to any ecclesiastical sanction.[420]

In August 1995, Father Gerard Beasley of the Priests' Retirement Foundation wrote to Archbishop Little and told him that some priests had been 'surprised' to see Father Pickering listed as a beneficiary of the foundation. Father Beasley asked for advice as to whether Father Pickering was an 'eligible priest' as defined in the Foundation Charter, which required that the priest not be subject to any ecclesiastical sanction.[421]

When the matter was raised in correspondence with Father Pickering, Father Pickering suggested to Archbishop Little that there be a confidential and discretionary fund established to 'circumvent scandal and understandable indignation'. Archbishop Little provided Father Pickering's letter to Father Beasley.[422]

Archbishop Hart told us that, when he (as archbishop) became aware of this arrangement in 2002, he arranged for the payments to be suspended. He described this arrangement as a 'subterfuge' and said he refused to be a part of it. We found that Archbishop Little knowingly and deliberately supported a priest against whom allegations of child sexual abuse had been made in a way designed to conceal that support from others with access to the records or reports of the Priests' Retirement Foundation.[423]

Archbishop Little also sought to conceal the financial support being given to Father Gannon.[424] After Father Gannon's retirement and appointment as Pastor Emeritus in 1993, he received payments from the Priests' Retirement Foundation. Following criminal investigation of Father Gannon in 1995, the issue of his remuneration by the Priests' Retirement Foundation arose. Archbishop Little expressed the view to the Priests' Retirement Foundation that Father Gannon should not be recorded in the foundation's expenditure.[425]

Archbishop Hart agreed that Archbishop Little's concern that Father Gannon not appear in the expenditure column of the annual report was a concern that the public should not know that Father Gannon was receiving money from the fund. Archbishop Hart accepted that it was another way to keep continued support of a priest facing sexual abuse allegations hidden. He also accepted that Archbishop Little was seeking an arrangement to pay Father Gannon in circumstances where the payment was not public because people would think less of the archbishop and the Catholic Church for doing so and that this was another example of the secrecy of the Catholic Church in this area.[426]

On 19 April 1995, Monsignor Cudmore wrote to the foundation and said that Archbishop Little was concerned about being seen to disclaim all responsibility for the actions of priests guilty of misdemeanours. He wrote that the archbishop was 'also concerned about the risk of unfavourable publicity' should it be perceived that the archbishop was indirectly providing income for a priest in those circumstances.[427]

We found that Archbishop Little endeavoured to conceal from those with access to the annual report that Father Gannon was being supported financially with funds from the Priests' Retirement Foundation. That arrangement was facilitated with the knowledge of the vicar general, Monsignor Cudmore. The financial support provided to Father Gannon was reduced significantly in 2002, after Archbishop Hart became the archbishop. Archbishop Hart wrote to Father Gannon in October 2002 and said that remuneration arrangements for priests had been reviewed to ensure consistency in the Catholic Church's response to issues relating to abuse of power and trust. He informed Father Gannon that his support was no longer appropriate and would be reduced at the end of the year.[428]

Support during criminal proceedings

> The whole court process was not a good thing. Stephen Farrell kept adjourning the matter. This happened several times before he finally pleaded guilty. There were members of the Catholic Church there supporting Farrell every time he appeared in court. No one from the Catholic Church ever approached me or my brother to offer support during this time.[429]
>
> **Survivor, Mr Philip Nagle**

Catholic Church authorities have also provided forms of support to alleged perpetrators and convicted offenders of child sexual abuse during criminal proceedings. This has included giving positive character evidence for convicted priests during sentencing proceedings for child sexual offences. Survivors may find the provision of this type of support particularly distressing.

In the *Catholic Church authorities in Ballarat* case study, we heard that a number of priests in the Diocese of Ballarat were asked to, and did, provide character references for Father Ridsdale in the first criminal proceedings against him in May 1993. These included Father Brendan Davey, Father Francis Madden, Father Adrian McInerney and Brother Patrick White of the St John of God Brothers.[430]

Character references in criminal proceedings are usually intended to put before the court evidence of an accused's good character, to be taken into account when he or she is sentenced. The intention is to achieve a reduction in the sentence that might otherwise be imposed.[431] We acknowledge that the provision of character references is a common and permissible part of the criminal justice process.

Father Madden's character reference stated that Father Ridsdale, in his judgment, 'has been quite an outstanding priest in almost every facet of his work'. Father McInerney said that Father Ridsdale's talent was restricted by what he had observed to be severe bouts of depression and self-doubt.[432]

Father Davey wrote that he had 'always found Gerald to be a most dedicated priest', and asked that he be allowed to undergo further treatment and not be put in custody. Brother White provided a report to the court about his counselling of Father Ridsdale at a St John of God hospital, and gave his opinion that the risk Father Ridsdale posed to children was low.[433]

Bishop Pell (as he then was) was also asked to provide a character reference for Father Ridsdale. Father Ridsdale's solicitor, Mr Darvall, suggested to him that if there was a Bishop available, he should be called. In April 1993, documents record that Bishop Pell was willing to provide a reference for Father Ridsdale.[434]

Those documents record that Bishop Pell was willing to provide that reference orally in court. A note from Mr Darvall to Father Ridsdale in early May 1993 states, 'I have spoken with Bishop Pell and after very lengthy discussions he has agreed to attend and give evidence on your behalf. This is a breakthrough'. Mr Darvall also noted that Fathers Davey, Madden and McInerney were also coming to give character evidence for him.[435]

Cardinal Pell's evidence to us was that he had not been in contact with Father Ridsdale for years, but that 'I had some status as an Auxiliary Bishop and I was asked to appear, with the ambition that this would lessen the term of punishment perhaps – lessen his time in gaol'. Cardinal Pell did not ultimately provide a reference for Father Ridsdale. However, he walked with Father Ridsdale to the court on the day of his sentencing.[436]

During the public hearing, Father Madden told us that he had probably not made himself aware of the sexual offences for which Father Ridsdale was charged when writing his reference.[437] Father Madden, who also attended court in support of Father Ridsdale, told us during the *Catholic Church authorities in Ballarat* hearing that he 'regretted having been there'. He said that at that stage he did not have an appreciation of the devastation that Father Ridsdale had caused in many people's lives. Father Madden said that at Father Ridsdale's first court appearance in Melbourne 'the seriousness and the extent of [Father Ridsdale's] offences wasn't brought out'. He said that at the second trial in Warrnambool 'when the victims were present and made their victim statement' he then 'realised what had happened, and the nature and the extent of [Ridsdale's] offences'.[438]

In 1999, the Bishop of Rockhampton, Bishop Heenan, wrote a positive character reference tendered to the court as part of Father Durham's sentencing. At the time, Father Durham had been convicted of sexual offences against AYB. During the *St Joseph's Orphanage, Neerkol* public hearing, Bishop Heenan agreed that he wrote the character reference even though he was aware of additional sexual allegations against Father Durham and that he believed them to be

true. In the reference, Bishop Heenan referred to Father Durham's 'unique gift with youth' and wrote, 'I ask that the incredible amount of good he has done will be weighed against the failings that have also been part of his life'. Bishop Heenan told us that he could have overstated Father Durham's character in the last paragraph of his reference. We found that, in his support of Father Durham, Bishop Heenan failed to have regard to the negative impact his show of support would have on the victims of Father Durham's sexual abuse.[439]

Similarly, the act of Catholic Church officials accompanying an alleged perpetrator or offender to court may have been distressing for survivors. In the *Marist Brothers* case study, the former provincial, Brother Turton, agreed that he attended a number of court appearances of Brother Chute. When asked whether, by walking to court with Brother Chute, he was in fact indicating to victims that he was supportive of him, Brother Turton said:

> Yes, I had a comment from one victim who said, 'That confused me. I thought you were supporting me, and I saw you with Brother Kostka. You're supporting him.' I explained to the person that it was my duty, as the professional standards man, to ensure that he fulfilled the obligations of appearances and requests, and that person accepted that. But I accepted his observation, yes.[440]

13.8.12 Conclusions about Catholic Church responses to alleged perpetrators during and after the development of national procedures

> For me, it has to be more than simply rules. There needs to be a guideline – very firm guidelines and boundaries that are established. But, ultimately, I have to take responsibility for my actions … I have to want to make sure that no child or vulnerable person is ever harmed. I have to be conscious of that and I have to make my behavior correspond to that belief – that vulnerable children and vulnerable people need to be respected. Their human dignity needs to be maintained and respected and lifted up.
>
> And I'm terribly sorry for people who have been abused at the hands of members of the Catholic Church. It's not just that they are victims and survivors. They are human beings and their dignity has been stripped away from them, and for me, this is the great crime, this is the great sin.[441]
>
> **Auxiliary Bishop Anthony Randazzo, Auxiliary Bishop, Archdiocese of Sydney**

From the mid-1990s onwards, there were some improvements in the responses of Catholic Church authorities to allegations of child sexual abuse. Alleged perpetrators began to be placed on administrative leave while complaints were investigated, and steps were generally taken to remove perpetrators from ministry if complaints against them were substantiated. However, these processes were not always followed, and some measures masked the real reasons for

the action taken. Further, processes to dismiss priests and religious appear to have been rarely utilised during the 1990s and early 2000s. One of the major changes that occurred during the 1990s was a shift in understanding about the ability of counselling or other forms of spiritual or psychological treatment to 'cure' an alleged perpetrator of their sexual urges or to prevent reoffending.

The work leading to the development of early national protocols and Towards Healing began the process of formulating a more consistent response to child sexual abuse across the Catholic Church in Australia. However, the introduction of the Melbourne Response shortly before the implementation of Towards Healing had the effect that there would not be a uniform national approach.

While the early protocols contained some provisions relating to alleged perpetrators of child sexual abuse, they did not comprehensively set out the obligations of bishops and religious superiors in responding to alleged perpetrators and convicted offenders. Furthermore, it appears that some bishops and religious superiors were not aware of or did not consistently follow these protocols.

The early protocols did not require the leaders of Catholic Church authorities to report allegations to the police. Towards Healing did not mandate this action until 2010. In the period from the mid-1990s onwards, the leaders of Catholic Church authorities continued not to report alleged perpetrators to the police, leaving this to victims and survivors of child sexual abuse. This had the effect of keeping many complaints from the public gaze and in some cases meant that children continued to be at risk.

The early protocols saw the introduction of the approach that alleged perpetrators should be requested to take leave from active duties while the allegations were being investigated – an approach also followed by Towards Healing. However, Catholic Church leaders in some cases did not take this action and alleged perpetrators continued in the same positions for extended periods of time after allegations of child sexual abuse had been made against them. In other cases, alleged perpetrators were temporarily removed from religious ministry. However, some were placed on other types of leave such as sick leave, instead of administrative leave, which masked the reasons for which they had been placed on leave. Some continued to have access to children. It appears that, from the time that Towards Healing and the Melbourne Response were introduced, priests and religious were generally placed on leave if allegations were made against them. Towards Healing (1996) made it clear that serious offenders should 'never be given back the power they have abused'.

In some cases, the leaders of Catholic Church authorities took steps to remove perpetrators from religious ministry when complaints of child sexual abuse were substantiated or if they were convicted. In other cases action was taken due to concern about the level of risk posed

by an alleged perpetrator. In the case of priests, removal from ministry appears to generally have been achieved through the 'withdrawal of faculties'. We heard of at least one case where an alleged perpetrator was not removed from ministry when a complaint was substantiated. In relation to the Archdiocese of Melbourne, we heard that every priest against whom an Independent Commissioner had made a finding had his faculties removed.

Some bishops permitted priests and religious to resign or retire following allegations of child sexual abuse in circumstances where it was not made publicly known that allegations of child sexual abuse had been made against them. One bishop disguised the fact that priests had resigned because they were accused of child sexual abuse by attributing their resignations solely to ill health. In other cases, priests were bestowed with honorific titles, such as Pastor Emeritus, at the time of their resignation, despite being the subject of accusations or having made admissions of child sexual abuse.

Following the introduction of Towards Healing, bishops and religious superiors retained considerable latitude with respect to the measures they should take in response to perpetrators whose guilt had been admitted or proved. It appears that they took disciplinary steps under canon law to dismiss offenders in only a small number of cases during the 1990s and early 2000s. The reluctance of Catholic Church leaders to engage with canonical disciplinary processes may have been caused, in part, by confusion about those processes, as well as by a view that the Holy See tended to resolve matters in favour of offending priests. It may also have been due to the fact that the formal canonical disciplinary processes took considerable time.

The delayed or limited use of canon law processes to dismiss those found to have committed child sexual abuse meant that some perpetrators remained within the priesthood or religious orders for many years after the date that their guilt had been admitted or established. In addition, the Holy See was very slow to respond to petitions for dismissal from Catholic Church authorities in Australia, and it is clear that their approach to child sexual abuse by clergy was protective of the offender. One bishop told us that in a number of cases his request to have offender priests dismissed from the clerical state were refused and he was instead directed to ensure that the priests live a life of prayer and penance. Some Catholic Church authorities, rather than removing offending priests or religious from the priesthood or religious life, retained them within their communities as a way of supervising or monitoring their behaviour.

In an exchange with Archbishop Christopher Prowse of the Archdiocese of Canberra and Goulburn during the *Institutional review of Catholic Church authorities* public hearing, the Chair said:

> The Church has had to confront … the horror of what has actually occurred. There will be many people who will wonder why it was that it took a Royal Commission for the Church to come to confront its own reality, a reality which, at least in part, must have been known to many people in leadership and other positions for many years …
>
> What do you say, and what ultimately do all of you say, to the community?[442]

Archbishop Prowse responded as follows:

> I think we start by getting on our knees and saying we're profoundly and deeply sorry it has taken the genius of the Royal Commission to put a mirror in front of us in a prophetic way to say, 'You're not doing what your mission says you are to do and you are not even doing what are basic requirements of Australia'. So there's a massive failure in our mission in this particular regard, particularly to vulnerable people, children, young children. That's the first point I would want to make, is that we have messed up. We've done wrong. We're not being contrite in a superficial way. I can't think of another area of Church life, over the years that I've been involved with the Catholic Church in leadership, that has struck the inner core of us.
>
> The second thing is it's not enough to just say sorry. We are people who say we are sorry and we will try not to sin again … we must be able to work more transparently, with government agencies, to share what's going on in us, not to be so in-house, not to sort of think that we're some sort of bubble in an environment separated or on another orbit from the orbit of Australia. Coming together on this is something that is a present and future challenge.
>
> So I can only really say that, your Honour, heartfelt – the sorry and the determination to move on from here with the help of others.[443]

In Chapter 21 we set out our recommendations with respect to complaint handling, including responding to alleged perpetrators and those subject of a substantiated complaint of child sexual abuse within the Catholic Church. In particular, we consider the arguments for and against dismissing offending priests and religious from the priesthood or religious life. We conclude that people should not be retained within the priesthood or religious life just to maintain supervision and a level of control, or to provide them with material support. Supervision and control may be achieved in other ways even with dismissal, such as by making the provision of material assistance conditional on compliance with supervision arrangements and other terms. We recommend that Catholic priests and religious who are convicted of an offence relating to child sexual abuse, should be dismissed from the priesthood and/or dispensed from his or her vows as a religious. (See Recommendation 16.56.) In the same chapter, we set out our recommendations with respect to managing the participation of perpetrators (including people currently or formerly in religious ministry) in religious communities.

Endnotes

1 Transcript of P Parkinson, Case Study 50, 8 February 2017 at 24900:35–42.
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4 Exhibit 43-0005, 'Case Study of Sexual Abuse in the Maitland-Newcastle Diocese', 1 November 1996, Case Study 43, CTJH.210.01167.0083_R at 0098_R.
5 Transcript of A Turton, Case Study 4, 17 December 2013 at 3208:26–30.
6 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 26: The response of the Sisters of Mercy, the Catholic Diocese of Rockhampton and the Queensland Government to allegations of child sexual abuse at St Joseph's Orphanage, Neerkol*, Sydney, 2016, pp 62–3.
7 Transcript of BJ Lucas, Case Study 44, 19 September 2016 at 21236:15–21237:31.
8 Exhibit 44-0009, 'Confidential interview of Father Brian Lucas', Case Study 44, CTJH.240.01001.0645_E_R at 0653–0654_E_R.
9 Transcript of BJ Lucas, Case Study 14, 24 June 2014 at 7824:42–44.
10 Exhibit 14-0005, 'Statement of Reverend Brian Joseph Lucas', Case Study 14, CTJH.500.35001.0001_M_R at 0002_M_R.
11 Transcript of BJ Lucas, Case Study 14, 24 June 2014 at 7813:31–33, 7813:38–39.
12 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 14: The response of the Catholic Diocese of Wollongong to allegations of child sexual abuse, and related criminal proceedings, against John Gerard Nestor, a priest of the Diocese*, Sydney, 2014, p 10.
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15 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 14: The response of the Catholic Diocese of Wollongong to allegations of child sexual abuse, and related criminal proceedings, against John Gerard Nestor, a priest of the Diocese*, Sydney, 2014, pp 13–16.
16 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 14: The response of the Catholic Diocese of Wollongong to allegations of child sexual abuse, and related criminal proceedings, against John Gerard Nestor, a priest of the Diocese*, Sydney, 2014, p 11; Exhibit 14-0005, 'Statement of Reverend Brian Joseph Lucas', 6 June 2014, Case Study 14, CTJH.500.35001.0001_M_R at 0003_M_R.
17 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 14: The response of the Catholic Diocese of Wollongong to allegations of child sexual abuse, and related criminal proceedings, against John Gerard Nestor, a priest of the Diocese*, Sydney, 2014, p 11.
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19 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 14: The response of the Catholic Diocese of Wollongong to allegations of child sexual abuse, and related criminal proceedings, against John Gerard Nestor, a priest of the Diocese*, Sydney, 2014, p 11.
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21 M Cunneen, *Special Commission of Inquiry into Matters Relating to the Police Investigation of Certain Child Sexual Abuse Allegations in the Catholic Diocese of Maitland-Newcastle: Report – Volume 2*, State of NSW, Sydney, 2014, p 47.
22 Exhibit 13-0031, 'Statement of Alexis Turton', 31 May 2013, Case Study 13, CTJH.500.28001.0001_R at 0007_R.
23 Transcript of BJ Lucas, Case Study 13, 17 June 2014 at 3533:26–37.
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27 Exhibit 50-0012, 'CCI Special Issues Incident Report and attachment', 11 May 1994, Case Study 50, CCI.0345.00008.0018_R, CCI.0345.00008.0019_R; see further Exhibit 50-0012, 'Draft letter from CCI to the Christian Brothers' lawyers', 10 February 2004, Case Study 50, CCI.0037.00011.0137_R.
28 Exhibit 50-0012, 'CCI Special Issues Incident Report and attachment', 11 May 1994, Case Study 50, CCI.0345.00008.0018_R, CCI.0345.00008.0019_R; see further Exhibit 50-0012, 'Christian Brothers case summary relating to "Brother C" [Obbens]', Case Study 50, CCI.0345.00008.0020_R; 'Interview with GMC', Case Study 50, CCI.0037.00011.0082_R at 0083–0085_R.
29 Exhibit 50-0012, 'Letter from Provincial McDonnell to Magistrate', 16 June 1989, Case Study 50, CCI.0059.00006.0210_R; 'Christian Brothers case summary relating to "Brother C" [Obbens]', Case Study 50, CCI.0345.00008.0020_R; 'Obbens' Missions Report', 10 July 1998, Case Study 50, CCI.0059.00006.0122_R.
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32 Exhibit 50-0012, 'Christian Brothers Personal Information Report on Roberts', 16 May 2013, Case Study 50, CCI.0097.00002.0441_R at 0444_R; 'Christian Brothers case summary relating to "Brother L" [Roberts]', Case Study 50, CCI.0631.00002.0292_R.

33 Exhibit 50-0012, 'Christian Brothers case summary relating to "Brother L" [Roberts]', Case Study 50, CCI.0631.00002.0292_R; 'Letter to Brother McDonald', 1 August 1992, Case Study 50, CCI.0097.00002.0484_R; 'Letter from psychiatrist to Christian Brothers' lawyers', 23 March 1994, Case Study 50, CCI.0097.00002.0551_R at 0552–0553_R; 'Christian Brothers Personal Information Report on Roberts', 16 May 2013, Case Study 50, CCI.0097.00002.0441_R at 0444_R.

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13.9 Catholic Church responses to victims and survivors after the development of national procedures

> We want to acknowledge that it is never an even playing field when a survivor confronts the size and magnitude of an institution like the Catholic Church. Neither is it easy in the first instance to come forward and to reveal what has happened.[1]
>
> **Mr Francis Sullivan, Chief Executive Officer, Truth, Justice and Healing Council**

> We had the means and ability to guide our daughters through the Melbourne Response process; however, not all victims have that same level of support. Even as parents of victims, we found the experience to be daunting. From the moment we entered the meeting with the Compensation Panel we felt intimidated. Based on our experience, we consider that victims without adequate support or legal representation would feel intimidated and overwhelmed by the whole process.[2]
>
> **Parent of two victims of child sexual abuse, Mrs Christine Foster**

As discussed in Section 13.7, the Catholic Church's *Protocol for dealing with allegations of criminal behaviour* (1990 Protocol), revised in 1992 (1992 Protocol), represented an effort by the Catholic Church in Australia to provide a more consistent response to allegations of child sexual abuse by Catholic Church personnel than had previously been the case. However, these protocols were primarily focused on responding to perpetrators rather than to victims of child sexual abuse, and Catholic Church authorities did not always know of or follow them.

The introduction of Towards Healing in 1996 was intended to provide a more uniform, victim-centred response to reports of child sexual abuse. We examined the operation of Towards Healing and the Melbourne Response in several case studies, hearing evidence from a number of survivors of child sexual abuse about their experiences when engaging with these processes.

In addition, in private sessions we heard accounts from hundreds of survivors about their efforts to seek redress from the Catholic Church through Towards Healing and the Melbourne Response or by direct negotiation with the relevant Catholic Church authorities. Many of these accounts were recorded in a de-identified manner in 'private sessions narratives'. The narratives reflect each survivor's own views of their experiences. References to them below are intended to give voice to those personal views and experiences and we draw no conclusions from them. These narratives are available as an online appendix to Volume 5, *Private sessions*.

In this section, we first discuss some of the Catholic Church claims data, with specific focus on redress received by survivors of child sexual abuse. We then address the evidence and information we received about institutional responses to victims and survivors in the early 1990s, in the period of the 1990 and 1992 Protocols. However, the majority of evidence and private session accounts that we received about Catholic Church responses to victims and survivors following the development of national procedures related to Towards Healing and the Melbourne Response. For some, engaging with these protocols was a positive experience which contributed to their process of healing. Many others told us that their experiences were difficult, frightening, and/or confusing and led to further harm and re-traumatisation. We acknowledge that people who were dissatisfied with these processes may have been more likely to make contact with us.

Later in this section, we discuss the experiences of survivors who have engaged in civil litigation, mediation or direct negotiation of a monetary sum with the institution where they were sexually abused. As discussed further in Chapter 22, 'Redress and civil litigation for survivors of child sexual abuse in religious institutions', during *Case Study 50: Institutional review of Catholic Church authorities (Institutional review of Catholic Church authorities)* we heard from several Catholic Church authorities that an increasing number of survivors are using lawyers to directly negotiate a monetary sum with the institution where they were sexually abused rather than engaging with Towards Healing or the Melbourne Response.

In Chapter 21, 'Improving responding and reporting by religious institutions', we consider more recent developments and the current systems in place in the Catholic Church in Australia for responding to complaints from victims of child sexual abuse. In that chapter, we outline recommendations for improving the responses to, and reporting of, child sexual abuse in all religious institutions in Australia.

13.9.1 Catholic Church claims data on redress

In February 2017, we published an analysis of claims of child sexual abuse made between 1 January 1980 and 28 February 2015 with respect to Catholic Church institutions in Australia.[3] A revised version of the analysis was published in June 2017. In relation to each claim, information was sought from the relevant Catholic Church authority about the redress process/es initiated by the claimant.

In our analysis we defined a 'claim' as including:[4]

- claims of child sexual abuse made against Catholic Church personnel by a claimant, or a solicitor or advocate on their behalf, seeking redress through Towards Healing, the Melbourne Response or another redress process, including civil proceedings, whether ongoing, settled or concluded without redress

- complaints of child sexual abuse against Catholic Church personnel made by any person without redress being sought that are substantiated following an investigation by the relevant Catholic Church authority or another body or otherwise accepted by the relevant Catholic Church authority.

We defined 'redress process' as a process where a person makes a claim of child sexual abuse against Catholic Church personnel through Towards Healing, the Melbourne Response or another redress process and seeks one or more of the following:[5]

- monetary compensation, being lump sum, periodic or ex-gratia payments to a claimant
- financial support paid for legal costs and therapeutic or medical consultation or treatment for a claimant
- apology or acknowledgement of wrongdoing to a claimant
- assurance regarding the cessation of an alleged perpetrator's position or role within an institution.

Redress processes as outlined above include claims for redress that are ongoing, settled, or concluded without redress.[6]

Our analysis showed that 3,057 claims of child sexual abuse resulted in a payment being made following a claim for redress. Catholic Church authorities in Australia made total payments of $268.0 million in response to claims of child sexual abuse received between 1 January 1980 and 28 February 2015. This includes payment of monetary compensation, treatment, legal and other costs. Of this amount, a total of $250.7 million was paid in monetary compensation, at an average of $88,000 per claim. A total of 2,845 claims of child sexual abuse resulted in monetary compensation following a claim for redress.[7]

The Christian Brothers reported both the highest total payment and the largest number of payments. The Christian Brothers paid a total of $48.5 million in relation to 763 payments at an average of approximately $64,000 per payment.[8]

Of those Catholic Church authorities that made at least 10 payments, the Jesuits (the Society of Jesus) had the highest average payment at approximately $257,000 per payment.[9] Of that same group, the Pallottines (the Society of the Catholic Apostolate) and the Good Shepherd Sisters - Our Lady of Charity of the Good Shepherd had the lowest average at approximately $10,000 per payment.[10]

The most commonly used redress process was Towards Healing, with 41 per cent of claims going through this redress process. The Melbourne Response had the highest proportion of claims resulting in monetary compensation of all redress processes: 324 claims, or 84 per cent of all claims under the Melbourne Response, resulted in monetary compensation. Both

Towards Healing and the Melbourne Response had the lowest average of total payments, including monetary compensation and payments for treatment, legal and other costs, of approximately $47,000.[11]

Of all redress processes, the highest amount of monetary compensation paid was through civil proceedings and 'other' redress processes ($88.9 million and $92.8 million, respectively). Of the claims made through civil proceedings, 632, or 67 per cent, resulted in monetary compensation.[12]

13.9.2 Responses to victims and survivors following the 1990 and 1992 Protocols

The 1990 and 1992 Protocols did not contain detailed provisions setting out the manner in which Catholic Church authorities should respond to victims following receipt of a complaint of child sexual abuse. Rather, the 1990 Protocol simply required that complainants be 'reassured' that 'the Church' took their allegations seriously and was concerned for their welfare.[13] The 1992 Protocol added that complainants should also be 'reassured' that the Church authority would make appropriate arrangements for them to be given advice regarding counselling or therapy.[14] More broadly, the 1990 and 1992 Protocols required Catholic Church authorities to act with 'justice, mercy and charity' and to have regard for the welfare of victims.[15]

We did not hear a great deal of evidence about how these provisions of the 1990 and 1992 Protocols were interpreted or applied by Catholic Church authorities. However, in some case studies we heard that survivors of child sexual abuse who made complaints in the early 1990s received little in the way of direct personal responses.

In *Case Study 35: Catholic Archdiocese of Melbourne (Catholic Archdiocese of Melbourne)* we heard that on 5 December 1992 survivor BTC met with then Vicar General Hilton Deakin and Father Brian Fleming at St Patrick's Cathedral. She told them that she had been sexually assaulted by Father Nazareno Fasciale in 1953 and that her sister and another girl had also been sexually abused by him. We received into evidence a typed record of the meeting prepared by Father Fleming. We found that this note conveys an attitude of disbelief and disrespect, resulting in BTC's account being minimised and dealt with in a dismissive manner. We found that was so even though it was 1992 – a time when the issue of child sexual abuse by Catholic clergy and religious was a matter that had been considered nationally by the Australian Catholic Bishops Conference (ACBC) and protocols had been developed which were directed to responding appropriately to survivors who reported allegations.[16]

In the same case study we also received evidence about a complaint made to the then Vicar General, Monsignor Gerald Cudmore, concerning the sexual abuse of a boy, BTM, by Father Wilfred Baker. BTM's father, BTN, wrote to Monsignor Cudmore in August 1995, speaking of 'horrendous crimes'. BTN wrote that 'urgent investigation should be implemented by trained

police investigators, and the person under investigation must be relieved of any duties which could place them in a position from which further offences could occur. This is surely plain common sense action'.[17]

In his response to BTN, Monsignor Cudmore noted that the Catholic Church had established protocols and procedures to be followed in relation to complaints of alleged criminal conduct. He told BTN that he would take action once he received 'a written and detailed statement of allegation(s) against the priest concerned from your son' and that he would 'take action immediately' if he received specific allegations.[18]

We found that the matters BTN raised with Monsignor Cudmore were very serious. They indicated that Father Baker had sexually abused BTM, even if the details of the allegations were not known. They indicated it was likely that there had been criminal conduct by Father Baker. We found that Monsignor Cudmore's response to BTN was unsatisfactory and was consistent with an approach that was protective of the Catholic Church and not the complainant. We also found that it was inconsistent with the 1992 Protocol in that it should have been referred to the relevant Special Issues Resource Group for investigation.[19]

In other cases, those who had been sexually abused as children did receive a response from the relevant Catholic Church authority when the abuse was brought to that authority's attention. Again, however, such responses were variable and appear to have depended more on the particular circumstances and the approach taken by that Catholic Church authority rather than on any national protocols.

In *Case Study 11: Congregation of Christian Brothers in Western Australia response to child sexual abuse at Castledare Junior Orphanage, St Vincent's Orphanage Clontarf, St Mary's Agricultural School Tardun and Bindoon Farm School (Christian Brothers)* we heard evidence about the response of the Christian Brothers in Western Australia to ex-residents of four institutions run by the Brothers between the 1920s and 1980s, where there were many allegations of boys being sexually, physically and emotionally abused.[20] In the 1990s, during the period when Catholic Church leaders in Australia were beginning to discuss a more coordinated approach to child sexual abuse, the Christian Brothers took a number of actions on the issue of child sexual abuse within its order.[21]

Among these, Brother Barry Coldrey was commissioned to write a history of the four institutions. According to Brother Anthony Shanahan, the former Province Leader of the Christian Brothers Province of Western Australia and South Australia, the Provincial Council 'learnt from Brother Barry Coldrey that there had been sexual abuse of residents of the institutions'.[22] Brother Shanahan gave evidence that in 1993 he felt that one of the first things the Christian Brothers had to do in response was to admit that there had been abuse at the institutions and apologise.[23] This written apology was published in the media in July 1993. It stated:

> While the extent of the abuse appears to have been exaggerated in some quarters, the fact that such physical and sexual abuse took place at all in some of our institutions cannot be excused and is for us a source of deep shame and regret. … We, the Christian Brothers of today, therefore unreservedly apologise to those individuals who were victims of abuse in these institutions.[24]

It also invited former residents to come forward for practical assistance.[25]

One former resident and survivor, Mr Edward Delaney, told us that he felt the apology was 'too little, too late'.[26] Another, Mr John Hennessey, said of the apology:

> The 1993 apology by the Christian Brothers was not a personal apology. It was all done through the media, not to us personally. Again, no identity. I did not get a letter or any personal contact. It made me feel cold. They still believed that we were nobodies. The only reason they made the apology was public pressure. It had nothing to do with the victims at all and it cost them no money. They just wanted to wash their hands and feel good …[27]

In addition to the public apology, the Christian Brothers took a number of other actions between 1989 and 1995 to assist former residents. These included establishing a helpline, providing funded assistance for family tracing services and providing financial assistance for former child migrants to travel to meet their family members overseas. The Christian Brothers also set up an independent advisory panel to profile the needs of ex-residents and make recommendations to the Brothers as to how they could respond. In 1995, following the panel's final report, the Christian Brothers established the Christian Brothers Ex-Residents Services (CBERS) to provide a range of services to survivors including counselling, a no-interest loan scheme, literacy and numeracy assistance and advocacy services.[28]

During the public hearing, former residents told us about their feelings towards CBERS and their experiences when accessing the services provided.[29] VV told us that the counselling he received through CBERS was 'quite good'.[30] VG received financial assistance from CBERS to visit his family in Malta but did not make use of the counselling services offered, as he did not really trust the psychologists 'because they were always employed by the Christian Brothers'.[31] Mr Oliver Cosgrove thought that the service offered by CBERS was 'too close to the Christian Brothers and a waste of time'.[32] Mr Clifford Walsh told us he did not seek any assistance from CBERS because it 'was too closely associated with the Christian Brothers'.[33]

In *Case Study 26: The response of the Sisters of Mercy, the Catholic Diocese of Rockhampton and the Queensland Government to allegations of child sexual abuse at St Joseph's Orphanage, Neerkol (St Joseph's Orphanage, Neerkol)* we received evidence concerning the response of the Diocese of Rockhampton and the Sisters of Mercy to survivors of child sexual abuse both prior to and following the introduction of Towards Healing. We concluded that, from 1993 to 1997, a number of the responses of the diocese and the sisters, and of Bishop of Rockhampton, Bishop Brian Heenan, and the then Congregational Leader of the Sisters of Mercy Rockhampton, Sister Berneice Loch, to survivors of child sexual abuse at Neerkol were inadequate and/or lacked compassion.[34]

We heard that in June 1993 Bishop Heenan did not respond to a letter from one survivor, AYB, or to her four attempts to contact him via telephone. It was not until AYB again wrote to Bishop Heenan expressing her dismay and upset at his lack of response and making clear that the alleged perpetrator of the sexual abuse was still alive that Bishop Heenan responded to her.[35] While Bishop Heenan did subsequently take steps in response to AYB's disclosure, we concluded that he had failed to provide an adequate response as a result of this delay.[36]

We also found that the diocese and the sisters failed to provide an adequate response to AYC, Mr David Owen, AYQ, and AYP in the period before 1997. These survivors experienced long delays before representatives of the Catholic Church authorities contacted them or acknowledged their complaints, and they were not offered any pastoral support.[37]

In June 1994 a protocol titled *Pastoral action in response to allegations of sexual abuse by people who work on behalf of the church in Queensland* was approved by the Queensland Catholic Bishops Conference and Queensland Conference of Leaders of Religious Institutes.[38] This protocol was drafted by the Queensland Special Issues Resource Group and stated that it was 'in accordance with the National Principles', which we take to be a reference to the 1990 and 1992 Protocols developed by the Special Issues Committee.[39] We found that, in responding to Mr Owen, AYQ and AYP, the diocese and the sisters also failed to follow the June 1994 Queensland protocol.[40] At the relevant times both Bishop Heenan and Sister Loch were aware of this protocol, but, as it was a trial document, compliance with its terms was not mandatory.[41]

Some leaders of the Catholic Church in Australia recognised that the 1990 and 1992 Protocols did not go far enough in ensuring a consistent approach to allegations of child sexual abuse that was responsive to the needs of victims. As discussed in Section 13.7, this and other developments in the mid-1990s resulted in the formulation of Towards Healing and the Melbourne Response in 1996. In addition, there was a developing understanding that more general apologies to those who had been sexually abused as children, and to the broader Catholic community, were required.

13.9.3 General apologies

In December 1992, the Catholic Church in Australia issued the first public statement about child sexual abuse. The statement was in the form of a *Pastoral statement on child protection and child sexual abuse*. It acknowledged that the sexual abuse of children had occurred and that Catholic Church authorities had 'sometimes denied or minimized the seriousness of such incidents or accepted too readily the promise by an offender that such behaviour would not be repeated'. While it noted that 'mistakes have been made', it did not provide an apology to survivors or to the Catholic community in general.[42] Similarly, neither the 1993 ACBC public statement titled *Sexual offences and the Church* nor the April 1996 'pastoral letter' issued by the ACBC setting out its plan of action contained an apology.[43]

As noted above, in July 1993 the Christian Brothers in Western Australia issued a public apology to victims of abuse, including sexual abuse, which had occurred at four residential institutions in Western Australia. The apology was printed in the *West Australian* newspaper and included the following:

> We cannot change the past. We cannot take away the hurt. We can express our heartfelt regret for the failings of the past and we can, on behalf of our predecessors, beg the forgiveness of those who suffered.[44]

In Towards Healing (1996), the Catholic Church in Australia expressed 'regret and sorrow' for the hurt caused whenever responses to victims by Catholic Church authorities were to deny, distort, or minimise their complaints.[45] More explicitly, in his announcement of the Melbourne Response, then Archbishop George Pell stated that it was time for him, on behalf of the Catholic Church, 'to apologise sincerely and unreservedly, first of all to the victims, and then to the people of the Melbourne Archdiocese for this betrayal of trust'.[46]

Following the first review of Towards Healing conducted by Professor Patrick Parkinson, the revised version, Towards Healing (2000), provided a clear apology to victims of child sexual abuse by clergy and religious.[47] This apology remained in subsequent versions of the protocol. In 2008, during an address in St Mary's Cathedral, Sydney, Pope Benedict XVI also apologised 'for the pain and suffering' of the victims of child sexual abuse by clergy and religious in Australia.[48]

In its September 2013 submission to our *Issues paper 2: Towards Healing* (Towards Healing Issues paper), the Truth, Justice and Healing Council (the Council) first published a joint commitment statement. Among other things, this statement provided that the Catholic Church was 'deeply sorry' for the sexual abuse of children by its personnel, for the fact that many victims were not believed when they reported the sexual abuse, and for those cases where those in positions of authority concealed or covered up child sexual abuse. It apologised 'to all those who have been harmed and betrayed'.[49] According to the Council, the statement 'represents the first time, anywhere in the world, Catholic leaders nationally have come together as one to publicly recognise the tragedy and criminality of child sexual abuse in the Church'.[50]

In Chapter 22 we discuss more recent apologies made by various Catholic Church authorities and institutions in Australia.

13.9.4 Survivors' experiences of Towards Healing

> When I look back now at the *Towards Healing* process, I can say 'Oh, so that's what *Towards Healing* was' and basically that I was given some money to pay for counselling and that was it. But I really did not understand at the time where *Towards Healing* was coming from or what I could achieve through the process – or even if I was formally part of that process. … I found the whole thing pretty disgusting and I could never quite work out where the healing part came into it, because I certainly didn't feel healed by that process.[51]
>
> **Survivor, DG**

> The problem with Towards Healing has very often been not the protocol … but the appalling … inconsistency of its application. Now, this touches again upon that extraordinarily decentralised and various nature of the Catholic Church. Individual bishops and individual Provincials were making decisions or implementing the protocol in all kinds of ways, sometimes effectively and sometimes not. But that lack of consistency I think has been a problem.[52]
>
> **Archbishop Mark Coleridge, Archbishop of Brisbane**

The process envisaged by Towards Healing in the 1996 and subsequent versions is discussed in Section 13.7. As outlined in that section, while there have been a number of amendments to Towards Healing, in this chapter we refer only to the 1996, 2000 and 2010 versions. These versions all provide that a 'compassionate' response to the victim must be the first priority in all cases of abuse.[53]

In August 1997, the Royal Commission into the New South Wales Police Service concluded that 'Generally it appears that Church policies are becoming more constructive' and that 'the Catholic Church is now aware of its past deficiencies in dealing with allegations of sexual abuse and is making a concerted effort to overcome them'. However, it also noted that 'As with all policies and plans, the proof will lie in their implementation'.[54]

In several case studies, we heard evidence about the experiences of survivors who went through Towards Healing in the period since it became operative in March 1997 through to its 2010 version. We also heard from hundreds of survivors in private sessions who told us about their engagement with Towards Healing. Some of these survivors described positive experiences they had, either with Towards Healing as a whole or at various stages of their Towards Healing matter.

Private session attendee 'Fynn' said he found the Catholic Church representatives involved to be kind and understanding. He was given $25,000 in compensation and a formal apology.[55] Similarly, 'Jethro' told us in his private session that he was appreciative that the Church 'never put me in a compromising position saying that they did not believe me or they weren't willing … the amount that was settled was considered … quite a good amount'.[56]

For private session attendee 'Deborah', while she was initially disappointed with what she perceived to be the slow pace of her Towards Healing process and the inadequacy of the investigation, her experience took a positive turn in the end. She told us, 'Eventually they went on to investigate everyone and they substantiated it all, and that has made an impact on my life, to get that validation'. 'Deborah' also told us that the two nuns who attended her session 'were great. They cried. And especially they understood what it was like for me to lose my faith, because that's all I had. … Thank God I was able to get that back'.[57]

However, we also heard from many other survivors who told us that they did not find their Towards Healing experiences to be positive. Indeed, the preponderance of views expressed to us by survivors about Towards Healing was negative, at least in some respects.

A number of survivors said that they found the whole process to be confusing and told us that they did not feel they were assisted in understanding it as they went along. In the *Christian Brothers* public hearing Mr John Wells gave evidence that the Towards Healing process was unclear and left him feeling unsupported:

> The Christian Brothers had mentioned the Towards Healing process, although it was never explained to me. I did not know much about the process: who the players were, whether it was a legal process and so on. I also feel like I didn't have anyone on my side …[58]

Mr Raphael Ellul, who also gave evidence in our *Christian Brothers* public hearing, said that his Towards Healing experience was awful. He felt bullied and they used 'big words' that he could not understand. He said he did not know how to argue back, he was told not to get legal advice and he did not understand the documents.[59]

One survivor, 'Fionn', who was also a Catholic religious brother, told us in his private session, 'I'm an educated, intelligent person. I'm not only a victim of sexual abuse, I was a Catholic religious Brother for 16 years … If I can't work it out, then who can?'[60]

Some survivors told us that they had thought Towards Healing would help them to heal, but their experience did not match their expectations. Mrs Joan Isaacs said:

> I really wanted to believe that the church meant what I thought it said, which was 'Towards Healing is here, come to us, we know you've been hurt, we want to help'. Unfortunately, this was not my experience.[61]

She said that, by the time she was offered financial compensation, her counselling sessions 'did not only focus on the sexual abuse experienced as a child, but on the trauma and anxiety which I experienced as a result of the Towards Healing process'.[62]

Similarly, in *Case Study 28: Catholic Church authorities in Ballarat (Catholic Church authorities in Ballarat)*, BAA told us that his Towards Healing experience was 'horrific' and he was 'left feeling really suicidal by the end of it'. He said, 'Even today, going to Melbourne is traumatic for me, because it reminds me of the Towards Healing process'.[63]

Private session attendee 'Rowan' described his experience with Towards Healing as frustrating and disappointing. He told us, 'They used the term "Towards Healing" and I thought, you ripper, I can get rid of all this pain. Three appointments later I'm shuffled out the door of the Catholic Insurance Office and that's it. That just made it worse'.[64]

Further, in 2013 we received a number of submissions from individual survivors, survivor groups, lawyers and advocacy groups in response to the Towards Healing Issues paper. Some of those submissions also reported on the experiences of survivors with Towards Healing.

Drawing on her research with survivors who had gone through Towards Healing and lawyers who had assisted them, in her submission to the Towards Healing Issues paper, Dr Judy Courtin stated that:

> Despite the principles providing for a commitment to striving for 'healing' and 'truth' the victims not only did not find healing within the TH [Towards Healing] process, they suffer further damage and harm. The impacts of the TH process on the victims are multiple and serious, including being suicidal and attempted suicide.[65]

Many of the submissions received in response to the Towards Healing Issues paper that were based on contact with survivors said that Towards Healing mostly resulted in further harm rather than healing.[66] Lewis Holdway Lawyers, who drew on 18 years of experience assisting over 200 victims of sexual assault by members of religious organisations, including through the Towards Healing process, submitted that 'a number of our clients have been significantly further damaged as a result of going through the Towards Healing process. They have in fact experienced the opposite of healing'.[67]

In another submission, Ms Andrea Lockhart, a senior clinician at the Ballarat Centre Against Sexual Assault, said that the 'consistent response' from her clients who had gone through Towards Healing was that it was 'distressing, confusing, dissatisfying and despite having received financial payments … left them with the feeling of being "worse off" (emotionally) than prior to the process'.[68]

A number of submissions to the Towards Healing Issues paper also raised the concern that Towards Healing operates to protect the assets of the Catholic Church rather than prioritising the needs of victims.[69] The Council submitted that:

> it has been argued by some that *Towards Healing* is a device by which the Church encourages or persuades victims to adopt an internal Church process, so that the Church will not be exposed to civil litigation where the amount of damages is likely to be much higher … such claims fail to recognise the benefits that *Towards Healing* offers to victims compared with traditional contested litigation, as well as assisting those for whom civil litigation is not an option.[70]

Some submissions to the Towards Healing Issues paper expressed the view that, while the principles and procedures set out in the Towards Healing protocols were promising, there was a significant gap between what was stated in the documents and what survivors experienced in practice. Lewis Holdway Lawyers commented, 'despite its very commendable written Principles in the first part one of the protocol, in practice it is a flawed process, which is in need of significant reform'.[71] Knowmore legal services, an independent legal service that assisted people who were considering telling their story to the Royal Commission, also submitted that the most constant complaint they received from their clients was that the principles and procedures of Towards Healing were not uniformly applied. They told us that their clients had complained that there was no certainty in process and no consistency among decisions.[72]

Micah Projects, a not-for-profit organisation with experience working with Forgotten Australians and Former Child Migrants, including through the provision of support services to those seeking redress from the Catholic Church, submitted that 'The individual skills of the leaders involved and the staff of the professional standards committee and the level of compliance of dioceses and religious orders with the process determined the outcomes of the process'.[73]

We also heard from survivors who chose not to engage with Towards Healing both because they did not want to re-engage with the institution responsible for the child sexual abuse and because they had heard negative things about Towards Healing. In his evidence in *Case Study 4: The experiences of four survivors with the Towards Healing process (The Towards Healing process)*, DG explained:

> My gut feeling was that Towards Healing would be a waste of time. I didn't trust the Catholic Church after what had happened to me. I remember Towards Healing being criticised in the press at the time, and I didn't want to receive a pittance and an empty apology and get told not to tell anybody anything.[74]

Similarly, in his evidence in *Catholic Church authorities in Ballarat*, survivor Mr Stephen Woods told us:

> I refused to go through Towards Healing. It was at quite an embryonic stage when I first made my complaint to the police, but I had already heard that the church was screwing people over. I didn't want to go back to the Catholic Church. You wouldn't go back to a dog that has bitten you.[75]

In addition to these more general observations or opinions about Towards Healing, we also heard from survivors and their representatives about their concerns or experiences with respect to particular aspects or stages of the process. These are discussed further below.

In 2013, the Council submitted to us that the introduction of Towards Healing in 1996 was a 'watershed moment in the Church's approach to dealing with child sexual abuse within the Church'.[76] The Council also recognised that Towards Healing is not 'a complete, or perfect, solution' and that it 'will inevitably have shortcomings from the perspective of some victims'.[77] It also said that '*Towards Healing* can and does provide many victims with the assistance they need in the very challenging process of seeking justice and healing, and potentially a degree of closure'.[78]

We agree that the formulation and adoption of Towards Healing in 1996 was a considerable achievement. We also recognise that many people who have engaged with the Towards Healing process since 1997 may have received greatly needed compassion and support and have derived important benefits from their participation. We understand that those who have had such positive experiences may have been less likely to engage with us than those who were disappointed, frustrated, angry or traumatised by the process. In addition, we note that through the various reviews of and amendments to Towards Healing (discussed in Section 13.7) important changes have been made over time, some of which have addressed criticisms of the process from those who engaged with it.

However, the Council acknowledged in evidence to our *Institutional review of Catholic Church authorities* public hearing that some survivors who have participated in the Towards Healing process have been critical of it.[79] Indeed, we were told by a number of Catholic Church authorities that resort to Towards Healing has declined in recent years, perhaps due in part to a negative public perception of the process. This is discussed further in Chapter 22.

Significantly, a number of survivors told us that they perceived the various personnel they engaged with throughout their Towards Healing process as insufficiently independent from the Catholic Church. This issue was also raised in submissions in response to the Towards Healing Issues paper with respect to contact persons, assessors and facilitators.[80]

In reply to this type of criticism, the Council submitted that Towards Healing (2010) 'does contain various procedures to help ensure an element of independence in the process', giving the requirement that assessors be independent of the Catholic Church authority, the victim and the accused as an example. The Council also told us that an 'alternative view' was that '*Towards*

Healing was never intended to be an independent process where an arbiter makes a decision binding on two parties, but rather was intended to be a process bringing two parties together, to try to agree on a mutual outcome'.[81] It observed that:

> Taking the element of decision-making in relation to the level of any reparation away from the Church Authorities would fundamentally change the character of the process, from one of pastoral engagement (as a primary objective) with reparation (as something separate), to a quasi-legal determination of compensation.[82]

However, it acknowledged that separation of the pastoral aspects of Towards Healing from the reparation aspects was a change that needed to be considered.[83]

Initial contact

As discussed in Volume 4, *Identifying and disclosing child sexual abuse,* survivors of child sexual abuse are often extremely vulnerable at the point of first contact and may describe the process of disclosure as a highly distressing experience. Many survivors have described how a supportive and positive response to their disclosure was an important step in their recovery process. However, any negative experience at this early stage, in the form of a poor response to their disclosure, may further traumatise survivors and may be associated with an increased risk of negative outcomes for them.[84]

In her submission to the Towards Healing Issues paper, researcher Dr Courtin drew on interviews with a small number of survivors who had been through Towards Healing and commented that 'the initial contact with TH is pivotal for victims'. Dr Courtin also submitted that among the concerns reported to her by survivors was the 'need to contact a complete stranger on the telephone to discuss, sometimes for the very first time, a topic that is highly personal and distressing'.[85]

Private session attendee 'Eoin' told us that when he contacted Towards Healing:

> The woman who I spoke with … made me feel like I had done something wrong. I found her manner towards me aggressive and intimidating. I made the decision not to pursue my matter further with Towards Healing because it did not feel safe or respectful.[86]

Under Towards Healing (1996) any 'member' of the Catholic Church receiving a complaint of sexual abuse was to immediately refer the matter to a contact person, who was then to provide written notes of the complaint, signed by the victim, to the appropriate Catholic Church authority.[87] In its 2013 submission to the Towards Healing Issues paper, the Council stated that contact persons are appointed by the Professional Standards Resource Groups, and they are chosen because of their skills and experience in listening and responding to complaints of this nature.[88]

The role of the contact person in a survivor's initial contact with Towards Healing has remained important through later versions of the protocol. Towards Healing (2000) also required any Catholic Church personnel receiving a complaint to refer the matter to a contact person as soon as possible.[89] The contact person was then to forward a report of the complaint to the relevant Director of Professional Standards.[90] According to a 2011 document issued by the National Committee for Professional Standards outlining the Towards Healing process, that process is formally initiated when a signed contact report is received by the Director of Professional Standards.[91]

Towards Healing (2010) states that complaints can be received directly in writing by the Catholic Church authority or Director of Professional Standards or they can be received verbally and 'followed up' by a contact person.[92] While the document no longer explicitly requires complaints received by other 'members' of the Catholic Church to be referred to a contact person, the Council told us that the first step taken following initial contact is usually to put the victim in touch with a contact person.[93] The Council also stated that the 'role of the contact person is central to the way a victim experiences the *Towards Healing* process from the outset',[94] indicating their ongoing importance in the initial stages.

All versions of Towards Healing state that contact persons are to be 'skilled listeners, sensitive to the needs of complainants'.[95] Their role was also expanded in 2000 to include acting as a support person for the victim, assisting with communication between the victim, assessors and the Catholic Church authority and explaining the procedures of Towards Healing.[96] In its submission to the Towards Healing Issues paper, the Council acknowledged that 'It is no doubt true that some contact persons … are better than others'.[97]

In *The Towards Healing process* public hearing, we received evidence from survivor Mrs Jennifer Ingham, who first made contact with the process in 2012 by telephoning the Director of Professional Standards in Queensland, Mr Patrick Mullins. She told us he was 'very compassionate' and 'outlined the process of Towards Healing well'.[98] After their phone call, Mrs Ingham emailed Mr Mullins to thank him for his 'compassion and the way you explained the process of *Towards Healing* … That made the phone call so much easier. It was a nervous call to make. Having as much detail and knowledge is very important to me'.[99]

Having received her complaint verbally, Mr Mullins then referred Mrs Ingham to a contact person to prepare a contact report in line with Towards Healing (2010) procedures. The contact person, Mr Peter Scanlan, came to Mrs Ingham's house to prepare the written complaint while her husband and best friend were there with her for support.[100] Mrs Ingham's experience in completing the contact report was largely positive. This was greatly influenced by her assigned contact person. She said:

> Peter was very professional, gentle and took a lot of care in asking questions. He advised he had a specific set of questions to ask me and prepared me well that there were some 'tough questions'. It was very traumatic … Peter's experience and his manner made this interview bearable.[101]

In the same case study, we heard evidence about DG's experience making initial contact with the Marist Brothers to report sexual abuse perpetrated against him by Brother Raymond Foster. DG wrote to the Marist Brothers in early 2000, attaching his police statement. His written complaint was received by then Provincial, Brother Michael Hill, who consulted the Marist Brothers' solicitors (who in turn consulted Catholic Church Insurance Limited (CCI)) before responding. Brother Hill wrote to DG suggesting he had two options: to engage in the Towards Healing process or be represented by a solicitor. This was despite the fact that the Towards Healing procedures do not prevent a victim from being represented by a solicitor. Brother Hill did not include any information about Towards Healing in the letter.[102]

Brother Hill then met with DG, who told him that he was not attracted by the Towards Healing approach.[103] DG told us this was because he 'didn't trust the Catholic Church after what had happened to me' and because he had heard criticisms of Towards Healing in the press.[104] Brother Hill told us that he did not tell DG about the benefits of Towards Healing during the meeting because of DG's unwillingness to use the process, and did not send DG any information about Towards Healing after they met because DG had rejected that line of action. Brother Hill rejected the proposition that he should have given DG this information before, during or after the initial meeting because it was 'too soon'. DG said that, after this initial meeting, 'I really didn't understand where *Towards Healing* was coming from and whether I was in or out of that process'.[105] After DG's initial meeting with Brother Hill the Marist Brothers made no further attempts to contact him.[106]

Similarly, in *Case Study 41: Institutional responses to allegations of the sexual abuse of children with disability*, we found that the processes of Towards Healing were not explained to CIC when Sister Sonia Wagner and Sister Jeanie Heininger visited her home in November 1997 after CIC reported that her daughter, CIB, had been sexually abused by a staff member at Mater Dei School – a Catholic school in the Diocese of Wollongong catering for students with mild to moderate cognitive disabilities.[107] CIB was a student in the residential program at Mater Dei School.[108]

Mr John Ellis first made contact with the Towards Healing process in 2002 by telephoning the Professional Standards Office NSW/ACT and disclosing to the telephone operator that he had been sexually abused by a priest 25 years previously. At first his experience was positive, with the brother who assisted him in writing his complaint being both supportive and encouraging. However, from this time on the brother had no further contact with Mr Ellis. He did not act as Mr Ellis's support person or assist him in communicating with the Catholic Church authority or assessor.[109]

The Director of Professional Standards at the time, Mr John Davoren, who was responsible for managing Mr Ellis's Towards Healing matter, did not appoint the brother as Mr Ellis's contact person, and he did not appoint anyone else to fill this role.[110] Under Towards Healing (2000), Mr Ellis should have been referred to a contact person as soon possible.[111] In our report on *Case Study 8: Mr John Ellis's experience of the Towards Healing process and civil litigation (Mr John Ellis, Towards Healing and civil litigation)*, we found that, in not appointing a contact person for Mr Ellis, Mr Davoren did not comply with the procedures in Towards Healing (2000).[112]

We heard from other survivors who took the first difficult step of contacting the Catholic Church to report the sexual abuse they experienced as children and were then left waiting and uncertain, without communication from the Catholic Church. In the *Catholic Church authorities in Ballarat* public hearing, BAS told us that he made contact with Towards Healing in 2012 and was told that he would be put on a waiting list and be contacted by the people from Towards Healing. He told us that he was not contacted 'for a long, long time' and that 'No one from Towards Healing has come to see me'.[113]

In a private session, 'Julian' told us that he made a complaint concerning child sexual abuse to two Catholic Church staff in the 1990s, who suggested that he go through the Towards Healing process. 'Julian' told us, 'I went away believing that there'd be some follow-up, and absolutely nothing happened for four years – nothing, nothing, not a word, nothing from the Church at all'.[114] In our *Redress and civil litigation* report we recommended that there should be a 'no wrong door' approach for survivors in gaining access to redress, meaning that, regardless of who they first contact, they should be helped to understand the redress available and to apply if they wish to.[115]

Reporting to police

Another important element of a survivor's experience when making initial contact is the extent to which they are supported in making a report to police if they wish to do so. We discuss the question of whether Catholic Church authorities themselves reported allegations of child sexual abuse against priests and religious to police in Sections 13.5 and 13.8.

The procedures of Towards Healing have always required the contact person or Director of Professional Standards to inform victims of their right to report to police where the matter involves a criminal act.[116] Towards Healing (2010) requires that they inform the victim of the Catholic Church's strong preference that the complaint be reported to the police.[117] All versions have required survivors who do not want to approach police to sign a record confirming this before they are able to proceed under Towards Healing.[118]

Each version also states that the Catholic Church will not jeopardise or interfere with police action or criminal processes by conducting their own investigations.[119] In practice this means that survivors who make initial contact are told that they can report to police but that, if they do so, Towards Healing will not be available to them until the conclusion of the criminal justice process.[120] Towards Healing (2010) states that, in cases where a survivor does report to police, they may still be provided with funding for counselling or other assistance in the meantime if this is recommended by the Director of Professional Standards to the relevant Catholic Church authority.[121]

In *The Towards Healing process* public hearing, we heard that the Director of Professional Standards in Queensland, Mr Mullins, advised Mrs Ingham at the beginning of her Towards Healing experience that 'the Church's position in these matters is that victims should take the matter to police'. After further assistance from Mr Mullins, Mrs Ingham reported the sexual abuse to police.[122]

In its submission to the Towards Healing Issues paper, the Council highlighted the procedures in Towards Healing which state that, while it is the preference of the Catholic Church that victims report to police, many victims do not want to do so and their wishes must be respected. It directed us to the provisions in Towards Healing (2010) requiring Directors of Professional Standards to report all cases involving allegations of sexual abuse to police, leaving out any details that could lead to the identification of the victim, which it said was an attempt to strike an appropriate balance between the rights of a victim to privacy and confidentiality and the public interest in such crimes being prosecuted.[123]

We heard an example of this practice in *The Towards Healing process* case study. On 15 February 2010, Brother Alexis Turton urged DK to take his matter to the police, but DK did not want to. Brother Turton told DK he would need a signed statement of DK's story and a signed acknowledgment that he had been urged to take his matter to police.[124] Mr Michael Salmon, the New South Wales Director of Professional Standards, then referred DK's matter to police on 24 February 2010 'in the conventional notification process that we have regarding this matter mentioning the complaint … but not mentioning the name of the complainant'.[125]

We discuss this practice, known as 'blind reporting', briefly in Chapter 21 and in more detail in our *Criminal justice* report. In Chapter 9 of the *Criminal justice* report, 'Police responses and institutions', we acknowledged the competing concerns that institutions face in relation to blind reporting to police. Blind reporting can enable institutions to provide police with information while respecting the wishes of survivors and not discouraging them from coming forward to seek support. However, it can also leave institutions open to criticism that they have discouraged survivors from consenting to police reports and that they have been motivated by a desire to protect the institution.[126]

In our *Criminal justice* report, we made a number of recommendations on blind reporting. These included a recommendation that, regardless of an institution's policy in relation to blind reporting, the institution should provide survivors with information to inform them about options for reporting to police and support them to report to police if the survivors are willing to do so.[127]

As detailed in the *Criminal justice* report, the Council told us that, in New South Wales, the practice of blind reporting under Towards Healing stopped in 2015. The Professional Standards Office NSW/ACT now provides all information, including the survivor's details, to police on a reporting form. This occurs even if the survivor says that they do not want their name given to police. In Victoria, current practice is governed by relevant legislation.[128] In the *Institutional*

review of Catholic Church authorities, Mr Mark Eustance, the Director of Professional Standards for the Catholic Church in Queensland, told us they offer survivors the option of having their information shared with the police but also acknowledge they may not want to be contacted about it. If the survivor does not want their name shared with police, this will be kept confidential.[129]

In the *Criminal justice* report, we also made recommendations for voluntary reporting of child sexual abuse in an institutional context[130] and for the introduction of a 'failure to report' criminal offence targeted at child sexual abuse in institutions.[131] We discuss these recommendations in relation to religious institutions in Chapter 21.

We were told by some survivors that they felt as though they were put in a position of having to choose between seeking redress and reporting to police. Some told us that the Catholic Church personnel and Towards Healing staff they spoke to told them that going to police would be a difficult and fruitless experience given the historical nature of the sexual abuse they experienced as children. Some told us that they had gone to the Catholic Church at a time when they desperately needed help, so they felt pressured into not reporting in order to access financial and other assistance through Towards Healing.

In her submission to the Towards Healing Issues paper, Ms Lockhart of the Ballarat Centre Against Sexual Assault informed us that none of her clients were advised or encouraged to go police but felt that the choice was 'either/or'. She said, 'As most of the survivors have struggled financially due to chronic unemployment the money seemed like the only option'.[132]

A number of submissions made in response to the Towards Healing Issues paper raised concern regarding the impact of Towards Healing on victims' access to criminal justice processes.[133] Bravehearts, a support service working with and advocating for survivors of child sexual assault, submitted that many survivors told them of being actively discouraged by the Catholic Church from pursuing criminal proceedings.[134] Micah Projects said in their submission that some survivors reported feeling 'discouraged from going to the police more by the attitude and actions of church personnel than by any specific direction'.[135]

In Chapter 8, 'Issues in police responses', of the *Criminal justice* report we recommended that police should provide information on the different ways in which victims and survivors can report to or seek advice from police on their options for reporting. We recommended that this information should be in a format that allows institutions to provide it to victims and survivors.[136] Institutions should provide such information to survivors. They should also offer to support survivors to make a report or to pursue more information about reporting and should offer to make a report on the survivor's behalf.[137]

We recognise the need for Catholic Church authorities to ensure that their own investigations do not compromise those of the police and the difficulty this may create in progressing a complaint under Towards Healing where there is a concern that the conduct associated with

the complaint constitutes a criminal offence. We provide information regarding managing institutional investigations and responses alongside criminal investigations in Chapter 21 of this volume and Chapter 9 of the *Criminal justice* report.[138]

While recognising this difficulty, we are also concerned that survivors not feel placed in an either/or situation. In Chapter 21, we suggest that support and assistance be provided by religious institutions from the time of disclosure throughout a survivor's complaint process, which may involve providing support throughout the police investigation and criminal process.

Assessment

Towards Healing (1996) provided that in each case the contact person would recommend to the Catholic Church authority whether there was a need for a formal assessment of 'any aspect of the matter'.[139] Towards Healing (2000) and Towards Healing (2010) provide that, following receipt of a complaint, the Director of Professional Standards decides 'whether the complaint concerns conduct which could reasonably be considered to fall within the definition of abuse' in the document. Suitable complaints are forwarded to the appropriate Catholic Church authority. The Catholic Church authority then informs 'the accused' of the nature of the complaint and seeks a response from them in order to determine whether the facts of the case are significantly disputed.[140] If there is a 'significant dispute or uncertainty about the facts' the matter is to be investigated.[141] According to guidelines produced by the National Committee for Professional Standards in 2011, 'It is a matter of discussion between the Church Authority and the Director of Professional Standards whether a formal assessment of the complaint is needed'.[142] In its submission to the Towards Healing Issues paper, the Council told us that, as at 2013, assessments occur only in a minority of cases.[143]

All versions of Towards Healing provide that there are to be two assessors appointed, although the 2000 and 2010 versions give the Director of Professional Standards the discretion to decide that one assessor is sufficient in the circumstances of the case.[144] All versions state that assessors 'must be, and be seen to be, independent of the Church Authority, the complainant and the accused'.[145]

In evidence provided to us in public hearings we heard that sometimes the relevant procedure was not followed by those responsible for administering Towards Healing.

In the *Mr John Ellis, Towards Healing and civil litigation* case study, we found that the Director of Professional Standards NSW/ACT, Mr Davoren, did not comply with the procedures in Towards Healing (2000) by not referring Mr Ellis's complaint to an assessor.[146] We heard that the alleged perpetrator of Mr Ellis's sexual abuse, Father Aidan Duggan, was in a nursing home and that his mental state was in question. Mr Davoren repeatedly presented Father Duggan's ability to participate in an assessment as a prerequisite for further steps being taken.[147] Towards Healing (2000), which applied at the time, stated that an investigation was to occur where there was a significant dispute about the facts or where 'the accused is unavailable to give a response'.[148]

Six months after Mr Ellis initiated contact under Towards Healing, then Archbishop Pell sent Mr Ellis a letter in which he stated, 'On the one hand, there is your allegation, and on the other Father Duggan cannot respond and we have no other record of complaints of this kind against him'. The letter concluded, 'I regret that a clear resolution of this matter is not possible, but under the circumstances I do not see that there is anything the Archdiocese can do towards this end'.[149]

Mr Ellis received the letter on Christmas Eve 2002 and understood it as a 'clear statement that the Archbishop considered the matter to be at an end, despite there having been no formal assessment'. He felt 'the door was being slammed in [his] face' and that the Catholic Church's position was that his account 'was not to be believed'.[150] We found that Cardinal Pell's letter was contrary to the procedures in Towards Healing, as an assessor should have been appointed regardless of the inability of Father Duggan to respond.[151]

In 2003 Mr Ellis's complaint was taken over by Mr Salmon and Monsignor Brian Rayner, who quickly organised an assessment. The assessor appointed found that it was 'more likely than not that the allegations as alleged occurred'.[152]

We also heard from survivors who were not required to undergo assessment. The contact person in Mrs Isaacs' matter determined that there was no need for a contact report or assessment. In our report on *The Towards Healing process* case study we concluded that this was a sensible decision, made on the basis that the perpetrator had been convicted and Mrs Isaacs had provided various supporting documents.[153] Notably, Mrs Isaacs told us that she waited to start the Towards Healing process until after the person who sexually abused her, Father Francis Derriman, had been convicted. She felt this would make the process easier, as she 'wouldn't have to prove anything anymore'.[154]

This decision to proceed without assessment was also made in the matters of Mrs Ingham, DG and DK. In Mrs Ingham's case, the decision was based on her contact report. For DG, the decision to bypass the appointment of a contact person and completion of an assessment was based on the fact that DG had already reported to police and there was an admission by the perpetrator, Brother Foster. With respect to DK, Brother Turton made a decision to accept DK's written statement and email as a contact report and proceed to facilitation.[155]

In *Case Study 9: The responses of the Catholic Archdiocese of Adelaide, and the South Australian Police, to allegations of child sexual abuse at St Ann's Special School (St Ann's Special School)*, we received evidence about the Archdiocese of Adelaide's efforts to provide a response 'along the lines of *Towards Healing*', but without the requirement of assessment, to former students of St Ann's Special School.[156] The school catered for students with intellectual disabilities ranging from a moderate to profound level of severity. Many of the students had limited communication abilities.[157]

In this instance, the Professional Standards Office and archdiocese decided to replace individual assessments with a group approach, under which students were categorised according to their varying levels of unsupervised contact with the perpetrator, Brian Perkins. The Catholic Archbishop of Adelaide, Archbishop Philip Wilson, told us that the main reasons for this decision were to accommodate the fact that many victims were non-verbal; and reluctance to put the former students and their families through more distress.[158]

Not all parents were satisfied with the decision, with some criticising the failure under this model to provide the same level of engagement as under the protocols of Towards Healing.[159] One parent, Mrs Helen Gitsham, wrote a letter to the Catholic Church following receipt of a letter advising that her son 'was not identified specifically as a victim of the abuse'.[160] It stated that:

> We remain mystified by the assessment process. The Archbishop has stated publicly that it is in the context of Towards Healing but no one has discussed David's circumstances with us which we would have expected as outlined in Towards Healing. The assessment has been undertaken with no input from David or his family ... So much for the pastoral response.[161]

In evidence to us, Mrs Gitsham outlined the importance of the assessment process for some victims:

> I think what we wanted more than anything was discussion, was dialogue. One of the things – the first things – that we saw with Towards Healing was that the assessor would talk to us, would listen to us; that there would be opportunity, even with facilitation, if we ever got that far, to discuss the issues that concerned us. That's what we were expecting from Towards Healing, and that's what we wanted, some face-to-face discussion …[162]

For survivors who have been through the assessment process, some told us that they found it to be re-traumatising. In *St Joseph's Orphanage, Neerkol*, AYB told us she was interviewed by an assessor, who asked her to detail the sexual abuse she had suffered. She said that this experience left her feeling 'humiliated and violated' and 'like the circle of abuse continued' through the assessment process. She told us, 'Neither my husband or I could drive for an hour afterwards because we were so distressed'.[163]

Knowmore legal services said in its submission to the Towards Healing Issues paper that most of its clients who engaged in Towards Healing found it to be, at least to an extent, a re-traumatising process. Having to provide assessors with precise details of their experience of sexual abuse in order to satisfy the evidentiary test required under Towards Healing was highlighted as a particularly traumatising element of the process. Many felt that the assessment was very legalistic and incongruent with the stated pastoral nature of Towards Healing.[164]

Other submissions to the Towards Healing Issues paper also identified as a problem the forensic and legalistic approach to assessment, drawing on contact and experience with survivors who had been through the process. Both Lewis Holdway Lawyers and researcher Dr Courtin raised in their submissions that the two assessors in Victoria at that time were Catholic ex-policemen who conducted their interviews with survivors in an investigative, forensic manner. Both provided examples of assessors putting questions to survivors that were extremely detailed, such as 'did Father wear rosary beads on the left or right side when he abused you?'. Dr Courtin also provided examples of assessors making inappropriate or insensitive comments to victims as a part of their Towards Healing assessment.[165]

Lewis Holdway Lawyers submitted that assessors appeared to demonstrate 'little acknowledgment of or understanding of the impacts of trauma, including the impact on a victim's memory and ability to recall dates and times'.[166] Similarly, knowmore told us that some of its clients reported being made to feel like liars because they were not able to give precise details of their experience of sexual abuse due to the passage of time or because they wanted to block those memories out.[167]

In its submission to the Towards Healing Issues paper, the Council acknowledged that 'It is no doubt true that some … assessors … are better than others' and recognised that the qualities and attributes of individual assessors, such as their compassion, empathy and ability to connect and communicate with survivors, are vital to each survivor's Towards Healing experience.[168] The Council told us that assessors either must be appropriately skilled or will be provided with training on the appropriate use of investigation and communication.[169]

We recognise that any process requiring a survivor to recall their experience of sexual abuse as a child is liable to be distressing for them. In our *Redress and civil litigation* report we recommended that all redress should be offered, assessed and provided with appropriate regard to what is known about the nature and impact of child sexual abuse.[170] This requires that those involved in providing redress, particularly those who interact with survivors or make decisions that affect them, have a proper understanding of these issues and any necessary training.[171] As discussed in Volume 9, *Advocacy, support and therapeutic treatment services*, to provide effective services that avoid re-traumatisation, it is essential to have an understanding of the effects of trauma associated with institutional child sexual abuse.

The experience of Mrs Gitsham and her husband shows that, while for some survivors assessment can cause re-traumatisation, others may feel it is an important part of their Towards Healing experience, and they may be impacted negatively if a decision is made to bypass this step in the redress process without consulting them. This shows the importance of institutions engaging sensitively with survivors, actively seeking to identify their needs and being responsive to these needs in providing redress, as discussed in our *Redress and civil litigation* report.[172] We further discuss the importance of responsiveness to the diverse needs of survivors and victims in Volume 9 of this report, *Advocacy, support and therapeutic treatment services*.

Another issue that was raised with us was the perception of some survivors that their assessors were not sufficiently independent, particularly when they found out that they were either connected to or employed by the Catholic Church.

In its submission to the Towards Healing Issues paper, knowmore said that some of its clients had raised concerns over the fact that the assessor in their case was 'from the Catholic Church', which led them to question their independence.[173] Lewis Holdway Lawyers also reported that some of their clients have felt that Towards Healing staff were 'on the Church's side' and that some staff, including assessors, were selected 'due to their connection with the Church, not for their particular qualifications'.[174] Similarly, Broken Rites, a voluntary organisation that provides advice and advocacy to survivors of abuse in Catholic institutions, told us that 'cases have been conducted where the appointed Assessor was a member of the same religious community as the alleged offender'.[175]

In its submission, the Council highlighted the requirement that assessors be independent of the Catholic Church authority, the victim and the accused as a procedure in Towards Healing (2010) designed to 'help ensure an element of independence'.[176]

Facilitation and outcomes

Following any assessment process, the next key stage in Towards Healing is the facilitation. Its stated purpose is to identify the victim's needs and how they can be met by the relevant Catholic Church authority.[177] Towards Healing (2000) and Towards Healing (2010) both state that the outcomes for the victim must be responsive to the victim's needs.[178] The responses of the Catholic Church authority that are decided on through facilitation may include apology, provision of counselling services or payment of counselling costs, and/or provision of financial assistance.[179] The National Committee for Professional Standards has emphasised that the primary purpose of a facilitated meeting ought to be pastoral, rather than to settle a dispute or to engage in negotiations towards a financial settlement.[180] This point that the principal aim of Towards Healing was and remains to provide pastoral care to survivors has been made to us repeatedly by the Council, Catholic Church leaders and those involved in the application of the Towards Healing process.[181]

The facilitation session is typically attended by the victim and a senior representative of the Catholic Church authority, with a facilitator assisting to mediate an agreement about what the Catholic Church authority can and should do to assist the victim.[182] The sessions may also be attended by support persons and legal representatives. We have also heard that a representative of CCI is often present. The Council told us that, if CCI is attending a facilitation where a victim is legally represented, CCI may also instruct its solicitors to attend.[183]

Selection of facilitator

Towards Healing (1996) required that 'the Church authority and the victim shall mutually agree on a Facilitator from the approved panel'.[184] This requirement was modified in subsequent versions of the protocol, with Towards Healing (2010) stating that:

> The Church Authority and the victim shall endeavour to agree on a facilitator, either from the approved panel or otherwise a qualified mediator approved by the Director of Professional Standards, who is suited by reason of training and experience to understand the needs of victims of abuse. In the absence of agreement, the Executive Officer of the National Committee for Professional Standards shall appoint a facilitator.[185]

Despite this modification, it is clear that there should, at the very least, be a process of consultation with survivors as to who will act as facilitator in their Towards Healing matter. We heard that in some cases this did not occur.

In *Mr John Ellis, Towards Healing and civil litigation*, we received evidence that the Director of Professional Standards, Mr Salmon, appointed Mr Raymond Brazil as facilitator without consulting Mr Ellis or giving him a list of possible facilitators from which he could make a choice. We found that, in not seeking Mr Ellis's consent to appoint Mr Brazil as facilitator, Mr Salmon acted inconsistently with clause 41.3 of Towards Healing (2000).[186]

Based on their experience assisting clients in Towards Healing matters, Lewis Holdway Lawyers told us in their submission to the Towards Healing Issues paper that, although the Towards Healing protocols require the names of approved facilitators to be publicly available, they have 'only once known this to be the case'.[187]

The facilitator for Mrs Ingham's Towards Healing facilitation was also appointed without her having been consulted. The Queensland Director of Professional Standards, Ms Bernadette Rogers, appointed the same Mr Salmon referred to above as facilitator on the recommendation of CCI. Mr Salmon was, at the time, the Director of Professional Standards in New South Wales.[188] Ms Rogers advised Mrs Ingham of Mr Salmon's availability as facilitator in such a way that Mrs Ingham was not asked if she agreed or disagreed with his appointment or told of her option to suggest an alternative facilitator, as contemplated by clause 41.4 of Towards Healing (2010).[189] We found that having a Director of Professional Standards act as facilitator raises a real potential for an actual or perceived conflict of interest, as they are employed directly by the Catholic Church.[190]

In its submission to the Towards Healing Issues paper, the Council told us that facilitators are usually appointed by the Director of Professional Standards from an approved list of experienced candidates and that consideration is usually given to whether the victim would prefer a male or female facilitator. The Council said that many Towards Healing facilitators are

lawyers, psychologists or experienced mediators, adding that, 'On occasions, the Director acts as the facilitator'. The Council also told us that facilitators must be independent of the Catholic Church authority, the victim and the accused.[191] The procedures in Towards Healing (2010) do not specify that the facilitator must be independent.[192]

Concerns around the independence of the facilitator, real or perceived, were also an issue in DK's Towards Healing matter. In this case, Brother Turton appointed Mr Salmon, Director of Professional Standards in another state, as facilitator. Both Brother Turton and Mr Salmon gave evidence that they verbally communicated Mr Salmon's position to DK and obtained his verbal consent to have Mr Salmon act in this role.[193] DK's evidence was that Brother Turton asked him if he was happy for Mr Salmon to act as his facilitator but did not tell him that Mr Salmon was employed by the Catholic Church.[194] He told us that Mr Salmon spoke with him on two or three occasions before the facilitation but did not tell him that he was employed by the Catholic Church, describing himself as independent. Neither Brother Turton nor Mr Salmon wrote to DK about Mr Salmon's position or asked him to consent in writing.[195]

Towards Healing (2010) provides that 'The Director of Professional Standards should not normally participate in the facilitation process' unless approval is given in accordance with clause 39.5. Clause 39.5 provides that the director must obtain written approval of the executive officer of the National Committee for Professional Standards to do so, in circumstances where to do so would better accord with the principles of Towards Healing. This written approval was not sought in DK's matter.[196]

We found that neither the Marist Brothers nor Mr Salmon effectively communicated his position to DK either before or during DK's facilitation.[197] We also found that Mr Salmon did not act consistently with Towards Healing (2010) in that he acted as facilitator without having obtained approval in accordance with clause 39.5.[198] We again found that a Director of Professional Standards acting as a facilitator in a Towards Healing facilitation raises a real potential for an actual or perceived conflict of interest given that the director is employed by the Catholic Church.[199]

DK told us that he did not find out about Mr Salmon's position until after he had completed his Towards Healing facilitation, and he did so by chance while watching television. He said, 'The failure to disclose Mr Salmon's position as Director of the New South Wales Professional Standards Office made me really, really angry because I felt that I was lied to'.[200]

Questions around the independence of facilitators, real or perceived, were also raised in public submissions to the Towards Healing Issues paper. Solicitors John and Nicola Ellis, whose submission was based on their experience in acting for a number of survivors, wrote that they were 'aware of several matters where the Director of Professional Standards has acted as facilitator'.[201] Similarly, Lewis Holdway Lawyers said that some of their clients have raised concerns that facilitators have been chosen due to their connection with the Catholic Church rather than their qualifications. They said that they were aware of 'one Towards Healing facilitator who concurrently works for a religious authority'.[202]

In Chapter 20, 'Making religious institutions child safe', we recommend that religious institutions should have a policy relating to the management of actual or perceived conflicts of interest that may arise in relation to allegations of child sexual abuse (see Recommendation 16.39).

Communication failures

We also heard about issues with communication that negatively affected survivors' experiences of their Towards Healing facilitation. These included instances where there was a failure to communicate clearly and consult with survivors in the lead-up to the facilitation and a failure to communicate sensitively.

In *The Towards Healing process* case study, Mrs Ingham told us that, when she first engaged in the process, the Director of Professional Standards in Queensland was Mr Mullins. Mr Mullins was her first point of contact and continued to communicate with her over the months during which the Archdiocese of Brisbane made a decision about her complaint. He had also agreed to Mrs Ingham's request to meet prior to the facilitation to answer her questions.[203] However, eight months after Mrs Ingham had first made contact, Ms Rogers took over from Mr Mullins as director. Neither Mr Mullins nor Ms Rogers contacted Mrs Ingham to advise her of this change.[204] We found that this should have been communicated to Mrs Ingham.[205]

Mrs Ingham also told us that she was upset by several comments Ms Rogers made to her during the time she was handling her matter. As a result of her communications with Ms Rogers, Mrs Ingham told us that she was 'very confused and nervous, and really defensive'. She 'felt that the goalposts of the process had changed' and 'the pastoral care element was lost and it was to be about money'.[206]

We found that these communication issues highlight the importance to survivors of child sexual abuse of being dealt with sensitively by the institution.[207] As stated above with regard to assessors, all people involved in redress, particularly those who interact with survivors or make decisions that affect them, should have a proper understanding of the nature and impact of child sexual abuse and any necessary training, as outlined in our *Redress and civil litigation* report.[208] We make recommendations with respect to improving staff education and training, including for people in religious ministry, in Chapter 20.

In the same case study, we also heard about a number of problems with the handling of pre-facilitation consultation and communication with Mrs Isaacs. Before her facilitation, Mrs Isaacs had clearly communicated to the Professional Standards Office what she hoped to get out of the Towards Healing process: an apology, counselling and compensation. The convenor of the Professional Standards Office wrote to Mrs Isaacs confirming that the agenda for her facilitation would relate to her identified needs.[209]

However, the representative of the Archdiocese of Brisbane who attended the facilitation, Father Adrian Farrelly, was placed under restrictions with respect to the counselling that could be offered to Mrs Isaacs and he was not entitled to engage in negotiations about a financial

settlement. He did not do anything before the facilitation meeting to let Mrs Isaacs know that his role was limited so that she could set her expectations about what he did and did not have the authority to do.[210]

Mrs Isaacs gave evidence that no one explained to her what the facilitation would entail and no one consulted her on the facilitator selected. While the convenor for the Professional Standards Office had difficulty accepting Mrs Isaacs' evidence, he accepted responsibility for the fact that Mrs Isaacs felt unprepared and insufficiently informed about what would occur at the facilitation. Mrs Isaacs also believed that she could take only one person to the facilitation with her. As she wanted to take her lawyer, she thought that this meant she could not bring her husband with her for support. We found that this was probably due to a miscommunication.[211]

In considering the effect of these issues with communication on Mrs Isaacs's Towards Healing experience, we found that any process by which survivors engage with the Catholic Church about the abuse they have suffered from a member of the clergy should be one in which they are consulted and listened to.[212]

Power imbalance

In the *Christian Brothers* case study, we heard from survivors whose experiences of attending a facilitation with the Christian Brothers brought back feelings from their childhood and memories of child sexual abuse, leaving them feeling disempowered and unable to negotiate on equal footing. VV said of his Towards Healing facilitation:

> This meeting was very traumatising. The brothers were not approachable or welcoming and I felt intimidated. I felt like a child again trying to defend myself.[213]

Similarly, Mr John Wells told us:

> When the two Brothers entered the room I cringed with fear. Even though I was an adult man … the fear from my childhood just came flooding back to me when I saw them. One of them was just looking at me and I thought to myself, 'Gee, I have completely lost'.[214]

In its submission to the Towards Healing Issues paper, knowmore legal services quoted a survivor who experienced this same sense of disempowerment during their Towards Healing facilitation, stating, 'as soon as I walked into that room with the people from the Church, I was that little boy in the home again'.[215]

Knowmore also highlighted other elements that may contribute to this feeling of power imbalance. It stated that many of its clients who had gone through Towards Healing have low literacy levels, intellectual or other disabilities and are suffering from the multiple and severe impacts of the complex trauma they experienced as a result of the sexual abuse, putting them at a disadvantage when negotiating with Catholic Church authorities.[216] Several other

submissions also referred to the impacts of child sexual abuse on the health, wellbeing and finances of survivors and on their capacity for decision-making; and to the disadvantaged position this places them in during the Towards Healing process.[217]

Knowmore and others who made submissions in response to the Towards Healing Issues paper also raised the barriers victims face in pursuing a civil claim against the Catholic Church, meaning that many felt they had no other option for redress other than to engage with Towards Healing – putting them in a disempowered position from the beginning.[218] These legal barriers, including the 'Ellis defence', are discussed further below in relation to civil litigation.

We also heard that the imbalance in power between survivors and Catholic Church authorities could be exacerbated by the Catholic Church authority withholding information from survivors in the lead-up to and during the facilitation session.

In *The Towards Healing process* public hearing we received evidence about the Marist Brothers' response to DK's request for information as to whether the brothers present at his facilitation had reason to suspect Brother Ross Murrin's behaviour and whether there had been other complaints about Brother Murrin's behaviour while he was at St Augustine's College in Cairns, Queensland. We found that, during his facilitation, both the facilitator and Brother Turton knew that DK wanted the Marist Brothers to respond to his concerns that many people at St Augustine's knew of Brother Murrin's behaviour and that there were other victims, and that this question was clearly raised during the pastoral session of DK's facilitation. We also found that Brother Gerald Burns did not inform DK about complaints from 1981 of which he had personal knowledge. Brother Burns caused DK to understand that the Marist Brothers were not, and had no cause to be, aware of Brother Murrin's behaviour at St Augustine's and did not know of any other child sexual abuse.[219] At the public hearing, DK said that he had been 'deeply hurt' by the extent of information that was withheld from him during his Towards Healing process, which he later felt was 'a complete sham'.[220]

In her submission to the Towards Healing Issues paper, Dr Courtin included excerpts from research interviews with lawyers who had worked with clients going through Towards Healing. A number of these lawyers reported being involved in Towards Healing matters where the Catholic Church authority denied knowledge of other claims and complaints made against the same perpetrator, and survivors were told they were the only one to come forward, only to later find out that this was not the case. According to these accounts, survivors eventually learned from lawyers or other survivors that the Catholic Church had previously processed claims from other victims who had made allegations against that same perpetrator.[221]

The significant power imbalance between survivors and Catholic Church authorities can be alleviated where survivors have legal representation. Some submissions to the Towards Healing Issues paper stated that lawyers for survivors, as well as support people and advocates, were crucial to addressing the significant power imbalance between them and the Catholic Church.[222] However, Lewis Holdway Lawyers observed that the presence of lawyers for survivors can

escalate a defensive Church dynamic.[223] Based on their experience acting as Towards Healing facilitators in Western Australia, Ms Mary Power, Mr Graham Castledine and Ms Kate Castledine submitted that the absence of lawyers at facilitations can help to avoid an adversarial approach being taken.[224]

The Council told us that Towards Healing was never intended to be a 'legalistic' process but over time the involvement of lawyers has increased.[225] While recognising that the presence of lawyers can be constructive, allowing victims to feel that their interests are being safeguarded, the Council submitted that this has tended to result in an emphasis on monetary payments rather than on 'the pastoral support that is at the heart of *Towards Healing*'.[226]

This dichotomy is illustrated by the experience of DG, examined in our report on *The Towards Healing process*. In 2000 DG complained to the Marist Brothers that he was sexually abused by Brother Foster at a Marist Brothers college in the early 1970s. While his complaint was not initially considered within the Towards Healing framework, by October 2001 the Marist Brothers Provincial, Brother Hill, understood that DG wished to proceed with the final part of the Towards Healing process – namely, some kind of mediation. When DG attended a 'settlement conference' in June 2002, he was not aware that the Marist Brothers did not regard it as part of the Towards Healing process. We found that DG's Towards Healing experience was little more than negotiations between his lawyers and CCI about money.[227]

In his 2009 review of Towards Healing, Professor Parkinson observed that many cases that ostensibly come under Towards Healing are essentially a process of negotiations between lawyers or a mediation to attempt to settle the victim's claim and are indistinguishable from the settlement process for other civil claims. He noted that, if the case is run by lawyers and the complainant is only seeking compensation, Towards Healing really only provides procedures for the investigation and assessment of a complaint.[228] Towards Healing was amended in 2010 to clarify that, if a complainant chooses to be represented by a lawyer and is only seeking compensation, the complaint should not proceed through Towards Healing.[229]

Pastoral care

As noted above, in its submission to the Towards Healing Issues paper, the Council informed us that Towards Healing is intended to be pastoral in nature and aims to provide victims with a pastoral response, or pastoral care, shaped according to each victim's needs. It said that a pastoral response may include an apology, provision of counselling services, payment of counselling costs, financial assistance or reparation and/or spiritual support.[230]

Towards Healing (2010) defines 'pastoral care' as:

> the work involved or the situation which exists when one person has responsibility for the wellbeing of another or for a faith community of which the complaint is, or was, a part. It includes the provision of spiritual advice and support, education, counselling, medical care, and assistance in times of need …[231]

We heard from some survivors that they had positive pastoral experiences which contributed to their healing. Private session attendee 'Catherine Elizabeth' said that her Towards Healing process 'went really well'. The person to whom she spoke was understanding and offered her counselling. 'Catherine Elizabeth' requested and was granted support to attend a yoga retreat.[232]

However, many survivors who spoke to us were critical of the pastoral element of their Towards Healing experience. As noted above, we acknowledge that people who were dissatisfied with the process may have been more likely to make contact with us.

We also recognise that survivors may have differing understandings of what constitutes pastoral care, and they may have different needs and wants. In our report on *The Towards Healing process* we found that, for many survivors, the most important part of their Towards Healing facilitation is the experience of being listened to and acknowledged by the Catholic Church, particularly by someone senior in the Church.[233]

In that case study we heard that Mrs Ingham was originally 'angered and confused' when she was told that Deacon Christopher Wallace, then Chancellor of the Diocese of Lismore, would be attending her facilitation in place of Bishop Geoffrey Jarrett, the bishop of the diocese. Mrs Ingham told us that her primary objective was to meet the bishop because he was the head of the diocese and she needed to tell the leader her story so that she felt 'valued and respected and heard'.[234]

Mrs Ingham said she saw Deacon Wallace as only a deacon and a lay person.[235] Mrs Ingham said:

> I found it was extraordinarily traumatic in telling my story, and the church representative was Chancellor Chris Wallace, and that I felt like I was telling that story for Chris to tell that to the bishop. The manner in which I was able to tell that story I felt was facilitated very well by Michael Salmon, but it was the response from the bishop which was the most important part of the pastoral care element, and he was not there on the initial day.[236]

Following her Towards Healing facilitation, Mrs Ingham attended a pastoral meeting with Bishop Jarrett where she was able to tell him her story and receive an apology. She told us that, while she was disappointed that the bishop did not attend her facilitation, the pastoral meeting was of real benefit and it was a positive experience to have this separated from the financial negotiations component of Towards Healing.[237]

We also heard that the pastoral element of Mrs Isaacs' Towards Healing facilitation was affected by the fact that the Catholic Church authority sent Father Farrelly, a junior representative of the Catholic Church. While it was Mrs Isaacs who made the decision to proceed with Father Farrelly, she did so because she wanted the matter resolved as soon as possible, so she chose to proceed with the person the Catholic Church authority had put forward as a suitable representative.[238]

In a letter addressed to Father Farrelly following the facilitation, Mrs Isaacs said that, while the opportunity to heard by the Catholic Church at the facilitation was a 'crucial element to my healing process', she also expressed her disappointment that the bishop had not attended the facilitation. She advised that that would have been 'seen as a more genuine and meaningful response'.[239] We found that a senior person from the Catholic Church should attend meetings with survivors which have a pastoral element.[240]

In our *Redress and civil litigation* report, we recommended that the opportunity for a survivor to meet with a senior institutional representative and receive an acknowledgment of the child sexual abuse and its impact on them should be offered and provided by institutions on a survivor's request.[241]

Mr Ellis told us that the most important things for him in engaging with Towards Healing were 'firstly, to be believed; secondly, to be told that it actually mattered to somebody what had happened to me; and, thirdly, to have that spiritual assistance'.[242] Mr Ellis said that he wanted a spiritual director because:

> I wanted someone who would help me to reconcile within my head what had happened to me with an institution that I trusted and believed in and a faith that, up until then, had been the foundation of my life … my spiritual life has been totally trashed by this, and that was one of the most important things that I wanted the church to help in, and that's why I was talking to the church about this.[243]

During Mr Ellis's facilitation, Monsignor Rayner agreed to make arrangements for the appointment of a spiritual director for Mr Ellis, irrespective of whether legal proceedings were commenced. However, after Mr Ellis commenced legal proceedings, he was not provided with a spiritual director and was not told why.[244] We found that the Archdiocese of Sydney fundamentally failed Mr Ellis in its conduct of his Towards Healing process by not complying with clause 19 of Towards Healing (2000) and not giving him such assistance as was demanded by justice and compassion, including not providing him with a spiritual director when that was plainly one of his needs.[245]

Some survivors also told us that they were disappointed with the lack of follow-up or pastoral care they received after their Towards Healing matter was settled.

With respect to Mrs Isaacs' Towards Healing matter, we heard that, when she sought to negotiate financial compensation with the Archdiocese of Brisbane after her Towards Healing facilitation, the archdiocese stopped its pastoral response. Father James Spence, who participated in the negotiations for compensation on behalf of the archdiocese,[246] said in evidence to us:

> When Ms Isaacs sought to press a claim for compensation, the Archdiocese essentially moved into a defensive litigation stance and there followed a drawn-out two year period before the matter was resolved. Apart from the provision of counselling which continued for some time, there was no further engagement with her on a pastoral level. I regret the lack of any further pastoral contact with Mrs Isaacs.[247]

In her submission to the Towards Healing Issues paper, Ms Lockhart of the Ballarat Centre Against Sexual Assault said, 'None of the men who went through the Towards Healing process have received any follow up support, and feel as if once the cheque was paid, they were forgotten about and the door for ongoing support was closed'.[248] Similarly, Micah Projects submitted that a number of their clients told them they had received no ongoing support or follow-up and felt that their Towards Healing experience 'was simply a case of pay up and forget about us'.[249]

In contrast, the Council told us that, if a victim wishes it, the relevant Catholic Church authority may maintain ongoing contact with them and provide ongoing support following the conclusion of their Towards Healing process. It also told us that, if victims contact the Catholic Church to request further assistance after Towards Healing, it may be provided in various forms.[250]

The role of pastoral care in the effectiveness of Towards Healing as a response to survivors was acknowledged by Bishop William Morris during *Case Study 6: The response of a primary school and the Toowoomba Catholic Education Office to the conduct of Gerard Byrnes (Toowoomba Catholic school and Catholic Education Office)*. Drawing on his knowledge of the operation of Towards Healing generally around Australia, Bishop Morris told us that the process could deliver real and valuable outcomes for many, but not all, victims. He emphasised the importance to the success of the process of victims being looked after 'in a pastoral way'.[251] Bishop Morris acknowledged that this was not the uniform experience of those who engaged with Towards Healing. He told us that:

> a lot of times what happened is the process wasn't followed strictly, and the other thing that wasn't followed strictly was there wasn't that pastoral follow up with regards to, say, the victim. They were left almost hanging out there wondering what was going to happen with the process, and that, of course, brought pain into their lives, and also the process didn't work when that happened …[252]

Counselling

Participating in Towards Healing may result in survivors being provided with counselling services or receiving payment of their counselling costs from the relevant Catholic Church authority. In its submission to the Towards Healing Issues paper, the Council told us that this is one aspect of the pastoral response that the Catholic Church authority may provide, according to the needs of the victim.[253] It further told us that counselling is usually offered to a victim early on in the process, when they meet with a contact person,[254] and may be provided in the period between when the victim first makes their complaint and when their matter proceeds to facilitation for settlement,[255] as well as after settlement.[256]

While it may be the case that most survivors were offered counselling early on in the Towards Healing process, we heard from some who experienced lengthy delays before they were offered counselling. Some told us they were not offered counselling at all.

We heard that Mr Ellis was not offered counselling until 18 months after he commenced his Towards Healing process.[257]

In our *Redress and civil litigation* report we recommended that counselling should be offered and funded throughout the redress process, from the time that a survivor first makes or is assisted to make an application through the period when the application is being considered to the time of an offer being made and the survivor considering whether or not to accept the offer.[258]

Some survivors told us that they did receive counselling through Towards Healing and found it to be an important part of their healing process. Mr Albert McGregor, who gave evidence during the *Christian Brothers* public hearing, said that he found the counselling he was offered through Towards Healing to be helpful.[259]

Many survivors who were offered or provided with counselling by the Catholic Church authority told us that they had concerns about the relationship between the counselling services, or individual counsellors, and the Catholic Church. Knowmore legal services, in its submission to the Towards Healing Issues paper, also told us that clients had expressed concerns about their counsellors being selected by the Catholic Church. These clients reported feeling that the counsellor would be on the side of the Catholic Church and would not be supportive of them.[260] Similarly, in her submission Ms Lockhart of the Ballarat Centre Against Sexual Assault said that her clients consistently reported 'that as the counselling was paid for by the church, none of them felt they could trust the counsellor'.[261]

In *Catholic Church authorities in Ballarat*, BAA told us how his perception that the counsellor the Catholic Church sent him to was not independent affected his ability to engage in counselling:

> Towards Healing gave me five counselling sessions. They told me which counsellor to see. He came across as a wonderful fellow, but I couldn't open up to him because the church told me to go there and they were paying his wage.[262]

Similarly, in the *Christian Brothers* public hearing VW raised concerns over the fact that the psychologist he was sent to was associated with the Christian Brothers, although he did believe she had his interests at heart.[263]

Some survivors did not attend the counselling sessions offered to them due to this perceived connection with the Catholic Church. In *Catholic Church authorities in Ballarat*, BAV told us, 'I didn't attend the counselling sessions they offered. I didn't trust the councillor [sic] they

referred me to as it seemed to me that she was working for or with the Catholic Church. I doubted her independence'.[264] Another survivor, 'Marie', told us during a private session that she did not take up the offer of counselling because it was with someone affiliated with the Catholic Church and that 'It all felt too close'.[265]

These accounts highlight the importance of both actual and perceived independence in a survivor's ability to engage with counselling services provided by the Catholic Church.

As discussed above, we have heard from both survivors who want counselling services to be provided by the institution in which they were sexually abused and survivors who do not want to use services that have any connection with that institution.[266] In our *Redress and civil litigation* report we recommended that survivors should be given flexibility and choice in relation to counselling and psychological care.[267] We also recommended that a redress scheme should fund counselling provided by a therapist of a survivor's choice if it is specifically requested and in circumstances where the survivor has an established relationship with the therapist and the cost is reasonably comparable.[268] We further discuss the importance of choice for survivors when accessing support and therapeutic treatment services in Volume 9, *Advocacy, support and therapeutic treatment services*.

We also heard that survivor Mrs Isaacs encountered difficulties in accessing payment by Catholic Church authorities for counselling services. Mrs Isaacs told us that at her facilitation she was first offered counselling through Centacare – a Catholic Church run health and welfare service. She refused this offer because she 'had known some of the people who worked in Centacare' and 'knew that some of the counsellors were ex-nuns or priests, and there was no way I was going to put myself in that position'. Instead, Mrs Isaacs requested that the Archdiocese of Brisbane pay for her to continue seeing the counsellor she had been seeing for years.[269] The archdiocese offered to pay for 10 sessions of counselling, followed by a review. Mrs Isaacs said that she 'was content with that offer as a starting point'.[270]

However, after Mrs Isaacs had completed nine counselling sessions she found out that the Archdiocese of Brisbane had not paid for the last eight sessions. She told us that she had to write to Bishop John Gerry asking that he pay the account, which made her feel 'just devastated'.[271] Some months later, Mrs Isaacs found out that the archdiocese had not paid for her second set of counselling sessions, which made her 'very angry' and prompted her to call Bishop Gerry. During this phone call Bishop Gerry asked Mrs Isaacs whether counselling was addressing the problem, to which Mrs Isaacs responded, 'Counselling can address some issues but the total process of "healing" is severely impeded by the Church's reluctance to see this to its conclusion'.[272]

Apologies

> Victims are sick and tired of apologies and explanations, of more promises, of more protocols, of more policies, 'We're going to do this, we're going to do that'. They want something to happen so that if they make a complaint, why isn't it okay for the bishop to say, 'I'm getting in my car and going over to her house and sitting with her family to listen to what happened'.[273]
>
> **Dr Thomas P Doyle OP, American Dominican priest, canon lawyer and survivor advocate**

We were told by many survivors that receiving acknowledgment and an apology from the Catholic Church was a key motivation for them when engaging with the Towards Healing process. This is consistent with what we heard from survivors more generally about the importance of receiving a genuine, personal apology from the institution in which they experienced sexual abuse, as discussed in Volume 3, *Impacts*. In our *Redress and civil litigation* report, we observed that these accounts are consistent with the research on the importance and impact of apologies for survivors and their importance in the healing process.[274]

In its submission to the Towards Healing Issues paper, the Council stated that a formal apology is normally part of the outcome in Towards Healing matters. The Council also told us that, if a victim requests an apology from the accused personally, the Catholic Church authority will offer that apology if they are able to obtain it.[275]

We were also told by some survivors that the apology they received from the Catholic Church authority under Towards Healing contributed significantly to their healing process. At Mrs Ingham's Towards Healing facilitation Deacon Wallace opened his comments with what Mrs Ingham described as 'a sincere apology on behalf of the Church'.[276] As Mrs Ingham's main goal from Towards Healing was to be heard by a senior member of the Catholic Church, a pastoral meeting was also organised with Bishop Jarrett after the facilitation. Bishop Jarrett apologised verbally to Mrs Ingham, which she said had great value and importance.[277]

Bishop Jarrett also provided a written apology after their meeting, as he thought it was important that the apology reflect the sexual abuse and the effects as described by Mrs Ingham.[278] Mrs Ingham said that receiving the written apology was very empowering. She said that receiving this acknowledgment and acceptance from someone in a position of authority within the Catholic Church was 'one of the most significant outcomes' of her Towards Healing process. She told us, 'It is so important to be heard, so important to be believed'.[279]

Similarly, in his private session, 'Ridley' told us that, despite a rocky start to his Towards Healing process, his meeting with one of the leaders of the Christian Brothers order was 'a beautiful experience'. He told us, 'I got a beautiful apology from that guy, and he actually had showers in his eyes. And I went to rescue him … I said, "Mate, you didn't do it". He said, "No, but people representing us did".'[280]

Knowmore legal services also told us in its submission to the Towards Healing Issues paper that it had heard from many clients who appreciated receiving heartfelt apologies from the Catholic Church authority, while others felt no words could heal the enormous pain they have experienced.[281] Lewis Holdway Lawyers also submitted:

> We have seen firsthand the wonderful healing that occurs when a heartfelt and genuine apology is given, abuse is acknowledged and concern has been shown for the victim. This for us has been Towards Healing at its best.[282]

In our *Redress and civil litigation* report, we recommended that an apology from the relevant institution is part of the minimum direct personal response an institution should offer and provide on request by a survivor.[283] We also highlighted the importance of apologies as an element of redress and noted that apologies can have a significant impact on survivors. Survivors' accounts to us indicate that a genuine, effective apology can have a positive and healing impact, while other apologies can have negative impacts and potentially cause further harm.[284]

The survivors who gave evidence in the *Christian Brothers* case study had differing reactions to the apologies given to them by the Christian Brothers through Towards Healing. Mr McGregor felt that the apology he received at his facilitation was genuine. He said, 'I told my side of the story and they professed sorrow for what had happened. I think they were'.[285] In contrast, VV said that he found the apology he received weak and insincere. He told us that it left him feeling 'all the more betrayed'.[286]

As discussed in our *Redress and civil litigation* report, the issue of sincerity was raised by many survivors. From what we were told, it seems that an apology that expresses regret after giving appropriate recognition and taking responsibility may be most likely to be regarded as sincere.[287]

However, some survivors told us that they would not consider any apology offered by the institution responsible for their experience of sexual abuse as children to be sincere.[288] Mr Wells, who also gave evidence in the *Christian Brothers* case study, told us he was not interested in receiving an apology from the brothers as part of his Towards Healing process, as he 'did not believe that any apology would be truly genuine'.[289]

This is reflective of the observation made in our *Redress and civil litigation* report that different survivors have told us they responded differently to the same public apology or same form of private apology.[290] We recommended that, in providing survivors with a direct personal response, institutions should try to be responsive to each survivor's needs.[291] This is because those needs vary from individual to individual. As such, institutions should engage sensitively with survivors, actively seek to identify their needs, listen to them about what they need and want, and be responsive.[292]

This is particularly important given that there is often a power imbalance between the survivor and the institution, as discussed above, which an apology from the institution can go some way to addressing if done well. If, on the other hand, the institution dictates the apology and is not responsive to a survivor's needs and wants, this can serve to reinforce the power imbalance.[293]

In discussing apologies in our *Redress and civil litigation* report, we noted that one of the strongest themes that arose in survivors' accounts was the importance of the institution taking responsibility for the wrong and the harm caused. Partial apologies, which express sorrow but fail to take responsibility, can significantly limit the effectiveness of an apology.[294]

In *Mr John Ellis, Towards Healing and civil litigation*, we heard that Mr Ellis was denied an apology from the then Archbishop of Sydney, Archbishop Pell, at the conclusion of his facilitation, as matters such as reparation and the deed of release had not been resolved. His facilitator, Mr Salmon, advised that 'it would appear to be inappropriate to place the Cardinal in the middle of a potentially vigorous negotiation context'. Mr Ellis told Mr Salmon that he was 'gravely disappointed' that a meeting with the archbishop and formal acknowledgement and apology was not achieved through Towards Healing, 'as from the outset that was my primary and foremost request in terms of tangible outcomes of the process'.[295]

Despite the fact that Mrs Isaacs had clearly identified an apology as one of her primary motivations for engaging in the Towards Healing process, Father Farrelly had no authority to give Mrs Isaacs such an apology at her facilitation session. As discussed above, CCI had advised that Father Farrelly 'expresses sorrow that such events could take place, that a priest of the Archdiocese could act in such a way' but should 'avoid any suggestion the Archdiocese is itself responsible'.[296] At the facilitation, Father Farrelly expressed sorrow only as he was authorised to.[297] Mrs Isaacs told us that she said, 'Thank you for that, but it's not good enough for me. I would like it in writing', as she wanted an apology signed by the bishop. Father Farrelly told her that he did not have instructions on this but would raise it with the bishop. This made Mrs Isaacs feel that the matter was 'left up in the air'.[298]

The written apology that Mrs Isaacs did finally receive had been drafted by Father Farrelly then sent to CCI for advice before Bishop Gerry made changes and finalised it.[299] Mrs Isaacs told us that when she read the letter the first thing that entered her mind was 'that it had been written by a lawyer, not by Bishop Gerry'. The apology made Mrs Isaacs feel 'as though the Catholic Church were completely distancing themselves from Frank Derriman to protect themselves from any responsibility and maybe litigation'.[300]

We received other evidence that lawyers for Catholic Church authorities were directly involved in the apologies given to some survivors. In DG's matter, the private written apology he received was drafted and approved in its final form by lawyers acting for him.[301] For DG, the healing potential of the apology was diminished by the disappointment he felt with the Towards Healing process up to that point and the fact that the apology was signed by the new Provincial of the Marist Brothers, who DG felt did not have a genuine understanding of his experience. DG told us:

> I thought the apology was pretty hollow and I was over it all by that stage. Basically, the letter made an apology for this and that, and I thought, 'I don't even know who you are, and it doesn't really mean that much to me.' To me, Brother Thompson was apologising for something he probably knew very little about. I thought it was rather worthless.[302]

He said, 'I was ambivalent to the whole process by then and thought that – my thoughts were that the apology was rather empty and somewhat self-serving'.[303]

In the *Catholic Church authorities in Ballarat* public hearing, we heard that the apology given to BAA was also affected by the fact that the brother who delivered it was not known to him. BAA told us:

> During the mediation some Brother I had never met before said, 'We're really sorry' and stuck his hand out. I hate myself today still for shaking his hand. I felt like the apology was just words and there was no compassion.[304]

In the same case study, BAV told us that the apology he received through Towards Healing 'felt pretty empty'. He said, 'It felt like I was just part of the process, going through the motions'.[305]

Financial assistance or reparation

The response of the Catholic Church authority to a victim under Towards Healing may also include provision of 'financial assistance or reparation'.[306] 'Reparation' is defined in Towards Healing (2010) as:

> a monetary sum or some form of in-kind assistance that is directed to the provision of practical means of support in order to promote healing for the victim. It is provided by the Church Authority as a means of recognising the harm suffered by a victim of a criminal offence or civil wrong, and as a tangible expression of the Church Authority's regret that such abuse occurred. Reparation may be offered independently of whether the Church Authority is legally liable.[307]

In its submission to the Towards Healing Issues paper, the Council said that '*Towards Healing* is not, and was never intended to be, a scheme for providing "compensation" to victims', with the focus instead being on providing pastoral care. It acknowledged that in most cases some financial assistance is paid to the victim as a form of reparation based on the victim's individual needs and circumstances, as distinct from a payment of compensation based on legal liability.[308] It further submitted that financial assistance may include assistance in relation to things such as education, rent or medical costs or may be paid directly to service providers.[309]

We heard from a number of survivors for whom the payment of reparation was not an important part of their Towards Healing journey. In his private session, 'Julian' told us that his attempts to engage with the Catholic Church under Towards Healing were not about reparation. He said, 'I did not want money; I just wanted acknowledgment'.[310] Another survivor,

'Brigitte Alice' told us, 'I just wanted to be recognised. I wanted an apology. Look, I would have gone away with no money at all. It's not the money!'.[311] 'Stu', in his private session, told us that 'Money was not what I was seeking at all. I wanted to be heard. I wanted my grievance acknowledged and if possible I wanted it believed'.[312]

Other survivors told us that their motivation for seeking reparation from the Catholic Church was because they did not feel that they could believe in the value of a verbal apology from the institution responsible for their experience of sexual abuse as children. In *The Towards Healing process* public hearing, Mrs Isaacs told us, 'Compensation was not a big part of it for me, but I just knew that I might get words that were empty if I didn't go that step and ask for compensation'.[313]

Private session attendee 'Warren' told us that he felt apologies alone from the Catholic Church meant nothing and that he wanted compensation.[314] One parent of a victim told us in a private session that 'Words without action are meaningless. If you're going to make an apology, there has to be some kind of restitution, and if you're not going to do that your apology is totally empty, there's nothing to it'.[315]

Towards Healing (2000) and Towards Healing (2010) both specify that outcomes for survivors, including payment of financial assistance or reparation, must be responsive to 'the needs of the victim in such ways as are demanded by justice and compassion'.[316] We heard from survivors who engaged in the Towards Healing process and received some form of monetary payment which they told us was not determined with reference to their needs. We also heard from survivors who told us that they asked for specific types of financial assistance, such as payment of education or counselling costs, but this was either ignored or denied by the relevant Catholic Church authority.

The evidence before us in *Mr John Ellis, Towards Healing and civil litigation* was that the Archdiocese of Sydney came to a figure of $25,000 to be offered to Mr Ellis with no reference to his needs. This occurred in spite of the fact that Mr Ellis had taken into account the informal cap of $50,000 paid under Towards Healing at that time and during pre-facilitation meetings he had given the archdiocese a reasoned calculation of what he believed would be an appropriate financial gesture. We found that the process by which the figure of $25,000 was determined was inconsistent with clause 41.1 of Towards Healing (2000), which required responses to be determined based on the needs of the victim in such ways as are demanded by justice and compassion.[317]

Mr Ellis told us that being told the amount that the archdiocese was offering him through Towards Healing 'was a bit of a shock, given the effort that we had put in to working out what our needs were and trying to fit that within their scheme, then to be told that they weren't going to go anywhere near that'.[318] We found that the Archdiocese of Sydney fundamentally failed Mr Ellis in its conduct of the Towards Healing process by not complying with clause 19 and not giving him such assistance as was demanded by justice and compassion, including not sufficiently referring to or responding to his needs in determining the amount of reparation.[319]

In the *St Ann's Special School* case study we heard that the Archdiocese of Adelaide took a unique 'group approach' to calculating the amount of reparation to be paid to victims, as discussed above, which was not focused on their individual needs or circumstances but, rather, according to the likelihood that they were indeed victims of sexual abuse. Instead of undergoing a Towards Healing assessment, students were organised into three categories with corresponding financial payments.[320]

The Director of the South Australian Professional Standards Office, Mrs Susan Cain, told us that she believed this approach would avoid re-traumatisation while ensuring that every former student who might have been sexually abused would receive some financial reparation, with a higher payment for those who clearly had been. Her evidence was that, if the Towards Healing protocols had been applied instead, some victims may not have received any assistance or financial payments.[321] Accordingly, some families responded positively to the group approach, as they received financial reparation they would not have otherwise received under Towards Healing.[322]

While we recognised that the group approach was objectively reasonable given the large number of complaints, particularly where the students had intellectual disabilities and a limited ability to communicate, some parents were critical of this approach. A key criticism centred on the failure by the Catholic Church to engage parents in formulating and adopting the group model and the lack of clear explanation of why different families were offered different amounts and how categorisations were determined. In this regard, we found that the Catholic Church parties in the case study did not consult former students or their families about the decision to take a group approach to the payment of 'gifts' and did not provide an explanation about how the amounts were formulated.[323]

Among the recommendations in our *Redress and civil litigation* report was that payments to survivors under a redress scheme should be assessed and determined with regard to the severity of the abuse, the impact of the abuse on the individual survivor and additional elements, such as whether the survivor was in a 'closed' institution or without the support of family or friends at the time of the abuse and whether the survivor was particularly vulnerable due to disability.[324] We also recommended that the purpose of a monetary payment under redress should be to provide a tangible recognition of the seriousness of the hurt and injury suffered by a survivor.[325] We observed that the ability of a payment to meet a survivor's needs depends on the size of the payment, the needs of the particular survivor and the way in which the survivor chooses to use their payment.[326]

We heard from other survivors who felt pressured to accept the monetary amount on offer as final or who accepted an offer because they felt unable to continue with the Towards Healing process. For some, this was because they felt disempowered when negotiating. Others were in desperate financial positions or felt traumatised by Towards Healing and wanted it to be over. In *The Towards Healing process* public hearing DK told us that, at the point that he was offered $80,000 plus costs at his facilitation, he 'just wanted to get the hell out of there as quickly as possible'.[327]

In *Catholic Church authorities in Ballarat*, survivor BAV gave evidence that he accepted the offer of reparation made to him during his Towards Healing process because he had 'had enough' and could not go on.[328] He told us:

> I resolved my claim against the church for $80,000 because I was feeling stressed and could not go on. I later came to regret this. It was against my solicitor's advice that I accepted this amount. The church's lawyers stuffed me around and then signed me up to a settlement when they knew I was not represented and they knew … I had a number of serious psychological conditions, including post-traumatic stress disorder, anxiety, depression, substance abuse problems.[329]

During the *Christian Brothers* hearing, Mr Ellul told us that he ended up accepting a financial offer from the Christian Brothers that he was not happy with because he 'didn't know how to argue back with the people who were at the *Towards Healing* meeting'.[330] In the same case study, VV gave evidence that the Christian Brothers initially offered him $20,000, which he found insulting. He then accepted $40,000 because he was financially desperate and he was told that $40,000 was beyond what the Christian Brothers had ever paid out.[331]

In Mrs Isaacs' Towards Healing matter, the issue of compensation became a protracted legal negotiation that took over two years to settle.[332] Mrs Isaacs told us she had hoped compensation would be resolved during her facilitation, but she quickly understood that it would be dealt with between lawyers afterwards.[333] We heard that the Archdiocese of Brisbane took a 'defensive litigation stance' to the issue of financial payment after receiving an initial claim for $358,682 from Mrs Isaacs' lawyer. From this point on, each side had a different understanding of the nature of the compensation process. Mrs Isaacs understood that the negotiations flowed from the Towards Healing facilitation, while the archdiocese understood that Mrs Isaacs was no longer engaged in the Towards Healing process.[334] Her experience of the compensation negotiations highlights some of the complex issues in the relationship between redress schemes and civil litigation.[335] For this reason, we also discuss Mrs Isaacs' experience of negotiation below in Section 13.9.6.

The archdiocese finally offered Mrs Isaacs an ex gratia payment of $30,000. Mrs Isaacs told us that after receiving this offer she called Archbishop John Bathersby. Her notes of their conversation record that she asked him, 'Do you know that after two years of stonewalling I have accrued nearly that amount in legal fees and I will have very little left?'. The notes record that Archbishop Bathersby responded, 'That's your problem'. Mrs Isaacs told us that she was 'utterly defeated' and decided to accept the offer to 'get out of this terrible situation'.[336] We found that the Catholic Church relied heavily on advice from insurers and lawyers when negotiating this compensation.[337]

In a private session, 'Aden Patrick' told us that he felt belittled and humiliated during his Towards Healing meeting. He said that halfway through it he had had enough and just wanted to 'get out and go'. He said that the Catholic Church then started 'angling about money' and he thought, 'Just take it and go'.[338] Another survivor, 'Randal', told us in his private session that he accepted the $15,000 he was offered at the end of his re-traumatising Towards Healing experience because he felt demoralised and 'otherwise we would have been out on the street'.[339]

We also heard from survivors who accepted the offers made to them because they did not believe there was any other alternative. Private session attendee 'Pavel' told us that he settled for the amount that was 'on the table', knowing that legally there was no other option.[340] This perception that there was no other option was sometimes related to the outcome of Mr Ellis's litigation against Cardinal Pell and the Archdiocese of Sydney. In 2007, the New South Wales Court of Appeal held that neither Cardinal Pell nor the Trustees of the Roman Catholic Church for the Archdiocese of Sydney (the Trustees) could be held liable for the sexual abuse that Mr Ellis experienced.[341] This finding is discussed further in Section 13.9.6 below.

In its submission to the Towards Healing Issues paper, the Australian Lawyers Alliance said that 'lawyers who have worked with victims of abuse report that it is standard practice for the Church's lawyers to reference the Ellis defence, and to tell victims to either accept a low settlement offer, or inevitably lose their case in court'.[342]

In her submission to the Towards Healing Issues paper, Dr Courtin drew on interviews with several legal advocates for clients going through Towards Healing who said that the Ellis defence is very commonly brought up and used to pressure survivors. One told her that the lawyers for the Christian Brothers 'bring up [the Ellis defence] every time in negotiations, commenting "they've got it up their sleeves"'.[343]

In their submission, Micah Projects also raised the issue of survivors feeling pressured to accept settlement offers. They said that 'a number of people who had been through the *Towards Healing* process felt they had been emotionally blackmailed when they received written ultimatums' with regard to offers of compensation. This involved giving tight time frames for acceptance, including caveats that there would be no further offers made if this one was rejected.[344]

We heard directly from survivors who were upset by the amounts of financial assistance the Catholic Church authorities provided to them as a result of their participation in Towards Healing.

Some felt devalued, both personally and in terms of the Catholic Church's lack of recognition of the harm done to them. Mr Wells gave evidence in the *Christian Brothers* public hearing that he felt like the Christian Brothers at his Towards Healing facilitation had already decided on the amount they were going to offer him prior to meeting with him. He said that he had no opportunity to tell them that the amount they offered him was insufficient. This was upsetting to Mr Wells, who told us, 'My time in the institution cost me my life and all they offered was a small amount of money and the words "We sincerely apologise for what happened to you." I nearly threw up'.[345]

In its submission to the Towards Healing Issues paper, knowmore legal services told us that some of its clients who received smaller monetary settlements viewed this as a comment from the Catholic Church that the sexual abuse they experienced as children was trivial or not severe.[346] We also heard evidence from Mrs Ingham about the way she was affected by the amount paid to her under Towards Healing. In Mrs Ingham's case, she received a higher amount than most survivors who go through Towards Healing. Of this she said, 'It is beyond unfair. My story of abuse is no greater or less or measurable against others. Such disparity has caused me psychological distress'.[347]

We heard that the CCI representative in Mrs Ingham's Towards Healing matter, Ms Emma Fenby, was instrumental in Mrs Ingham being offered a higher amount. In determining the amount to be offered to Mrs Ingham, Ms Fenby sought legal advice on how much the claim would be worth under common law and used this amount as a starting point, as she did not think a victim should receive less because they chose to negotiate through Towards Healing.[348]

After listening to Mrs Ingham speak at the facilitation 'and gaining a real understanding of the impact' of the sexual abuse Mrs Ingham experienced as a child, Ms Fenby increased the amount offered from $190,000 to $250,000.[349] We found that Ms Fenby acted consistently with the principles and procedures of Towards Healing (2010) and responded to Mrs Ingham's needs with justice and compassion.[350]

As a final outcome Mrs Ingham was paid $250,000 from CCI, $15,000 from the Diocese of Lismore and costs and disbursements of $11,736.64. This money was paid promptly, which Mrs Ingham very much appreciated.[351] However, when she found out that the payment came largely from the Catholic Church's insurance company, she found this 'really devastating'.[352] Overall, Mrs Ingham has 'had a great deal of difficulty coming to terms' with her compensation.[353]

Table 16.19 sets out the 'total compensation' paid to survivors who went through Towards Healing (ordered by the Catholic Church authority who received the most claims of child sexual abuse). This is drawn from the Catholic Church claims data for each Catholic Church authority that received 20 or more claims of child sexual abuse in the period 1 January 1980 to 28 February 2015. These figures starkly illustrate the significant disparities between Catholic Church authorities with respect to payments made to victims who went through Towards Healing.

Table 16.19 – Compensation paid to survivors by individual Catholic Church authorities under Towards Healing

Catholic Church authority	Amount
Christian Brothers[354]	$14.70 million total, at an average of approximately $42,000 per payment
Marist Brothers[355]	$8.0 million total, at an average of approximately $76,000 per payment
De La Salle Brothers[356]	$3.36 million total, at an average of approximately $51,000 per payment
Catholic Archdiocese of Sydney[357]	$4.04 million total, at an average of approximately $88,000 per payment
Institute of Sisters of Mercy Australia and Papua New Guinea[358]	$770,000 total, at an average of approximately $16,000 per payment
Diocese of Maitland-Newcastle[359]	$875,000 total, at an average of approximately $49,000 per payment
Catholic Archdiocese of Brisbane[360]	$1.03 million total, at an average of approximately $25,000 per payment
Diocese of Ballarat[361]	$1.97 million total, at an average of approximately $42,000 per payment
Salesians of Don Bosco[362]	$1.95 million total, at an average of approximately $42,000 per payment
Catholic Archdiocese of Perth[363]	$809,000 total, at an average of approximately $51,000 per payment
Missionaries of the Sacred Heart[364]	$944,000 total, at an average of approximately $56,000 per payment
Diocese of Rockhampton[365]	$693,000 total, at an average of approximately $46,000 per payment
Catholic Archdiocese of Adelaide[366]	$676,000 total, at an average of approximately $135,000 per payment
Hospitaller Order of St John of God[367]	$293,000 total, at an average of approximately $59,000 per payment
Catholic Archdiocese of Canberra-Goulburn[368]	$705,000 total, at an average of approximately $141,000 per payment
Benedictine Community of New Norcia[369]	$835,000 total, at an average of approximately $13,000 per payment
Marist Fathers – Society of Mary[370]	$904,000 total, at an average of approximately $56,000 per payment
Sisters of St Joseph of the Sacred Heart[371]	$283,000 total, at an average of approximately $28,000 per payment

Catholic Church authority	Amount
Pallottines – Society of the Catholic Apostolate[372]	$116,000 total, at an average of approximately $4,000 per payment
Diocese of Parramatta[373]	$602,000 total, at an average of approximately $86,000 per payment
Jesuits – Society of Jesus[374]	$1.66 million total, at an average of approximately $184,000 per payment
Vincentians – The Congregation of the Mission[375]	$1.98 million total, at an average of approximately $141,000 per payment
Sisters of Mercy – Brisbane[376]	$384,000 total, at an average of approximately $21,000 per payment
Sisters of Nazareth[377]	$303,000 total, at an average of approximately $18,000 per payment
Diocese of Lismore[378]	$898,000 total, at an average of approximately $69,000 per payment
Diocese of Wollongong[379]	$430,000 total, at an average of approximately $107,000 per payment
Franciscan Friars[380]	$968,000 total, at an average of approximately $65,000 per payment
Good Shepherd Sisters – Our Lady of Charity of the Good Shepherd[381]	$168,000 total, at an average of approximately $9,000 per payment
Diocese of Sandhurst[382]	$261,000 total, at an average of approximately $33,000 per payment
Diocese of Townsville[383]	$70,000 paid out in only one claim resulting in monetary compensation
Patrician Brothers – Congregation of the Brothers of St Patrick[384]	$962,000 total, at an average of approximately $120,000 per payment
Diocese of Bunbury[385]	$323,000 total, at an average of approximately $29,000 per payment
Diocese of Sale[386]	$520,000 total, at an average of approximately $65,000 per payment
Diocese of Port Pirie[387]	$145,000 total, at an average of approximately $36,000 per payment
Dominican Friars[388]	$479,000 total, at an average of approximately $80,000 per payment

In its submission to the Towards Healing Issues paper, knowmore legal services stated that the lack of a published maximum limit creates uncertainty for people who are considering engaging with Towards Healing and may be viewed by them as showing a lack of transparency or accountability. It also said that the 'lack of information and transparency around likely financial outcomes, places vulnerable complainants in a position where they may have little informed understanding about the process and their proper entitlements'.[389] In their submissions, Lewis Holdway Lawyers and Catholics for Renewal, a community-based group of Australian Catholics, also raised the issue of significant variation between the amounts paid to survivors.[390]

The Council, in its submission to the Towards Healing Issues paper, stated that 'criticism of the varying amounts which have been provided to victims through *Towards Healing* is to some extent misconceived'. It said that the difference is due to the fact that financial assistance provided through Towards Healing is a 'tailored and individual outcome, responding to that individual's circumstances, his or her present needs, and his or her own views about what would assist at that point in his or her life, work and relationships'.[391]

This may be one contributor to the wide variance in amounts paid to survivors. However, as detailed above, we have received evidence that not all Catholic Church authorities appear to take a survivor's needs or circumstances into account when determining what to offer in terms of financial assistance. Furthermore, the large variation in the average amounts paid out per survivor by a number of Catholic Church authorities, set out in Table 16.19 above, indicates that other factors are at play.

The discretion of the relevant Catholic Church authority as to how they calculate the amount offered and what amount is ultimately offered is an important factor in the variable amounts of financial assistance survivors receive. The Council acknowledged that 'varying outcomes, both pastoral and financial, can emerge from the process in particular cases, depending in part on which particular diocese, order or congregation is involved'.[392]

The effect of this discretion on reparation was also noted in Dr Courtin's submission to the Towards Healing Issues paper. She told us that, in an interview she conducted with a lawyer with experience working with survivors going through Towards Healing, the lawyer stated, 'there is too much disparity from one diocese to the other … Not even disparity, some of them just don't want to pay any money'.[393]

We note that, in November 2014, the Council issued *Guidelines for responding to requests from survivors of child sexual abuse whose claims have been subject to settlements*, acknowledging that some survivors had found the redress provided to them through Towards Healing and the Melbourne Response to be insufficient. The guidelines state that a previous claim under Towards Healing or at common law that has been settled with or without a deed of release may be reopened in certain circumstances. These circumstances include where the Catholic Church authority considers that the process that was followed in settling the claim was inadequate or

unfair and where it considers that amount paid to a survivor was not fair or reasonable having regard to the severity of the child sexual abuse and its effects.[394] We discuss the reconsideration of previous monetary payments by Catholic Church authorities further in Chapter 22.

Deeds of release

A deed of release is a formal document in which a party agrees not to pursue legal proceedings against another party. Towards Healing requires that any agreement reached between a Catholic Church authority and a victim, including about reparation, must be recorded in writing.[395] In its submission to the Towards Healing Issues paper, the Council told us that sometimes this is done relatively informally and other times it is done by way of a formal deed of release, depending on what individual Catholic Church authorities require.[396] Some Catholic Church authorities include provisions in such deeds of release that preclude any further claims against them in relation to the same matter. Some Catholic Church authorities do not require a deed of release where the reparation being provided is a 'small' amount.[397] The Council also told us that, where a deed of release is required by the Catholic Church authority as part of the Towards Healing process, it would usually preclude a victim from seeking further relief based on the same complaint through a civil claim.[398]

In Mr Ellis's Towards Healing matter, he received a deed of release from the Archdiocese of Sydney on 9 July 2004. Mr Ellis raised his disappointment with the requirement of clause 13 that he take legal advice before signing and told Monsignor Rayner that he did not think the deed of release was an appropriate starting point for the Towards Healing facilitation.[399]

Mr Ellis was also surprised and disappointed by the requirement that he sign a deed of release as a condition of the payment of any financial gesture. He told us:

> until a couple of weeks before the meeting, I didn't think that I had to do anything in return for what the church was prepared to do for me, except what I had already done, which is to come forward and to tell them about what happened to me and how I had been impacted.[400]

Towards Healing (2010) provides that a Catholic Church authority should not require a victim to sign a deed of release unless they have received independent legal advice or put in writing that they decline to seek such advice.[401] The Catholic Church authority is to pay the victim's reasonable costs involved in obtaining that advice.[402]

In its submission to the Towards Healing Issues paper, the Council also stated that in the early years of Towards Healing, confidentiality clauses were sometimes included in deeds of release which prevented victims from disclosing 'any information relating to the *Towards Healing* process such as the nature of the allegations, the amount of financial assistance received, any admissions of liability made by the Church Authority, and other details of the settlement'.[403] It asserted that 'since about 2000' such confidentiality clauses no longer appear in deeds of release and other settlement documents.[404]

However, in *The Towards Healing process* public hearing we heard that lawyers for the Archdiocese of Brisbane sent Mrs Isaacs a first draft of a deed of release on 13 June 2001. The draft deed of release included a clause preventing her from disclosing the terms of the settlement (clause 7) and another preventing her from making 'disparaging remarks or comments' about the Catholic Church authority in relation to the subject matter of the proceedings (clause 8).[405]

This was followed by a second draft deed of release, sent to Mrs Isaacs on 22 June 2001, which made these clauses stricter. This included preventing Mrs Isaacs from discussing the subject matter of proceedings or 'any process relating to any sexual abuse matter or issues involving the Church'. A new clause was included to allow Mrs Isaacs to make confidential disclosures about the sexual abuse she experienced and 'any consequential matters' in the context of therapeutic treatment.[406]

Ultimately, Mrs Isaacs signed a deed of release on 10 August 2001 based on the first draft. We found that the effect of clauses 7 and 8 of the deed of release was to impose upon Mrs Isaacs an obligation of silence about the circumstances that led to her complaint, which was inconsistent with clause 41.4 of Towards Healing (2000). We also found that it was not compassionate, fair or just to require Mrs Isaacs to sign a deed of release with clause 7 in it.[407]

Ms Lockhart of the Ballarat Centre for Sexual Assault told us in her submission to the Towards Healing Issues paper that her clients who had been required to sign a confidentiality clause were left with 'a sense of being silenced'.[408]

The Council has informed us that the Archdiocese of Brisbane no longer includes provisions in deeds of release preventing survivors from disclosing the terms of their Towards Healing settlement.[409] Similarly, we received evidence that the Archdiocese of Sydney does not use confidentiality clauses or deeds of release in Towards Healing or in any pastoral response to complaints of sexual abuse, unless requested by the victim for personal reasons. In such cases, the archdiocese makes clear to the victim that they remain free to speak about the sexual abuse suffered and the archdiocese's response to them.[410] We also received evidence that the Diocese of Parramatta no longer requires deeds of release in connection with the provision of financial reparations for victims of abuse.[411]

In our *Redress and civil litigation* report we observed that we have heard very different views on whether or not deeds of release are appropriate. We concluded that deeds of release should be required under the independent, government-run redress scheme we recommend. We noted our appreciation that this conclusion would disappoint many survivors and survivor advocacy and support groups.[412] However, we also recommended that no confidentiality obligations should be imposed and that the scheme should fund legal consultation for survivors to assist them in deciding whether or not to accept the offer of redress and grant the required deeds of release.[413] We also recommended that, in the interim period before the recommended redress commences, institutions should ensure no deeds of release are required.[414]

Review process

Towards Healing has always provided for a 'review of process' for victims.[415] Towards Healing (2010) introduced a National Review Panel (NRP) to conduct such reviews, which is to comprise nine independent members selected by the National Committee for Professional Standards.[416] Prior to this, the reviews were conducted by a reviewer.[417] The Professional Standards Resource Groups were responsible for keeping a list of suitable 'independent and impartial' persons to act as reviewers.[418]

In its submission to the Towards Healing Issues paper, the Council highlighted the fact that the review is not a review of the outcomes determined by the Catholic Church authority – being the outcomes provided to survivors through the Towards Healing process – as neither the National Committee for Professional Standards nor the NRP have the authority to overrule the decisions of the Catholic Church authority. Rather, the review is an independent evaluation of whether there is substance in any of the grounds for complaint and whether the principles of the Towards Healing process had been adhered to.[419]

Other than in the *Mr John Ellis, Towards Healing and civil litigation* case study, we have not received evidence about the manner in which the review process has been conducted. The review of Mr Ellis's Towards Healing process was conducted by Mr David Landa, a former New South Wales Ombudsman. Mr Landa reported on 10 January 1995 that there had been 'a failure to observe the required process' under Towards Healing in Mr Ellis's case. All failures identified by Mr Landa were serious and substantial.[420]

Mr Ellis said of the review:

> I was heartened by the review and I felt justified in having raised a lot of the issues that I'd raised … in general I felt that [Mr Landa had] upheld many of my complaints about the process that I'd been through, and I was hopeful that that would lead to some recommendations for improvement of the process and improvement in the way that other people were dealt with through the Towards Healing process in the future.[421]

Some submissions to the Towards Healing Issues paper raised concerns over the conflict of interest and real or perceived bias that exists where the only available review process is an internal complaint process. Broken Rites told us that 'when a review was conducted, the national office appeared to have no powers to require an individual Religious Authority to comply with the church's own process'.[422] The Australian Human Rights Commission suggested that it 'may be beneficial to have the process facilitated by an external body or alternatively to provide for review options by an external body'.[423]

Role of Catholic Church Insurance Limited

The role of CCI in the Towards Healing process was raised in public hearings and in submissions to the Towards Healing Issues paper. A brief discussion of the role of CCI within the Catholic Church in Australia can be found in Section 13.1. As the body providing insurance for Catholic Church authorities, CCI is normally notified by the relevant Catholic Church authority when a 'Towards Healing claim' is received.[424] We have heard accounts of CCI becoming involved in Towards Healing from this point on to varying extents, in some cases liaising with the Catholic Church authority throughout the entire process.

In its submission to the Towards Healing Issues paper, the Council told us that, after being notified of a claim, CCI gathers information, such as psychological reports and a copy of the Towards Healing assessment, to determine whether the insurance policy applies in each case.[425] However, the main concern raised with us by survivors concerning CCI has been with respect to its involvement in the Towards Healing facilitation. The Council told us that sometimes, when a Catholic Church authority is insured, a representative of CCI attends the facilitation at the discretion of that Catholic Church authority. It also told us that some Catholic Church authorities choose not to have CCI attend facilitation sessions, as they believe that 'the presence of a representative of the insurer can undermine the pastoral benefits of such a meeting'.[426]

We have received evidence that in some cases where representatives of CCI did attend a Towards Healing facilitation, their involvement had a positive impact on the facilitation process. In Mrs Ingham's case we found that the CCI representative, Ms Fenby, acted consistently with the principles and procedures of Towards Healing (2010) throughout the process and responded to Mrs Ingham's needs with justice and compassion.[427] Ms Fenby was actively involved in Mrs Ingham's case. She suggested a facilitator and assisted with practical arrangements for the facilitation and Mrs Ingham's pastoral meeting.[428] Ms Fenby also attended the facilitation and increased the amount of reparation offered to Mrs Ingham from $190,000 to $250,000, as discussed above.[429]

In its submission to the Towards Healing Issues paper, knowmore told us that many of its clients reported having been distressed to find a representative from CCI at their facilitation. They felt that the CCI representatives actively sought to reduce the settlement amount and also made the process appear more legalistic and adversarial.[430] Similarly, Lewis Holdway Lawyers submitted that some of their clients found the involvement of CCI in their Towards Healing process 'intrusive and unnerving and therefore somewhat of a hindrance to a positive and healing process'.[431]

In *The Towards Healing process* public hearing we heard that in April 1999 Mr Laurie Rolls, who was then the Manager of Special Projects at CCI, wrote to Bishop Gerry about Mrs Isaacs' Towards Healing matter. In that letter, he gave detailed advice on how Father Farrelly, who was to represent Bishop Gerry at Mrs Isaacs' facilitation meeting, was to conduct himself at

the facilitation. Mr Rolls also spoke to Father Farrelly by telephone prior to the facilitation. In our report on *The Towards Healing process* case study we noted that CCI took a commercial approach to the Towards Healing process in the 1990s.[432]

In its submission to the Towards Healing Issues paper, the Council responded to criticism regarding the intimidating effect of CCI representatives at facilitations by saying that CCI plays 'a supportive role only, and its representative attends to work with the Church Authority to facilitate an outcome acceptable to the victim'.[433] The Council said that, in cases where CCI does attend, this presents the practical advantage of allowing an immediate response on the level of payment that the insurance will cover.[434] In their submission, Lewis Holdway Lawyers recognised that the attendance of CCI can be helpful 'insofar as it resources the religious authority to match their acknowledgment and apology with sufficient compensation'.[435]

As discussed above, where survivors do find the presence of CCI personnel at their facilitation to be intimidating, this can contribute to the already significant power imbalance that many survivors told us they felt during facilitation when attempting to negotiate with the Catholic Church authority responsible for their experiences of sexual abuse as children.

13.9.5 Responses to victims and survivors through the Melbourne Response

The Melbourne Response adopted the goals set out in a 1996 Pastoral Letter from the ACBC addressing the issue of sexual abuse by priests and religious. Those goals were truth, humility, healing for the victims, assistance to other persons affected, an adequate response to those accused and to offenders and the prevention of any such offences in the future. These were also the principles that underpinned the Towards Healing protocol.[436]

At the time of our report on *Case Study 16: The Melbourne Response (Melbourne Response)*, the key features of the Melbourne Response were:[437]

- the appointment of Independent Commissioners to inquire into allegations of abuse, determine their credibility and make recommendations about action to be taken against those accused of abuse
- a free counselling and professional support service, known as Carelink
- the establishment of a Compensation Panel, which gives the archdiocese recommendations on the making of ex gratia payments to victims.

We heard from survivors who engaged with the Melbourne Response process in the *Melbourne Response* public hearing. The *Melbourne Response* case study focused on the story of the Foster family and the experiences of Mr Paul Hersbach and AFA, all of whom engaged with the Melbourne Response process.

Some survivors who gave evidence in the *Catholic Archdiocese of Melbourne* public hearing also told us that they had been through the Melbourne Response process. However, the focus of that case study was not on this aspect of survivors' experiences and we made no findings about the Melbourne Response in our report on it.

As discussed in Section 13.7, a review of the Melbourne Response was announced by Archbishop Denis Hart on 4 April 2014, and the review was conducted by the Hon. Donnell Ryan QC.[438] Mr Ryan's report (the Ryan review), including recommendations, was provided to the archdiocese on 25 September 2015 but not released publicly by the archdiocese. We published a redacted version of the report as an exhibit in our *Institutional review of Catholic Church authorities* public hearing.[439]

Betrayal of trust report

At the time of the establishment of the Royal Commission, there was an ongoing parliamentary inquiry in Victoria which examined the Melbourne Response process. The Victorian parliamentary Inquiry into the Handling of Child Abuse by Religious and other Non-government Organisations (Victorian parliamentary inquiry) was tasked with considering and reporting on the processes by which religious and other non-government organisations respond to the criminal abuse of children within their organisations. The inquiry tabled its final report, *Betrayal of trust: Inquiry into the Handling of Child Abuse by Religious and Other Non-Government Organisations* (*Betrayal of trust* report) in the Victorian Parliament on 13 November 2013.[440]

In drafting its report, the Victorian parliamentary inquiry examined the complaint files of the Melbourne Response. All of the Melbourne Response files were located in the chambers of Independent Commissioner Mr Peter O'Callaghan QC, and the Victorian parliamentary inquiry was provided with full access to them throughout January 2013. It reviewed 158 out of an estimated total of 330 Melbourne Response complaint files as provided by the Independent Commissioner. These 158 files were chosen at random.[441]

The *Betrayal of trust* report provided statistics based on a review of 154 files (of the 158 reviewed, two survivors phoned the office of the Independent Commissioner once and had no further involvement in the process and two were referred to Towards Healing). Based on the committee's analysis of the files reviewed, the *Betrayal of trust* report concluded:

Initial contact – Survivors approached the Melbourne Response/the Independent Commissioner through a number of avenues. The majority of survivors contacted the Independent Commissioner directly by telephone, letter or email. Others were referred by outside organisations such as the Catholic Church, Carelink, Towards Healing and Broken Rites.[442]

Support provided to survivors in initiating contact – Although survivors are allowed to have a support person throughout the Melbourne Response process, the file review suggested that they were neither offered nor encouraged to do so on initiation of a complaint.[443]

Legal support – In the files reviewed, 33 survivors were legally represented. The Independent Commissioner did not always encourage survivors to seek independent legal advice in relation to their complaint. Instead, survivors were only encouraged to obtain legal advice where there was a contested hearing, they needed more than the usual amount of support or a survivor repeatedly asked the Independent Commissioner whether they should obtain independent legal advice.[444]

Counselling – Every survivor that the Independent Commissioner found in favour of was referred to Carelink for counselling.[445]

Referral to police – The Independent Commissioner did not always encourage survivors to report their experience of abuse to the police. Of the 154 files reviewed, the Victorian parliamentary inquiry 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 recommending a referral to police, 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.[446]

Investigation – The Independent Commissioner performed the investigation of the complaints, and his approach varied depending on the circumstances. The investigation always involved an interview or meeting with survivors in his chambers to transcribe and verify their story. In 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 was unknown.[447]

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. In evidence to the committee, the chairperson of the Compensation Panel confirmed that the Compensation Panel had had 287 acceptances out of 290 offers that it had made 'thus far'.[448]

Financial compensation and non-financial assistance – The file review did not include those of the Compensation Panel, although 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.[449]

Apology – A written apology was provided to survivors with the compensation letter of offer. It was identified in the files reviewed that many survivors expressed the need for an apology from the Catholic Church either as their sole reason for approaching the Melbourne Response or as an additional outcome with another form of recompense.[450]

Deeds of settlement and release – A deed of release was signed by survivors and the Archbishop of Melbourne as a condition of payment of the ex gratia settlement. The files analysis suggested that until recently (as at 13 November 2013, when the *Betrayal of trust* report was published) survivors were not encouraged to obtain independent legal advice pertaining to the effects of the deed.[451]

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 survivor 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.[452]

Confidentiality (process) – 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 survivor. In more recent years (as at 13 November 2013, when the *Betrayal of trust* report was published), the Independent Commissioner has told survivors 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 survivors were concerned with keeping the facts of the abuse silent. No cases reviewed suggested that the Independent Commissioner misled survivors into thinking that they were not allowed to talk about the abuse committed against them. However, it was evident that his advice was not always received exactly as intended.[453]

Survivors' satisfaction with the process – In the 154 files reviewed, six survivors expressed thanks or indicated that they had a positive experience with the process and 20 survivors criticised the Melbourne Response process. The committee could not determine the satisfaction level of the remainder 128 survivors from the files received from the Independent Commissioner.[454]

The Fosters

The story of the Foster family is one of profound personal and family tragedy. Christine and Anthony Foster are the parents of three girls: Emma, born in November 1981; Katie, born in July 1983; and Aimee, born in March 1985.[455] Sadly, Mr Anthony Foster passed away in May 2017.[456] There is evidence that Emma and Katie were sexually abused by Father Kevin O'Donnell when they were pupils at the Sacred Heart Catholic Primary School at Oakleigh in Melbourne, Victoria, in the late 1980s or early 1990s.[457]

In March 1996, Emma disclosed that she had been sexually abused by Father O'Donnell. Mrs Foster gave evidence that, despite all of the professional help Emma received and despite their love for her, Emma never recovered from the sexual abuse she suffered. Throughout her life, Emma experienced anorexia, depression, substance abuse and self-harm.[458] Her life continued to spiral out of control and, in January 2008, Emma Foster took her own life.[459]

The tragedy for the Foster family was not confined to Emma's experience of sexual abuse as a child. In November 1997, Mrs and Mr Foster learned that their daughter Katie had also been sexually abused by Father O'Donnell.[460]

Mrs Foster told us that Katie has never recovered from being hit by a car in May 1999 while binge drinking to escape the memories of her sexual assault and that she will always require 24-hour care.[461] Mrs and Mr Foster's experience of the Melbourne Response is referred to throughout this section.

In March 1997, the Fosters decided to go through the Melbourne Response to seek help for Emma.[462] In August 1998, Emma was offered $50,000 in compensation following consideration by the Compensation Panel.[463] In November 1998, Emma accepted the offer of $50,000.[464] Ultimately, the Fosters did not believe this sum would provide a just outcome and in 2002 commenced five separate legal proceedings in the Supreme Court of Victoria on behalf of Emma, Katie, Aimee and Mrs and Mr Foster.[465] After a mediation in November 2005, a settlement sum of $750,000 was negotiated between the parties.[466] In March 2006, terms of settlement were agreed and executed.[467]

Mr Paul Hersbach

We heard evidence from Mr Paul Hersbach, a survivor of child sexual abuse whose father, Mr Tony Hersbach, had also been sexually abused as a child. Both men were sexually abused by Father Victor Gabriel Rubeo. Mr Paul Hersbach told us that he first came into contact with the Melbourne Response as a secondary victim after his father engaged with the process in 1997.[468]

Mr Tony Hersbach and his twin brother were both groomed and sexually abused by Father Rubeo in the 1960s over a period of about eight years, from the age of 10 until they were about 18 years old. Father Rubeo formed a close relationship with the Hersbach family. Mr Paul Hersbach told us that he was sexually abused by Father Rubeo for a year from 1985 while the family was living with him in the presbytery at East Preston in Melbourne, Victoria.[469]

Mr Tony Hersbach went through the Melbourne Response in 1997. He was found to be a victim of child sexual abuse, received counselling through Carelink and received $35,000 in compensation.[470]

In March 2006, Mr Paul Hersbach met with Professor Richard Ball and Ms Susan Sharkey of Carelink and disclosed that he had also been sexually abused as a child by the same priest who had sexually abused his father. Mr Paul Hersbach was subsequently interviewed by the Independent Commissioner, Mr O'Callaghan QC, who was satisfied that Mr Hersbach was a victim of sexual abuse by Father Rubeo.[471]

On 2 November 2006, the Compensation Panel recommended to the Archbishop of Melbourne that 'Mr Hersbach be offered ex gratia compensation of $17,500'.[472]

AFA

Survivor AFA gave evidence that Father Michael Glennon sexually abused him three times over a period of about 18 months from around 1977, when he was about 15 years old.[473]

AFA gave evidence that when he was in his early forties he was very depressed and could not work for about three years. He sought psychiatric help and eventually told his counsellor about the sexual abuse.[474]

AFA met with Independent Commissioner Mr O'Callaghan QC on 18 February 2011. He decided not to take his complaint to the police but instead to proceed with the Melbourne Response.[475]

On 1 June 2011, the Chair of the Compensation Panel, Mr David Curtain QC, recommended to Archbishop Hart that AFA be offered ex gratia compensation of $50,000. On 28 June 2011, AFA rejected the offer.[476] He subsequently took legal advice and eventually accepted the offer of $50,000.[477]

Independent Commissioner

As set out in Section 13.7, the role of the Independent Commissioner is to enquire into and report with respect to allegations of child sexual abuse by priests, religious and lay people under the control of the Archdiocese of Melbourne.

In October 1996, then Archbishop Pell appointed Mr O'Callaghan QC as the first Independent Commissioner. In 2012, Archbishop Hart appointed a second Independent Commissioner, Mr Jeffery Gleeson QC.[478]

Procedures followed by Independent Commissioners

The Independent Commissioners do not have formal procedures or rules that are documented or published. Mr O'Callaghan QC told us that his procedures are that he:[479]

- conducts an interview with the survivor, which is transcribed and forwarded to the complainant inviting amendments and additions
- informs the survivor of their continuing and unfettered right to report to police
- informs the accused of the complaint (if they are alive)
- invites the survivor and the accused to participate in a contested hearing if the accused denies the complaint
- makes recommendations about the ministry of the accused.

Mr Gleeson QC told us that he has adopted the processes that Mr O'Callaghan QC follows.[480] Mr O'Callaghan QC said that in almost all cases he explains his procedures to the victim.[481]

If an Independent Commissioner makes a finding that a complainant is a victim of child sexual abuse, he writes a report for the Compensation Panel and refers the complainant to Carelink.[482]

Mr O'Callaghan QC and Mr Gleeson QC told us that, when determining to accept an allegation of abuse, they require satisfaction on the balance of probabilities.[483]

Interviews with survivors

The office of the Independent Commissioner is the first point of contact for people making allegations or complaints of child sexual abuse or seeking information about compensation through the Melbourne Response.[484]

In the *Melbourne Response* case study we heard that survivors typically come into contact with the Independent Commissioner through an initial interview, conducted at either Mr O'Callaghan QC's or Mr Gleeson QC's barrister's chambers.[485]

At the public hearing into the *Melbourne Response*, we heard evidence from Mr Paul Hersbach that he felt intimidated by having to meet the Independent Commissioner in his chambers:

> I will never forget Mr O'Callaghan's chambers. It was a massive room – monstrous – it seemed to me to be the domain of an experienced legal professional. There were papers and books strewn everywhere. Mr O'Callaghan looked very comfortable but I was not. I sat down and he started recording our interview. I attended this meeting alone.[486]

The Archdiocese of Melbourne initially paid for Mr O'Callaghan QC to rent rooms in Optus House in Collins Street, Melbourne, which was not archdiocesan premises, to meet with survivors. He continued there for two or three years.[487]

In the *Melbourne Response* case study report, we observed that, for many people, the general environment of chambers may be threatening, if not overwhelming, and a barrister's room is unlikely to provide a sense of confidence and security for a survivor. We further observed that,

given the care with which we considered this issue when developing our own practice and the vulnerabilities of many survivors, we doubt whether it is appropriate to conduct the interviews in a barrister's chambers.[488]

Contested hearings

After Mr O'Callaghan QC and Mr Gleeson QC interview a survivor, they have a practice of writing to the alleged perpetrator of the abuse and presenting the allegations made against them.[489]

As discussed in Section 13.8, Mr O'Callaghan QC said that, if he receives a complaint against a priest in active ministry, he recommends to the archbishop that the priest be placed on administrative leave, depending on the seriousness of the allegation and the potential for risk to other people. The Independent Commissioners do not recommend disciplinary action other than administrative leave.[490]

The Independent Commissioners told us that they will conduct a 'contested hearing' if an alleged perpetrator denies, or substantially denies, a complaint.[491] The accused, and their legal representatives if desired, may be present.[492] Mr Gleeson QC told us that both the complainant and the respondent are entitled to legal representation at a contested hearing.[493]

Mr O'Callaghan QC told us that nothing was provided in writing to the parties before a contested hearing that indicated to the parties that the archdiocese would meet the costs of legal representation. The costs of legal representation were paid only if the legal representatives requested funding. If no request was made, the costs of representation were not met by the archdiocese.[494]

In our report on the *Melbourne Response* case study, we gave our opinion that, if the archdiocese is prepared to meet the cost of lawyers, as it obviously should, both the complainant and the respondent should be made aware of the position at the commencement of the process.[495]

We also gave our opinion that Mr Gleeson QC follows an appropriate procedure. He told us that, in his view, the parties are entitled to have legal representation and to have that funded by the archdiocese. If a complainant is not legally represented, he informs them that they are entitled to be legally represented. He also explains the role played by counsel assisting and that counsel assisting is not a lawyer for the complainant.[496]

The Catholic Church parties, in their submissions, accepted that there would be merit in a standardised approach by the Independent Commissioners on giving advice about legal representation. They suggested that an information sheet be prepared. As we expressed in the *Melbourne Response* case study report, this should be done.[497]

Legal advice

We noted in the *Melbourne Response* case study report that the practices of the Independent Commissioners vary on the advice they give to complainants about seeking legal advice on their right to sue in the courts. Mr Gleeson QC did not consider that to be part of his role, while Mr O'Callaghan QC has given such advice in the past. We found that this may lead to inconsistencies in the handling of particular complaints.[498]

The Catholic Church parties accepted in their submissions that the procedures adopted by the Independent Commissioners allow more flexibility than is desirable on what is said to people about bringing a lawyer or support person to the initial interview or seeking legal advice in certain circumstances. We agree and consider that a settled procedure that is applied in each case should be adopted.[499]

Reporting to police

As discussed above in Section 13.8, at the time of the *Melbourne Response* case study there was no express requirement in the Independent Commissioners' terms of appointment that they encourage survivors to report their experiences of abuse to the police.[500]

Nevertheless, both Mr Gleeson QC and Mr O'Callaghan QC told us that they have a practice of informing survivors of their continuing and unfettered right to report to police and of encouraging them to do so.[501] Mr Gleeson QC said that he did not give advice to complainants about his opinion on what would happen if they took their complaint to the police. Mr O'Callaghan QC said he encourages complainants to go to the police. However, he tells them that the Melbourne Response process comes to an end if they go to the police. He told us that he does not believe that this acts as a disincentive to complainants going to the police.[502]

Mr O'Callaghan QC and Mr Gleeson QC also told us that, if survivors do not want to make a report to the police, they are bound by confidentiality and their terms of appointment prevent them from reporting the alleged abuse to the police unless required to do so by law.[503]

After the *Melbourne Response* hearing there was a change in the law in Victoria on the obligation to report knowledge of sexual offences against children to the police.[504] Amendments to the *Crimes Act 1958* (Vic) came into force on 27 October 2014. Following these amendments section 327(2) of that Act provides:

> Subject to subsections (5) and (7), a person of or over the age of 18 years (whether in Victoria of elsewhere) who has information that leads the person to form a reasonable belief that a sexual offence has been committed in Victoria against a child under the age of 16 years by another person of or over the age of 18 years must disclose that information to a member of the police force of Victoria as soon as it is practicable to do so, unless the person has a reasonable excuse for not doing so.
>
> Penalty: 3 years imprisonment

There is no obligation of disclosure in circumstances where a victim has reached 16 years of age and does not want the information disclosed.[505] Section 327(5) of the Act provides:

> A person does not contravene subsection (2) if –
>
> (a) the information forming the basis of the person's belief that a sexual offence has been committed came from the victim of the alleged offence, whether directly or indirectly; and
>
> (b) the victim was of or over the age of 16 years at the time of providing the information to any person; and
>
> (c) the victim requested that the information not be disclosed.[506]

In the *Melbourne Response* case study, the Catholic Church parties submitted that, in light of these changes, the archdiocese should review the terms of appointment for the Independent Commissioners to further clarify the expectations of the archdiocese concerning the rights of victims and the reporting of abuse. We agreed and noted that a failure to report may have consequences for other children who could become victims of an alleged offender.[507]

We heard in the *Melbourne Response* case study that Mr O'Callaghan QC gave both Mr Paul Hersbach and AFA advice about the police process. We concluded that this discouraged them from going to the police. Having regard to Mr O'Callaghan QC's defined role, this advice was not appropriate. Advice about the approach that the police might take to any prosecution, and the likely outcome, should have been left to the police. They were the body with all of the relevant information.[508]

In our report on the *Melbourne Response* we observed that administrators or decision-makers in a redress scheme should never give advice to applicants about likely outcomes of a report to police, even if they are independent from the relevant institution. Giving such advice will always be inconsistent with their function and potentially confusing for applicants who, understandably, see them as being in a position of authority.[509]

Carelink

Carelink is an organisation that is provided for and funded by the archdiocese. It provides important services for survivors of sexual abuse. Carelink's role is to coordinate and fund treatment, counselling, medication and other support for victims of abuse and to prepare psychiatric medical reports for victims who apply for compensation.[510]

The Independent Commissioner typically refers survivors to Carelink if he makes a finding that someone is a victim of child sexual abuse. On occasion, he has referred survivors to Carelink before making such a finding.[511]

Carelink does not provide in-house counselling; it is a referral and funding service. Carelink refers survivors to a variety of counsellors, psychiatrists, psychologists and other external health service providers. Those providers are either chosen by the survivor or suggested by Carelink. There is no limit to the amount of counselling that Carelink clients can receive.[512]

Carelink will fund the provision of services if satisfied that there is a causal link between the abuse and the client's health issue. The services might include drug and alcohol detoxification; relationship counselling; providing social workers and financial planners; and dental treatment if clients have eating disorders. The question of causation is often a medical issue and is dealt with in the psychiatric assessment.[513]

Carelink is also able to provide limited financial assistance to survivors in certain circumstances. This includes food vouchers and assistance with other costs that survivors are unable to fund in the short term, such as payment of utilities. In addition, it can offer survivors up to $300 in financial assistance each year.[514]

Carelink coordinates the provision and funding of counselling and other services for secondary victims as well as primary victims. The need for this assistance is assessed on a case-by-case basis.[515]

Controversy surrounding the appointment of Professor Ball

Professor Richard Ball was appointed Director of Carelink in 1996 and remained in that position until 2006. We discussed Professor Ball's role, and the controversy relating to his appointment, in the *Melbourne Response* case study report.[516]

The archdiocese appointed Professor Ball as the public face for clinical services provided to survivors of Catholic Church abuse in the archdiocese. It did so knowing that Professor Ball:[517]

- had provided treatment to priests of the archdiocese
- had been engaged by lawyers to give expert evidence in criminal proceedings of priests who been charged with child sex abuse offences.

On 2 August 1995, at the request of Father O'Donnell, Professor Ball gave evidence as an expert witness at Father O'Donnell's trial for sexual offences against children. Professor Ball was excused from giving evidence to the Royal Commission on medical grounds. However, he made a statement in which he said that he did provide an opinion as an expert witness in relation to a number of Catholic priests in the 1990s.[518]

In the *Melbourne Response* case study report, we observed that, notwithstanding Professor Ball's qualifications and expertise, it is almost inevitable that a survivor would experience concern at his appointment.[519]

In the same case study, we heard evidence from Archbishop Hart that he would not today suggest that the person who is to become the public face of a counselling or medical component of a redress scheme be a person who had treated offenders or provided expert reports on them.[520]

As noted in our report on the *Melbourne Response* case study, a major issue for survivors is the breach of trust by a priest or religious. The Archdiocese of Melbourne should have realised that, regardless of Professor Ball's integrity (which we do not doubt), appointing him as the public face of clinical services, when he had given evidence at the request of Catholic clergy offenders, could seriously challenge a survivor's trust in the Catholic Church process. In this area, as in many other activities where there is a power imbalance, perceptions matter a great deal.[521]

'Gap' payments and Medicare

The Carelink coordinator, Ms Sharkey, gave evidence in the *Melbourne Response* public hearing that clients were asked to claim on Medicare for psychiatric and medical costs that are related to the abuse and that Carelink covered the gap between the Medicare rebate and the cost of the service.[522] In addition, at the time of the hearing, Carelink's policy in relation to private health insurance claims was:

> if a client already has private health insurance, they should claim all private health expenses (e.g. hospital bills) which are able to be claimed in accordance with their cover. Any 'gap' between the health insurance rebate and the actual cost of the service will be covered by Carelink.[523]

The issue of whether Carelink was intended to fund the full amount of the payment of treatment from medical practitioners, or only the gap between the Medicare rebate and the actual cost, was resolved by a ruling from the Health Insurance Commission in August 1997.[524] Mr Richard Leder of Corrs Chambers Westgarth (Corrs), solicitors for the Archdiocese of Melbourne, then wrote to Professor Ball confirming the archdiocese's instructions that: [525]

- patients who receive medical treatment from service providers external to Carelink should make a claim for those services on Medicare
- where there is a gap between the Medicare rebate and the actual cost of the service, that gap will be met or refunded by Carelink.

In the *Melbourne Response* public hearing, Mrs Foster told us that she thought it was inappropriate that Medicare and/or private health insurance should be relied on to pay Emma Foster's outstanding medical accounts. She said:

> It seemed to me that the Catholic Church wanted to transfer responsibility for Emma's medical expenses from itself and onto tax payers (through Medicare) and onto our private health insurer. This did not feel right to me.[526]

Compensation Panel

In the *Melbourne Response* hearing we heard that the process of survivors receiving a financial payment through the Melbourne Response Compensation Panel is seen as an alternative to civil litigation.[527] The panel hears from survivors, considers supporting documentation and recommends to the archdiocese an amount of ex gratia compensation, up to the cap. When the Melbourne Response was established, ex gratia payments were capped at $50,000. This amount increased to $55,000 in 2000, to $75,000 in 2008 and to $150,000 with effect from 1 January 2017.[528] The most recent increase was in accordance with the recommendations made in the Ryan review.[529]

A further recommendation made in the Ryan review was that the Compensation Panel be renamed the Assessment Panel.[530] In his statement during the *Institutional review of Catholic Church authorities* public hearing, Archbishop Hart told us this renaming was to occur.[531]

Compensation Panel process

When the Melbourne Response was in the process of being formulated in 1996, Corrs advised then Archbishop Pell about the proposed Compensation Panel as follows:

> The function of the panel is to provide complainants with an alternative to the pursuit of legal proceedings against the Archbishop or the Archdiocese. It is expected that the panel will provide an informal rather than legalistic approach and a forum for a fair, just and speedy settlement of claims …
>
> The establishment of the panel and the payment or offer to pay compensation is not an admission of legal liability. The Archbishop, the Archdiocese and the Church do not accept that they have any legal obligation to make payments to complainants. The Archbishop also recognises that there is strong opposition from some quarters to the making of any compensation payments. The compensation scheme takes these factors into account and strives to achieve a fair and reasonable compromise.[532]

We heard that when an Independent Commissioner advises a survivor that he is satisfied that they have been a victim of sexual abuse, he provides them with the application for compensation form. A person applies to the Compensation Panel by completing this form. The Compensation Panel must accept the findings of the Independent Commissioner that the person has been a victim of sexual abuse.[533]

The Compensation Panel commenced operating in the first half of 1997. It has four members: a solicitor, a community representative, a psychiatrist and a chair. During the *Melbourne Response* public hearing, the Compensation Panel Chair, Mr David Curtain QC, told us that the purpose of the panel was to hear from survivors, consider supporting material and give the archdiocese a recommendation on an amount of ex gratia compensation up to the cap, which was then $75,000.[534]

The Compensation Panel meets in the building occupied by Carelink. When it conducts a hearing, members of the panel may ask the survivor applicant questions. Mr Curtain QC told us that these are not asked in a challenging way. He said questions are generally directed towards the present status or life circumstances of the applicant.[535]

Mr Curtain QC told us that he tells applicants that, if they wish to accept an offer of compensation made by the archdiocese on the recommendation of the panel, they will be asked to sign a deed of release.[536]

After the survivor meets with the panel, the chair of the panel writes to the Archbishop of Melbourne through Corrs, the Catholic Church's solicitors, and recommends that an amount be offered to them and includes any special instructions.[537] Archbishop Hart told us that he has always acted upon the recommendations of the Compensation Panel.[538] After a recommendation for an amount of compensation is made by the panel, Mr Leder sends the applicant a letter of offer with a deed of release.[539]

In the *Melbourne Response* public hearing, Mr Paul Hersbach told us of his experience with the Compensation Panel:

> I do not know whether the panel had a report from Professor Ball or Mr O'Callaghan but I understood that they had read through the documents about my case. They asked me to tell them the effects of the abuse on my life. Again I was being asked to tell my story to a group of four strangers around a small table. The Compensation Panel was the first contact with the Melbourne Response where I met with people who I felt had a genuine compassion for victims. They took the time to put me at ease, and explained in a meaningful way who they were and what they did.[540]

Despite her own family's positive experience with the Compensation Panel, Mrs Foster acknowledged that not all victims have the same level of support. She surmised that the experience could be intimidating or overwhelming without adequate support:

> We had the means and ability to guide our daughters through the Melbourne Response process; however, not all victims have that same level of support. Even as parents of victims, we found the experience to be daunting. From the moment we entered the meeting with the Compensation Panel we felt intimidated. Based on our experience, we consider that victims without adequate support or legal representation would feel intimidated and overwhelmed by the whole process.[541]

Compensation payments

In our report on the *Melbourne Response* we observed that a significant element of controversy comes from the fact that, although the Catholic Church authorities acknowledge and accept moral responsibility for abuse, the monetary payments available under the Melbourne Response are below what some victims would receive if they were paid common law damages for their suffering.[542]

Based on data provided to us by the Archdiocese of Melbourne about claims made through the Melbourne Response up to 28 February 2015, we calculated that the total average payment made to each claimant was $47,000. This figure includes monetary compensation and payments through treatment, legal and other costs and was the same average payment as through Towards Healing. The highest average payment made was through civil proceedings ($145,000). The average amount paid through 'other' redress processes was $96,000.[543]

Of all redress processes, the Melbourne Response had the highest proportion of claims resulting in monetary compensation (324 claims, or 84 per cent of all Melbourne Response claims). The total amount paid under the Melbourne Response process was $15.1 million.[544]

As noted above, in March 1997, the Fosters decided to go through the Melbourne Response to seek help for their daughter Emma.[545] In August 1998, Emma was offered $50,000 in compensation following consideration by the Compensation Panel.[546] This was the maximum amount available under the Melbourne Response at that time.[547] That offer was accompanied by a letter which stated:

> The compensation offer, together with the services that remain available through Carelink, are offered to Emma by the Archbishop in the hope that they will assist her recovery and provide a realistic alternative to litigation that will otherwise be strenuously defended.[548]

As noted above, in November 1998, Emma accepted the offer of $50,000.[549] Ultimately, the Fosters did not believe this sum would provide a just outcome and in 2002 commenced five separate legal proceedings in the Supreme Court of Victoria on behalf of Emma, Katie, Aimee and themselves.[550] The Fosters' experience of engaging in civil litigation is discussed below.

As stated above, the cap on payments was increased to $150,000 effective on 1 January 2017. Archbishop Hart gave evidence in the *Institutional review of Catholic Church authorities* public hearing that additional payments will be made to survivors who have already been through the Melbourne Response and received payments. He said that these will be made by way of 'top-up' payments, being the difference between what a survivor would have received if payments were capped at $150,000 at the time, less payments already received, and adjusted for inflation. Archbishop Hart told us that the archdiocese has engaged an actuary to review and advise on the amounts to be paid.[551]

Reasons

The Compensation Panel does not provide applicants with reasons for its decisions about the ex gratia payment to be offered.[552]

Mrs Foster said that she and her family were not informed of how the compensation amounts were arrived at:

> Neither Anthony nor I ever had any sense about how the amounts of compensation were decided by the Compensation Panel. We were provided no information in relation to any criteria that was applied to Emma's application by the Compensation Panel and no appeal process was offered. Nothing about this process was transparent.[553]

Mr Curtain QC said he did not consider that it would be desirable to provide applicants with reasons because 'I think it would inevitably cause further angst to the victim'. He said:

> if you accept that this system is not intended to be full compensation but a financial recognition, then to give long reasons or to give detailed reasons would be counterproductive.[554]

Deeds of release

As noted above in relation to Towards Healing, a deed of release is a formal document in which, as part of a settlement process, a party agrees not to pursue legal proceedings against another party. During the *Melbourne Response* case study, Mr Curtain QC told us that he tells survivors who apply for compensation through the Compensation Panel that, if they wish to accept an offer, they will be asked to sign a deed of release.[555] Corrs solicitor Mr Leder told us that he sends applicants to the Compensation Panel a deed of release along with the letter of offer from the Archdiocese.[556]

Mr Paul Hersbach told us that he did not sign the deed of release sent to him for almost a year after receiving it. Mr Hersbach eventually accepted the offer and signed the deed of release on 25 October 2007.[557] Mr Hersbach expressed how his feelings towards the deed of release had evolved over time:

> Signing the offer became part of my healing process. I had made some great progress with Dr MacKenzie's help and in November 2007 I signed the document and received my compensation payout. My feelings towards the deed of release have changed significantly in the past five years. Signing it helped me emotionally at the time, but now it causes me angst. The Catholic Church has taken so much from me over the years. I feel like the church has exerted complete and total control over my life. I find it ironic that at the point where I finally wrested that control back I signed a document giving up my rights and putting myself again under its control …[558]

When it was put to Mr Leder in the *Melbourne Response* public hearing that it may be inferred that the Melbourne Response was aimed at purchasing freedom from legal processes at a low price, he responded:

> the Church's view and my view is that the claims being settled through this process were claims that had no significant prospect of success and therefore in that sense that what the victims give up when they sign the release is a legal claim that's unlikely to succeed.[559]

In our report on the *Melbourne Response*, we noted that the question of whether a deed of release should be a condition of receiving an ex gratia redress payment is complex. We observed that some people suggest that it is not appropriate to require a person to forego their common law rights as a condition of receiving a modest ex gratia sum.[560] Our conclusions on deeds of release in the *Redress and civil litigation* report are outlined above in 13.9.4, with respect to Towards Healing.

In the Ryan review it was recommended that the requirement that the acceptance of an offer of compensation be conditional upon the complainant executing a deed of release be removed.[561] In his evidence during the *Institutional review of Catholic Church authorities* public hearing, Archbishop Hart told us that, since the announcement of the Ryan review, all deeds of release entered into by survivors under the Melbourne Response have included a provision that the release does not affect any rights they may have arising from the implementation of the recommendations of the Ryan review or the Royal Commission.[562]

Confidentiality

At the time of the *Melbourne Response* case study, the application for compensation form that survivors were required to sign as part of the Melbourne Response process contained a confidentiality provision, which stated:

> 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)
>
> (a) disclose to any person,
>
> (b) rely or seek to rely in any arbitral or judicial proceeding (whether or not such proceeding relates to the subject matter of this application) on
>
> any communication, statement or information, whether oral or documentary, made or provided in the course of or in relation to the Panel's deliberations.[563]

Mr Leder told us that an obligation to confidentiality was imposed so that, if the offer of compensation was not accepted, neither party could use the offer to argue that the Catholic Church was liable in court. If the offer is accepted, this confidentiality obligation no longer applies.[564]

Mr Leder agreed that the application for compensation form was ambiguous – it could be read as imposing broad undertakings of confidentiality upon victims on their own medical reports – and that several provisions should be reviewed. Mr Curtain QC agreed that it could be read as imposing confidentiality on the application in relation to their meeting with the Compensation Panel. Mr Curtain QC agreed that the provisions of the application for compensation form were

at odds with the intention of the Compensation Panel and what the complainant should be able to say after its deliberations. He said, 'I think it's long overdue for revision'. In our case study report we agreed with this view.[565]

In our *Redress and civil litigation* report we recommended that no confidentiality obligations should be imposed on applicants for redress.[566]

Apologies

As outlined above with respect to Towards Healing, we have heard from many survivors about the importance of receiving a genuine, personal apology from the institution in which the sexual abuse was perpetrated.

For some survivors, it may be important that the person giving the apology is well informed about that survivor's experience and is not someone who is simply signing a letter without having any personal knowledge of the survivor. In the *Melbourne Response* hearing we received evidence from Archbishop Hart that the letters of apology he sends to survivors are very similar and that some may be identical. He agreed that the letter that was sent to Mrs and Mr Foster in 1998 was in the same terms as that sent to Mr Paul Hersbach in November 2006 and that sent to AFA in June 2011.[567]

Mr Paul Hersbach told us that he believed Archbishop Hart should have offered to meet with him and convey his apology personally. He said, 'that would have made a huge difference to me'. Similarly, AFA stated, 'I think this should have been a personal apology in a face-to-face meeting. No member of the clergy has ever attempted to contact me or to apologise about the abuse of Father Glennon'.[568]

However, unlike the process established by Towards Healing, the Melbourne Response process does not create a formal opportunity for survivors to meet directly with a senior Catholic Church official from the Archdiocese of Melbourne. During our *Institutional review of Catholic Church authorities* public hearing, Archbishop Hart told us that he has 'always made the opportunity available' for survivors who want to talk to him, including to receive an apology from him. He also recognised that survivors may find it 'impossible' to take that opportunity.[569]

We observed in our report on the *Melbourne Response* case study that a scheme that is heavily dominated by lawyers and traditional legal process is unlikely to provide the most supportive environment for survivors.[570] We continue to hold that view.

13.9.6 Responses to victims and survivors through civil litigation and direct negotiations

Although the Catholic Church has established redress processes such as Towards Healing and the Melbourne Response, for a range of reasons survivors may prefer to resolve complaints by bringing a civil action against the Catholic Church or by engaging in direct negotiation of a financial settlement with the institution where they were sexually abused.

Some survivors may make a claim through multiple redress processes. For example, a survivor may have initially engaged with the Towards Healing process and have later pursued a claim through civil proceedings or another redress process, being some form of negotiation with a Catholic Church authority by the claimant or their solicitor and/or advocate. The data provided to us by Catholic Church authorities demonstrates that of all the claims received by 92 Church authorities between 1 January 1980 and 28 February 2015, 573 claims (12 per cent) went through more than one redress process.[571]

As discussed above, in *The Towards Healing process* case study we heard from Mrs Isaacs, who, after going through Towards Healing, engaged in negotiations through her lawyer for settlement of a monetary sum with lawyers for the Archdiocese of Brisbane. In 2001, after two years of negotiations, Mrs Isaacs was offered an ex gratia payment of $30,000 'all up'.[572]

Mrs Isaacs told us she had incurred $12,000 of legal costs for the advice and representation she received for the Towards Healing process and the civil claim.[573] Of her final compensation payment she said:

> After the payment of legal fees and Health Commission fees, I bought $5,000 worth of Coles Myer shares and a sewing machine, and after that I had little or no money left from my settlement.[574]

The Catholic Church claims data indicates that the highest total amounts paid (including monetary compensation and payments for treatment, legal and other costs) were through 'other' redress processes ($99.5 million) and civil proceedings ($92.5 million).[575] 'Other' redress processes are where a claimant seeks redress from a Catholic Church authority directly or through a solicitor or advocate without using Towards Healing, the Melbourne Response or civil proceedings.[576] The highest average amount paid was through civil proceedings ($145,000).[577]

The Catholic Church claims data indicates that, of all redress processes, the highest amount of monetary compensation paid to survivors was through civil proceedings and 'other' redress processes ($88.9 million and $92.8 million, respectively).[578]

Of the claims made through civil proceedings, 632, or 67 per cent, resulted in monetary compensation and, of the claims made through an 'other' redress process, 921, or 58 per cent, resulted in monetary compensation. The highest average monetary compensation paid was through civil proceedings ($141,000 per claimant).[579]

Some survivors have obtained substantial compensation payments by pursuing civil litigation. If a survivor establishes liability and causation in a civil proceeding, the compensation to which they are entitled is significantly higher than the payments offered through the Catholic Church's established redress processes.

However, if survivors choose to pursue civil litigation, they may face a number of challenges, including that a financial outcome is far less certain and the process can be protracted and incur significant costs. On occasion, even if the court judgment is in their favour, survivors may go through the litigation process and find that, after paying legal and other expenses, they are left with only a small compensation sum.

In the *Case Study 13: The response of the Marist Brothers to allegations of child sexual abuse against Brothers Kostka Chute and Gregory Sutton (Marist Brothers)* public hearing, the Marist Brothers informed us that it has become more common in recent years for survivors to bring their complaints through lawyers by way of civil claims rather than through Towards Healing and that this is particularly the case where the accused brother has been the subject of criminal proceedings.[580]

The Marist Brothers stated that it had no written policies or procedures for dealing with civil claims made in this way and that the Marist Brothers is represented by its own lawyers in this process. Brother Jeffrey Crowe told us that it was the Marist Brothers' preference to deal with civil claims by way of mediation.[581]

It is sometimes difficult to distinguish between cases which are settled by way of civil litigation and cases which are settled by way of direct negotiations between lawyers for survivors and lawyers for the relevant Catholic Church authorities. As discussed further in Chapter 22, during the *Institutional review of Catholic Church authorities* public hearing we heard from several Catholic Church authorities that an increasing number of survivors are seeking redress from Catholic Church authorities directly, either personally or through a lawyer or victims' group, rather than engaging with Towards Healing or the Melbourne Response.

In *Case Study 43: The response of Catholic Church authorities in the Maitland-Newcastle region to allegations of child sexual abuse by clergy and religious (Catholic Church authorities in Maitland-Newcastle)*, we heard that an agency called Zimmerman Services (previously Zimmerman House) operates under the direction of the bishop with a mandate to prevent child abuse, respond to complaints of child abuse and provide support to persons affected by child abuse (both current and historical).[582] We heard that, while the Diocese of Maitland-Newcastle is 'a signatory' to Towards Healing and Zimmerman Services supports and facilitates any survivors who wish to go through the Towards Healing process, the vast majority of survivors choose to negotiate directly with the diocese.[583] The diocese has its own voluntary 'Proposed Protocol for settlement of civil claims brought outside of Towards Healing', which is managed by Zimmerman Services.[584] When asked during our *Institutional review of Catholic Church authorities* public hearing whether he could identify any reason why survivors prefer

direct negotiation, Mr Sean Tynan, the Manager of Zimmerman Services, Diocese of Maitland-Newcastle, responded, 'I think the public standing of Towards Healing has been significantly, if not permanently, damaged'.[585]

In the *Catholic Church authorities in Maitland-Newcastle* public hearing, we heard that Zimmerman Services has taken steps to separate survivors' experience of negotiating directly with the diocese from their experience of receiving pastoral support. The Bishop of Maitland-Newcastle, Bishop William Wright, told us that, in 2011, the investigative/preventative functions and the healing/support functions of Zimmerman Services were separated and an independent coordinator for a 'Healing and Support Team' was appointed. One purpose of this restructure was to address the potential conflict of interest that could arise when the manager of Zimmerman Services was responsible for the negotiation of a civil claim on behalf of the diocese with a claimant who was also a client of the Healing and Support Team.[586]

The head of Zimmerman Services' Healing and Support Team, Ms Maureen O'Hearn, told us that the team operates as a 'self-contained confidential service',[587] providing support to victims and their family members.[588] She said that, if a survivor later makes a claim, none of the information held by the Healing and Support Team can be accessed by 'any other part of the Diocese or other part of Zimmerman Services'.[589] Ms O'Hearn explained that this independence allows the Healing and Support Team to support and assist survivors who make claims through their claims process.[590] We further discuss the support service provided by the Healing and Support Team in Chapter 21.

During private sessions, some survivors told us about negotiating a settlement sum directly with the Catholic institution where they were sexually abused. Some survivors said they had positive experiences, while others were critical of their experiences and emphasised the re-traumatising effect of engaging with the institution where they experienced child sexual abuse.

Some survivors who have engaged in direct negotiation or mediation with a Catholic Church authority more recently have reported positive experiences. Private session attendee 'Harrison' told us that in 2011 he was asked to provide support to people who had been abused by religious figures. This brought up his own memories of being sexually abused. When he raised the matter with the Christian Brothers they held a hearing and settled the matter quickly. He said the religious brother at the hearing was good and fair and he thought his experience was different to others', where Catholic Church officials were so horrified by the reality of the abuse that they could not address it.[591]

Private session attendee 'Brien' told us that, after receiving a settlement sum of $5,000 in the 1990s, he recently went back to the order of Catholic Brothers that ran the school where he was sexually abused as a child. He told us that he met with the same lawyer who had made his first experience of negotiating with the order traumatic. 'Brien' found that the lawyer's hostile attitude had changed. He told us:

> I couldn't believe it. The guy was completely different … He spoke to me with respect. He was really decent. And I sound so surprised because I still am. He was really kind to me. And I don't think it was fake. I really don't. Something has moved there since this Royal Commission started.[592]

'Brien' told us that he walked away from the negotiations with a settlement sum that was more than 10 times what the order originally offered.[593]

Civil litigation

In *Issues paper 5: Civil litigation*, we sought submissions on a range of elements of civil litigation processes. The submissions we received gave many examples of the difficulties that survivors experience in seeking to commence or pursue civil litigation under the existing civil litigation systems. Subsequently, in our *Consultation paper: Redress and civil litigation*, we stated that it was clear to us from the very many accounts we had then heard from survivors in private sessions and through submissions to issues papers that many survivors do not consider that justice has been or can be achieved for them through existing civil litigation systems or through previous or existing redress schemes that some governments and non-government institutions offer.[594]

In our *Consultation paper: Redress and civil litigation*, we suggested that, for many survivors, including those who were sexually abused in religious institutions, existing civil litigation systems and redress schemes do not provide, and have not in the past provided, effective avenues to seek or obtain justice in the form of compensation or redress that is adequate to address or alleviate the impact on survivors of sexual abuse.[595]

In the *Redress and civil litigation* report, we focused on the topics of limitation periods, duty of institutions, identifying a proper defendant and principles for managing litigation. We distilled these topics from what we had heard in private sessions, public hearings and submissions. Our recommendations for reform in these areas are most likely to improve the capacity of the civil litigation systems to provide justice to survivors. In this way, it may be possible to ensure that survivors have reasonable access to civil litigation as an avenue for justice that is comparable to that of other injured persons.[596]

We acknowledged in our *Redress and civil litigation* report that survivors of child sexual abuse may face other difficulties, including legal costs, difficulties in bringing class or group actions and the burden of giving evidence and being subject to cross-examination. However, these difficulties may be shared by many people who suffer personal injuries and who are considering commencing civil litigation. For some matters, particularly legal costs, complaint mechanisms are already available.[597]

Many of those who pursue civil litigation against the Catholic Church share challenges faced by those who pursue civil litigation against other entities. For the most part, in this section we do not repeat the policy matters canvassed in our previous work on redress and civil litigation. Rather, we focus on what we have heard from survivors about their lived experiences when they engaged in civil litigation against the Catholic Church.

The two key case studies in which we heard from survivors about their experiences of commencing a civil action against the Catholic Church were *Mr John Ellis, Towards Healing and civil litigation* and the *Melbourne Response*. In both these case studies, we heard that civil litigation was initiated by survivors following perceived failures of the Towards Healing and Melbourne Response redress processes. We also heard about issues relating to civil litigation in the *Christian Brothers* and *Marist Brothers* case studies.

In an undated report provided to us by the Council, Professor Parkinson noted that, if a Catholic Church authority defends a matter on all available bases, as it is entitled to do, the difficulties for survivors are 'immense'. He highlighted that the main difficulties were issues relating to limitation periods within which to bring an action, finding a 'correct defendant' to sue and issues relating to establishing liability and proving the sexual abuse occurred.[598] We addressed and made recommendations on these matters in our report on *Redress and civil litigation*.[599]

Professor Parkinson observed that it is in the interests both of the Catholic Church authority and most survivors to 'try to resolve grievances, address needs and respond to the pain of abuse without being locked in an adversarial process of litigation'. He further wrote:

> If the Church authority reacts defensively to a complaint of abuse and sees the complainant as an adversary rather than as a hurt person in need of help, then a downward spiral of the relationship is inevitable. The Church does not want to be in an adversarial relationship with genuine victims of abuse for whom Christ died. It wants to offer a reconciliatory and compassionate response while not admitting legal liability.[600]

We have heard from the survivors referred to below that their experiences have not accorded with this view. Indeed, we have heard that some Catholic Church authorities have not given survivors of child sexual abuse special consideration when defending litigation brought against them.

Relationship between civil litigation and Towards Healing

In the *Mr John Ellis, Towards Healing and civil litigation* case study we received extensive evidence about the civil proceedings brought by Mr Ellis in 2004 in relation to sexual abuse he suffered as a child at the hands of Father Duggan.[601]

As noted above, Mr Ellis brought these proceedings after seeking, amongst other things, an ex gratia payment of $100,000 from the Archdiocese of Sydney through the Towards Healing process. In June 2004, he was offered $30,000 by the archdiocese. The Archdiocese of Sydney

ultimately made payments of $570,365 to him, consisting of counselling costs, medical expenses, costs for the repair of his house which was affected by storm damage, costs for a holiday and a final lump sum payment of $50,000.[602]

In our report on *Mr John Ellis, Towards Healing and civil litigation*, we observed that, at the time, the Archdiocese of Sydney had not adopted any obligations to guide its response to litigation by victims of child sexual abuse. The principles and procedures of Towards Healing, which from 1996 have included the requirement that Catholic Church authorities provide a compassionate response to victims, ceased upon the commencement of litigation, although they could be subsequently revived.[603]

Towards Healing was amended in 2010 to clarify that, if a survivor chooses to be represented by a lawyer and is only seeking compensation, the matter should not proceed through Towards Healing. Rather, the matter should proceed outside Towards Healing, in accordance with civil justice processes. Towards Healing (2010) notes that the relevant Catholic Church authority should nonetheless endeavour to act with a concern for the wellbeing of the survivor in seeking to resolve the civil claim.[604]

In our *Redress and civil litigation* report we recommended that government and non-government institutions that receive, or expect to receive, civil claims for institutional child sexual abuse should adopt guidelines for responding to claims for compensation concerning allegations of child sexual abuse.[605]

In its submission in response to our *Consultation paper: Redress and civil litigation*, the Council agreed that:

> both government and non-government institutions against which civil claims in relation to child abuse are brought would benefit from adopting more specific guidelines for responding to civil claims in relation to allegations of child sexual abuse. The Council is considering whether it is feasible for all Catholic Church authorities to adopt a consistent set of model litigant guidelines in this area.[606]

In response to our recommendations and further to the consideration above, in November 2015 the Council published a set of guidelines, endorsed by all Catholic Church authorities, on how they should respond when claims of child sexual abuse are brought against them. The *Guidelines for Church authorities in responding to civil claims for child sexual abuse* became effective on 1 January 2016. The guidelines are designed to promote 'justice and consistency' in the way that the Catholic Church handles child sexual abuse claims and conducts litigation.[607] We further discuss these guidelines and other related matters in Chapter 22.

Relationship between civil litigation and the Melbourne Response

In the *Four part plan* announcing the Melbourne Response, Archbishop Pell wrote on 30 October 1996:

> Complainants remain free to use the normal court processes if they do not wish to avail themselves of the compensation panel process. In that event they should expect that the proceedings will continue to be strenuously defended. Any claimant coming before the panel will be informed of their right to refuse the ex gratia payment being offered and to pursue their claim in the civil courts. They will also be informed that the Archbishop and the Archdiocese will continue to defend claims in the courts on all bases.[608]

Corrs solicitor Mr Leder told us that the Melbourne Response was established in light of the substantial legal defences available generally to organisations, including the Catholic Church, in defending civil action by plaintiffs. He said that no one in the Catholic Church considered that relying on these defences, and preventing plaintiffs from being able to sue, was the wrong thing to do.[609]

From its inception, the Melbourne Response's compensation component was seen as an alternative to civil litigation. Mr Leder refuted that the purpose of the compensation aspect of the Melbourne Response was to discourage civil suits against the Catholic Church. However, in our report on the *Melbourne Response* we found that, faced with the statement that court proceedings would be 'strenuously defended', it is inevitable that many people would be dissuaded from going to court.[610] These words were used in letters to complainants until 2002, when they were publicly criticised by Mrs and Mr Foster.[611] The Fosters' experience of the compensation aspect of the Melbourne Response is discussed above.

Indeed, this is consistent with evidence that we heard from AFA in the *Melbourne Response* case study:

> The Melbourne Response did not meet my expectations. I felt pressure to go through the Melbourne Response because I had followed John Ellis's case against the Church in New South Wales about his own child sexual abuse, and I thought the Church would rely on the defence if I tried to take them to court. I did not think I had any other options for seeking compensation.[612]

In 2002, the Fosters instructed their solicitors to commence five separate legal proceedings in the Supreme Court of Victoria on behalf of their daughters Emma, Katie and Aimee, and themselves. They did so because they did not believe that the sum offered to them through the Melbourne Response process would provide a just outcome. A mediation took place on 7 November 2005. After some negotiation, the Fosters said they would accept $750,000 plus payment of their legal costs and an indemnity in respect of any payments to the Health Insurance Commission. This offer did not include ongoing entitlement to Carelink. The archdiocese accepted this offer.[613] The challenges faced by the Foster family during their civil proceedings are addressed below.

Barriers to commencing proceedings

In its submission in response to *Issues paper 5: Civil litigation,* the Council identified two difficulties that are of particular significance for a victim of child sexual abuse wishing to sue a Catholic Church entity:[614]

- limitation periods – the operation of statutory limitation periods which may bar the claim
- defendant issues – identifying a responsible party against whom to bring proceedings.

We have heard from a number of survivors and survivor advocacy groups that these are significant barriers in commencing a legal action against the Catholic Church.

Limitation periods

As noted in our *Redress and civil litigation* report, limitation periods are the time limits within which legal proceedings must be commenced. They are set out in legislation in each state or territory in Australia. This legislation is sometimes referred to as the 'statute of limitations'.[615]

Many survivors who consider pursuing civil litigation would already be well outside the basic limitation period for personal injury claims. A number of survivors have told us in private sessions that they have been given legal advice that they cannot commence civil litigation because of the relevant limitation period. Some might have good grounds to support an application for an extension of time; however, many may be advised that their claims are too late.[616]

Many survivors, survivor advocacy and support groups, lawyers and academics have told us that the existence of limitation periods acts as a significant, sometimes insurmountable, barrier to survivors being able to commence civil litigation. They have told us that, although state and territory legislation often allows limitation periods to run from a time later than when the sexual assault itself occurred, or to be extended by a court's exercise of discretion, the existence of limitation periods may still create significant barriers for survivors.[617] Limitation periods create the risk of lengthy litigation – sometimes spanning many years – about whether or not the claim can be brought.[618]

In *Mr John Ellis, Towards Healing and civil litigation* we heard about Mr Ellis's successful application to extend time to commence proceedings against Cardinal Pell, the Trustees of the Roman Catholic Church for the Archdiocese of Sydney (the Trustees) and Father Duggan in 2004 in the Supreme Court of New South Wales.

Mr Ellis sought an extension of time under one of the exceptions in the *Limitation Act 1969* (NSW), which allowed an extension if a 'material fact' relating to the cause of action was unknown until after the expiration of the limitation period. Mr Ellis also had to persuade the court that it was 'just and reasonable' to extend the time, which required consideration of whether there was any prejudice to the defendants that would make a fair trial of the plaintiff's action not possible.[619]

In February 2006, Acting Justice Patten found that Mr Ellis did not have the means of knowing the nature and extent of the personal injury caused by Father Duggan's alleged sexual abuse – which he accepted was a 'material fact' – until Mr Ellis's consultation with a counsellor in September 2001. His Honour extended the limitation period for the causes of action pleaded against the Trustees but dismissed the action against Cardinal Pell on the basis that he was not a proper defendant.[620]

While finding that the Trustees and archbishop would be prejudiced if time was extended, his Honour held that the evidence established that there could be a fair trial of the action. Although some evidence may be lost because of the passage of time, there would nevertheless be people who could attest to Mr Ellis's service as an altar boy some 30 years previously and to the systems, if any, in place at Bass Hill and elsewhere to protect persons such as altar boys from the sort of conduct alleged against Father Duggan.[621]

In the *Christian Brothers* case study we heard that the law firm Slater and Gordon commenced civil proceedings on behalf of a number of claimants who were former residents in Christian Brothers institutions in Western Australia. Slater and Gordon commenced the proceedings in New South Wales and Victoria so that it could avoid the Western Australian limitation laws.[622] At the time, the limitation period in Western Australia was six years from the date of the tort (meaning six years from the date of the abuse) and could not be extended. At the time Slater and Gordon received instructions, the relevant survivors were already decades outside the limitation period for bringing a claim.[623]

From 1994 to 1996, the various proceedings brought by Slater and Gordon involved interlocutory, or preliminary, hearings in New South Wales, Victoria and Western Australia; one appeal to the New South Wales Court of Appeal; and three applications for special leave to appeal to the High Court of Australia. The underlying claims of abuse were not heard or determined on their merits on any of these occasions.[624]

In mid-1996, the proceedings were settled by the establishment of a trust fund of $3.5 million for payments to claimants. The trust fund operated for three years and made lump-sum payments to 127 men for child sexual abuse, as well as other needs-based payments. In addition, $1.5 million was paid towards Slater and Gordon's legal costs and disbursements. The Christian Brothers' legal costs and disbursements totalled at least another $1.5 million.[625]

We heard evidence from a number of survivors, some of whom had participated in the Slater and Gordon proceedings. Mr Clifford Walsh gave the following evidence:

> What I couldn't understand is how the Christian Brothers could raise a limitation defence. We were kids. It seemed to me that we couldn't do anything about the abuse when it was happening, and by the time we were able as a group to do something about it, in particular being in the right mental state to do so, we were told it was too late. We were just being abused all over again.[626]

In our report on *Redress and civil litigation*, we summarised events relating to limitation periods in the *Christian Brothers* case study and observed that they are an example of the difficulties survivors can face.[627] We concluded that the limitation periods in place at the time of the publication of our report were inappropriate given the length of time that many survivors of child sexual abuse take to disclose their experience of abuse.[628]

Identifying a proper defendant

As noted in our *Redress and civil litigation* report, an entity can be sued only if it has a distinct 'legal personality', meaning that it has legal rights, liabilities and duties, including the ability to sue and be sued.[629] Many of the submissions we received in response to *Issues paper 5: Civil litigation* expressed concern that the absence of legal personality of unincorporated associations, particularly faith-based institutions like the Catholic Church, made it impossible to sue those associations.[630]

We observed that it may be that the issue has arisen in relation to faith-based institutions for reasons such as the following:[631]

- Faith-based institutions may appear to be, and may conduct themselves as if they are, legal entities – for example, by speaking in the name of 'the church'.
- The institutions still exist decades after the alleged abuse, when a survivor may wish to sue.
- The institutions may have, or appear to have, significant assets.
- The perpetrator may well have taken a vow of poverty and given their assets to 'the church', making them unsuitable as a defendant if there will be no assets from which they could meet any judgment against them.

We noted that in these circumstances it may not be surprising that survivors do not understand why they cannot sue 'the church' or any other incorporated entity associated with it.

As noted above, in the *Christian Brothers* case study we heard of the difficulties that the solicitors for the claimants in the above-referenced civil litigation faced in identifying the proper defendants to claims for compensation for abuse. In 1993, proceedings were commenced in New South Wales and Victoria on behalf of claimants seeking damages from the Christian Brothers institutions for physical, sexual or psychological abuse at Christian Brothers' Western Australian institutions in the 1950s, 1960s and early 1970s.[632]

In 1995, the Court of Appeal of the Supreme Court of New South Wales held that the Archbishop of Perth could not be liable for the abuse, either as a natural person or as the incorporated corporation sole. The court held that there could not be any successor liability between the previous archbishop at the time the abuse occurred and the current archbishop at the time of the litigation; and that the corporation sole was responsible only for holding land and not for operating the institutions.[633]

The possible liability of the Trustees of the Christian Brothers, which was incorporated under New South Wales legislation, was not determined by a court and the proceedings settled in 1996.

Archbishop Hart of the Archdiocese of Melbourne told us that he is of the view that the Catholic Church in Australia should provide victims of child sexual abuse with an entity to sue – a view that he formed in 2012 or 2013. Archbishop Hart also said that, if civil proceedings were brought against the Archdiocese of Melbourne in the future, he would make sure there was an entity to sue.[634]

In the *Mr John Ellis, Towards Healing and civil litigation* case study, we heard that on 31 August 2004 Mr Ellis commenced legal proceedings in the Supreme Court of New South Wales against Cardinal Pell as the first defendant, the Trustees as the second defendant and his alleged abuser, Father Duggan, as the third defendant. He pleaded causes of action in tort and breach of fiduciary duty arising from allegations of sexual abuse by Father Duggan between 1974 and March 1979. Father Duggan died soon after proceedings commenced and Mr Ellis decided not to pursue the claim against his estate. The proceedings remained on foot against Cardinal Pell and the Trustees only.[635]

As outlined in our *Redress and civil litigation* report, the Trustees were incorporated under New South Wales legislation: the *Roman Catholic Church Trust Property Act 1936* (NSW). In *Trustees of the Roman Catholic Church for the Archdiocese of Sydney v Ellis*,[636] the Court of Appeal of the Supreme Court of New South Wales held that the Trustees could not be vicariously liable for the sexual abuse of Mr Ellis because:[637]

- the legislation establishing the trustees as a corporate entity only gave the Trustees a limited role in holding property, with no responsibility for ecclesiastical, liturgical and pastoral activities
- as a matter of fact the Trustees played no role in the appointment or oversight of priests at the relevant times.

The court held that Cardinal Pell could not be legally liable for the sexual abuse of Mr Ellis because he was not Archbishop of Sydney at the time the sexual abuse occurred and he could not inherit any legal liability of his predecessor.[638] The Court of Appeal left open the question of whether the archbishop at the time of the sexual abuse could be held liable for that abuse.[639]

As noted in our *Redress and civil litigation* report, we heard from representatives of the Catholic Church that the estate of Archbishop James Freeman, who was Archbishop of Sydney at the time of Mr Ellis's experience of sexual abuse as a child, was a possible appropriate defendant that Mr Ellis could have sued. However, we also heard that the Archdiocese of Sydney followed legal advice from its solicitors and did not provide information to Mr Ellis's lawyers about who the proper defendant in the proceedings should have been.[640] In our report on *Mr John Ellis, Towards Healing and civil litigation,* we observed that Cardinal Pell was aware of, and generally agreed with, the advice of Corrs that they should not help Mr Ellis to identify a suitable defendant.[641]

Mr Ellis subsequently applied for special leave to appeal the Court of Appeal's decision to the High Court. This was refused in November 2007.[642]

In the *Marist Brothers* case study, we heard that the Marist Brothers would use the 'Ellis judgment' to defend litigation brought against the Trustees of the Marist Brothers, which was incorporated under New South Wales legislation.[643]

A number of survivors and survivor advocacy groups have identified the decision made in *Trustees of the Roman Catholic Church for the Archdiocese of Sydney v Ellis*[644] as having the effect of creating significant barriers for survivors when approaching the Catholic Church, as well as other unincorporated non-government organisations, for redress.

For example, in their submission in response to *Issues paper 5: Civil Litigation*, knowmore legal services stated:

> The Ellis defence creates obvious legal difficulties for survivors when approaching the Catholic Church, as well as other non-government organisations that are similarly unincorporated, for redress. The effective consequence is that these institutions cannot be sued. When entering settlement discussions, either during civil litigation or while participating in institutional redress schemes, this difficulty, despite what institutions admit to, informs discussions and puts the survivor at the institutions mercy. This exacerbates what is already an inherently re-traumatising experience for survivors, where the power relationships inherent in the perpetration of child sexual abuse are replicated for the client …
>
> Not only can these institutions not be sued, but other findings in Ellis, such as those concerning the relevant Archbishop's personal liability, also operate to limit the other options available to claimant when seeking to identify potential defendants and to hold them accountable … [645]

We acknowledge these difficulties, and further discuss statements made and steps taken by Catholic Church authorities to resolve challenges faced by survivors to resolve the proper defendant issue, in Chapter 22.

In our *Redress and civil litigation* report, we addressed several options for reform related to identifying a proper defendant. We noted that the necessary outcome of any approach would seem to be that survivors should be able to sue a readily identifiable church entity that has the financial capacity to meet claims of institutional child sexual abuse.[646]

We recommended that state and territory governments should introduce legislation to provide that, where a survivor wishes to commence proceedings for damages for institutional child sexual abuse where the institution in question is alleged to have an associated property trust, then unless the institution nominates a proper defendant to sue that has sufficient assets to meet any liability arising from the proceedings:

- the property trust is a proper defendant to the litigation
- any liability of the institution with which the property trust is associated that arises from the proceedings can be met from the assets of the trust.

We recommended that governments should consider whether they fund any unincorporated bodies – either directly or indirectly, including through funding local government – to provide children's services. If they do, they should consider requiring them to maintain insurance that covers their liability in institutional child sexual abuse claims.[647] We further deal with this issue in Chapter 22.

Defending civil proceedings

In the *Mr John Ellis, Towards Healing and civil litigation* and the *Melbourne Response* case studies we heard that Catholic Church authorities have taken advantage of the legal defences available to them and conducted litigation in a manner that did not adequately take account of the pastoral and other needs of survivors of sexual abuse. We heard in those case studies that representatives of the Catholic Church authorities expressed that they would 'vigorously' or 'strenuously' defend civil proceedings brought by survivors of child sexual abuse.

In Mr Ellis's case, law firm Corrs acted on behalf of Cardinal Pell and the Trustees. We found that Cardinal Pell accepted the advice of Corrs to 'vigorously defend' Mr Ellis's claim. A major part of Cardinal Pell's decision to accept this advice was his conviction that Mr Ellis was seeking 'exorbitant damages' of millions of dollars. As noted above, Mr Ellis was seeking an ex gratia payment of $100,000. Another reason was to discourage other prospective plaintiffs from litigating claims of child sexual abuse against the Catholic Church.[648]

Some of the steps taken by the Archdiocese of Sydney and their solicitors during the conduct of Mr Ellis's litigation included:

- Cardinal Pell accepted the advice of Corrs at the outset of the litigation in September 2004 that mediation was no longer a viable option and that an approach from Mr Ellis's lawyers to mediate should be rejected.[649]
- Cardinal Pell accepted the advice of Corrs to reject an offer of compromise put forward by Mr Ellis in December 2004 and not make a counteroffer.[650]
- Corrs and Cardinal Pell disputed that Father Duggan had sexually abused Mr Ellis. We found that, instead of disputing that Mr Ellis had been abused, it was open to the Trustees and the archbishop to admit the fact of Mr Ellis's abuse and defend the case on other grounds.[651]

- Mr Ellis was cross-examined as to whether he was abused.[652] Mr Paul McCann, then partner at Corrs, accepted that if the purpose of the cross-examination was to test when Mr Ellis knew or understood that his sexual abuse constituted personal injury then it was not necessary to cross-examine him about whether he was abused. The issues relevant to the limitation application could have been thoroughly explored in the interlocutory application without the fact of Mr Ellis's experience of sexual abuse by Father Duggan being put in issue.[653]
- Throughout the litigation the Trustees and the Archbishop continued to dispute that the abuse had occurred, despite the fact that during the hearing another complainant – SA, who claimed he had been abused by Father Duggan in 1980 – came forward.[654] Cardinal Pell's view, which was shared by everyone he spoke to, was that the evidence of SA significantly strengthened Mr Ellis's legal case. However, during the litigation neither he nor anyone else in the archdiocese reconsidered whether to dispute the fact of Mr Ellis's experience of sexual abuse.[655]
- Another prospective witness, Mrs Judith Penton, had come to Corrs' attention. Mrs Penton had witnessed Mr Ellis kissing Father Duggan. Corrs did not depose an affidavit from her and did not bring her evidence to the attention of either the court or Mr Ellis. The Trustees and the archbishop continued to dispute that Mr Ellis had been sexually abused.[656]
- Cardinal Pell had decided not to pursue costs against Mr Ellis by May 2008. Monsignor John Usher told Mr Ellis that costs would not be pursued against him in August 2008; however, this was not confirmed in writing until August 2009. The length of time taken to resolve the costs issue had an adverse effect on Mr Ellis's health.[657]

We found that the Archdiocese of Sydney failed to conduct the litigation with Mr Ellis in a manner that adequately took account of his pastoral and other needs as a victim of sexual abuse.[658]

Following the Court of Appeal's decision in favour of the Trustees, Corrs wrote to Mr Ellis and informed him that their costs were likely to be up to $550,000 after assessment. In this email and on Cardinal Pell's instructions, Corrs conveyed an offer to forgo these costs if Mr Ellis agreed not to apply for special leave to appeal to the High Court. It was made clear that, if this was accepted, there would be no possibility of a monetary settlement, although the counselling and pastoral aspects of Towards Healing would be made available. Despite this offer, Mr Ellis sought special leave to appeal to the High Court.[659] Mr Ellis gave the following evidence about this decision:

> This correspondence put considerable pressure on me as I knew that special leave is difficult to obtain, and I feared that if I was unsuccessful, the Archdiocese would pursue me for costs which I would be unable to pay. The result of that would be that I would lose my house ...

> Because of the public importance of the issue and my belief that many hundreds or thousands of people may be disadvantaged if the Court of Appeal decision were allowed to go unchallenged, I made a conscious decision to risk everything I owned to do what I believed was right.[660]

Mr Ellis's application for special leave to appeal to the High Court was refused in November 2007. We heard that the proceedings took a profound emotional and psychological toll on Mr Ellis. Mr Ellis told us:

> Following the decision of the High Court to refuse special leave, I suffered a severe psychological decline and became again severely depressed. I considered that I had made a foolish decision to bring proceedings against the Archdiocese, given that the outcome of that decision was a judgement which created further barriers to other victims of abuse seeking justice against not only entities created for the operations of the Catholic Church … The realisation of that was devastating. I was finding it very difficult to cope with day to day life and the impacts of my decision.[661]

In relation to the civil proceedings brought by Mr and Mrs Foster against the Archdiocese of Melbourne, Archbishop Hart said in a statement to us:

> My strong preference from the time I became aware that the Fosters had started court proceedings was that their claims be resolved without delay, pastorally and in a non-adversarial way if that were possible.[662]

However, during the *Melbourne Response* public hearing Archbishop Hart agreed that he effectively gave Mr Leder of Corrs instructions to take all defences that were open to the Catholic Church in defending the matter. He said that he was dependent on his legal advisers; however, his lay reading was that it did not seem right to him that he and the Roman Catholic Trusts Corporation were legally liable for the crimes that had been committed by Father Kevin O'Donnell.[663]

In our *Melbourne Response* case study report, we addressed some of the difficulties experienced by the Foster family in engaging in civil proceedings against the Catholic Church, including:

- The Fosters had difficulty in identifying an appropriate defendant.[664]
- The defendants did not admit that Father O'Donnell had sexually abused Emma and Katie and they denied that Emma and Katie had suffered shock, personal injury, loss and damage as a consequence of a breach of their respective duties.[665]
- The process was highly protracted – after the Fosters filed the statements of claim, the cases were settled in just over a year and finalised within two years. If you count from the time the Fosters commenced the Melbourne Response process, it took 10 years to resolve their matter.[666]
- The Fosters felt they ultimately settled for an amount of money that was far less than what their children were entitled to.[667]

Mrs Foster said of the family's experience in the litigation:

> The civil litigation process took our family almost 10 years to complete. It required countless hours of effort at a significant personal cost and the help of our dedicated legal team. We are of the view that we settled for an amount of money that was far less than what our children were entitled to. Even so, it was a far better result than we could have hoped for from the Melbourne Response. With the settlement funds Emma was able to purchase a house. Katie was able to move into her own home which was specially designed to take into account her disabilities. Very few victims, however, are afforded the support our children had to be able to achieve such a result.[668]

Settlement of civil disputes

As noted in our *Redress and civil litigation* report, where survivors have received monetary payments through civil litigation, this has generally occurred through settlements rather than following a contested hearing on liability and damages. Where civil proceedings have settled, many survivors have told us that the settlement payments were inadequate and that legal technicalities forced them to accept these settlements without ever having their claims determined on their merits.[669]

In that report we observed that in some cases survivors have been poorly treated when they have sought redress or pursued civil litigation. This interaction with the institution in which they were sexually abused has been the source of further trauma and distress to them.[670]

We have heard that some survivors decided to settle their civil actions because they felt worn down by the Catholic Church's steps to defend the claims. Private session attendee 'Alanna' told us that the Catholic Church took a legalistic, bullying approach to their negotiations with her. Ultimately, 'Alanna' was too tired to fight and settled her matter for $70,000. She believes that this sum, like her abuser's sentence, is inadequate and unjust.[671]

Others have told us of how they pursued legal action through the courts but ended up receiving only a small sum of money at the conclusion of the proceedings. Private session attendee 'Charlotte' told us that, after her perpetrator was convicted for child sexual abuse offences, she sought and received a victims of crime compensation payment and subsequently sued the Catholic Church. She found this process unnecessarily painful. She said that this was because the Catholic Church fought her every step of the way and offered only a small sum of money in the end.[672]

13.9.7 Responses to affected communities

> The Catholic community was happy, healthy and thriving. These men, these priests and brothers, came in and ripped this apart in a few years.[673]
>
> **Survivor, Mr Paul Auchettl**

> Child sexual abuse doesn't just tear individuals and families apart. In my experience, its claws reach into the community as well, whether they know it or not.[674]
>
> **Survivor, Mr Andrew Collins**

While examining the responses of Catholic Church authorities to individual survivors and their families, we also heard about responses to communities affected by child sexual abuse perpetrated within Catholic institutions. As discussed in Chapter 5 of Volume 3, *Impacts,* child sexual abuse can have ripple effects which spread beyond a victim's family and friends to other children and staff in the institution, as well as to entire communities. Affected communities can become fractured and divided. This is particularly so when the perpetrator is well liked or the institution is trusted and respected, as is often the case in religious communities. Where large-scale child sexual abuse is revealed or institutions attempt to conceal the abuse, the breakdown of community cohesion can be intensified. The impacts of child sexual abuse on religious communities are discussed further in Chapter 10, 'Impacts of child sexual abuse in religious institutions', of this volume.

As discussed in Chapter 3 of Volume 7, *Improving institutional responding and reporting*, effective communication with affected third parties in a community can support and encourage other victims to disclose and may help the institution deal with the ripple effects of child sexual abuse on secondary victims and the wider community. The provision of support to secondary victims and other affected parties can play an important role in assisting whole communities to heal.

During our public hearings, we heard of some failures by Catholic Church authorities to provide information or support to communities affected by child sexual abuse. In some cases, Catholic Church authorities avoided or resisted meeting with affected communities and failed or refused to provide support to communities who needed and/or requested it. In others, information was withheld from the community, which meant that people were not alerted to possible cases of child sexual abuse or were left with unanswered questions.

Sharing information with affected communities

In our *St Ann's Special School* case study, we examined, among other things, the response of the Archdiocese of Adelaide, including the Catholic Education Office, to the sexual abuse of children by school bus driver Brian Perkins. St Ann's catered for students with intellectual disabilities ranging from a moderate to profound level of severity, many of whom had limited communication abilities.[675] We discuss this case study in further detail below in Section 13.10, 'Catholic Church responses to child sexual abuse in schools'.

The principal of St Ann's, Mr Claude Hamam, first became aware of allegations that Perkins had sexually abused former students in August 1991.[676] We found that neither the principal nor the acting principal, Mr Martin Aartsen, informed the board of management or board of governors (as a board) of the allegations, despite the requirement of the school's constitution to do so. We concluded that the allegations of sexual abuse against Perkins should have been raised at the board meetings so that the board of management and board of governors could have considered a response to the allegations, including whether and how the broader school community should be informed of them.[677]

In 1991, when the allegations against Perkins were first made and the police commenced their inquiries, a small number of parents, including those whose children were identified in the initial police inquiries, were informed.[678] However, from 1991 until 2001, most parents of children who had contact with Perkins, and the wider school community, were not informed of the allegations. This was despite the fact that Perkins had unsupervised contact with numerous children, many of whom were non-verbal or had limited capacity to complain of sexual abuse.[679] We found that in 1991, when the allegations against Perkins first emerged, the Catholic Church parties involved in that case study failed to take appropriate action to ensure that matters were fully reported and investigated by the Church parties and that families were informed and children protected.[680]

Mr Hamam and Mr Aartsen both told us that they understood the police wanted the allegations against Perkins to be kept confidential from the wider school community so as not to compromise the investigation. Detective Sergeant Leonid Mosheev, one of the detectives who conducted the initial inquiries in 1991, said that he could not recall whether he told Mr Hamam or anyone else not to discuss the allegations.[681]

In June 2001, some families of former St Ann's students learned of the allegations against Perkins. One parent approached and met with representatives of the Catholic education office of the Archdiocese of Adelaide and raised concerns about the lack of information that had been disclosed, both at the time of the allegations and subsequently.[682] Some families formed a support group which agitated with the Catholic education office for information and a response to their concerns about Perkins.[683] In March 2002, over 10 years after the allegations against Perkins were first raised, Archbishop Phillip Wilson sent a letter to each family identified as having a child at St Ann's during the relevant period. The letter advised them of the allegations and included an apology to victims and a copy of Towards Healing (2000).[684]

We heard from parents of St Ann's students who did not learn of the allegations against Perkins until 2001. Mrs Helen Gitsham told us that, after learning of the allegations, she and her husband formed the view that their son David had been sexually abused by Perkins. Prior to this, they had no other explanation for a change which had occurred in David's behaviour, his anxiety and panic attacks.[685] Mrs Gitsham, whose son David died in 2005,[686] told us:

> in 2001, when my husband and I were first made aware of the allegations of abuse at St Ann's by Mr Perkins, and that our son David was possibly one of those who was abused, we were shocked. We were more shocked when we heard that the information about the alleged abuse had been kept from us for the past 10 years. We could not understand how this happened and why it was kept from us.[687]

We also heard from LA's carer, LJ. After Perkins became the school bus driver, LA stopped wanting to travel on the school bus and started to exhibit inappropriate sexual behaviour. Following a further deterioration in his behaviour, LA was placed in permanent care in 1991.[688] LJ told us:

> We still do not understand why the school did not contact us in 1991, or subsequently, to inform us about Mr Perkins or let us know that our son might have been at risk. Had this occurred we might have been able to get counselling for LA as early as 1991 which might have helped him and prevented the deterioration in his behaviour.[689]

As outlined in Chapter 3 of Volume 7, *Improving institutional responding and reporting*, where police are involved in dealing with a complaint of child sexual abuse, institutions should consult with police about communication with affected communities. The need for police to assist institutions in understanding what information can be shared and managing communications with staff, victims and their families and the broader community is also discussed in Chapter 9 of our *Criminal justice* report.[690]

In the *Marist Brothers* case study, we heard of another failure to share information with a school community following a complaint of child sexual abuse. By December 1993, Brother Turton, the then Provincial of the Marist Brothers, had received two complaints from current and former students of Marist College Canberra which conveyed unwanted conduct of a sexual nature by Brother Kostka Chute. With this knowledge, Brother Turton failed to provide the Marist Brothers community, other teachers or parents with information relating to allegations made against Brother Chute. This included a failure to tell the community: [691]

- about the investigation of Brother Chute's conduct by Brother Turton
- that Brother Chute now had two complaints made against him of a similar sexualised nature
- that Brother Chute was removed from Marist College Canberra because of these complaints.

This failure occurred despite Brother Turton being provided with a list of suggestions by the father of victim ACN, in which it was strongly recommended that 'tangible efforts be made to identify those other students at Marist who may have been similarly affected by Br [Kostka]'.[692]

The potential for communication with school communities to empower families to support children who may have been victims to disclose is further discussed in Chapter 4 of Volume 13, *Schools*. As set out in Chapter 3 of Volume 7, *Improving institutional responding and reporting*, communication with affected parties can encourage disclosures, including by prompting parents, carers and guardians to raise concerns with their children. A failure to share important information with affected parties where the subject of the complaint is or has been working at the institution may reduce opportunities for additional complaints and disclosures.

A failure to share information with affected communities can also place other children at risk of further sexual abuse.

In the *Catholic Church authorities in Ballarat* case study we heard that in late 1974, while he was a trainee Christian Brother and a teacher at St Alipius School in Ballarat, Victoria, Stephen Farrell admitted to Brother Paul Nangle that he had sexually abused a student, CCD. We accepted Brother Nangle's evidence that he reported the matter to the Provincial at the time, Brother Chanel Naughtin.[693]

There was no evidence that anyone within the Christian Brothers, including the provincial, took any steps to notify other Catholic schools in the diocese, the St Alipius School community or the wider Ballarat community of Stephen Farrell's admission. Farrell was later hired for a lay teaching position at a Catholic primary school in Pascoe Vale, Victoria, in 1975. The Catholic Church parties in that case study acknowledged that it was unacceptable for Brother Naughtin to fail to notify the St Alipius School community about the complaint against Farrell in 1974 and, had that been done, the post-1974 sexual abuse of a boy would have been unlikely to have occurred.[694]

In *Case Study 14: The response of the Catholic Diocese of Wollongong to allegations of child sexual abuse, and related criminal proceedings, against John Gerard Nestor, a priest of the Diocese (Catholic Diocese of Wollongong)*, we heard from Bishop Peter Ingham with respect to his failure to inform the Wollongong community in New South Wales that former priest John Gerard Nestor had been dismissed from the clerical state due to findings of child sexual abuse and other inappropriate conduct. As discussed in Section 13.8, Nestor was dismissed on 17 October 2008. In the decree of dismissal issued by Pope Benedict XVI, the pope stated that Bishop Ingham was to make sure, as far as possible, that the decree did not cause scandal to the faithful, but he could make public the fact of the dismissal and its canonical basis if 'there [was] a danger of abuse to minors'.[695]

Bishop Ingham notified Nestor and the people involved with the Nestor case, including the complainants, of the decree and the outcome of the canonical process. However, he did not generally publicise Nestor's dismissal from the clerical state. Bishop Ingham acknowledged that it would have been safer, in terms of the protection of children, to have passed this information on to the community by some form of pastoral letter or public announcement. Bishop Ingham explained that he did not do this because of Nestor's threatening attitude and because he considered that those who were affected were informed directly.[696] We found that Bishop Ingham should have made the reasons for Nestor's dismissal from the clerical state publicly known.[697]

As discussed in Sections 13.5 and 13.8, responses to alleged perpetrators were often motivated by a desire to protect the reputation of the Catholic Church and were characterised by a preoccupation with minimising or managing the risk of public scandal. In Section 13.11 below, we detail the references that have historically been contained in canon law, the Catholic Church's internal system of law, to the importance of avoiding, preventing or repairing 'scandal'. The importance placed upon the avoidance of scandal by Catholic Church authorities in Australia may have influenced the extent to which information was shared with affected communities following cases of child sexual abuse.

In the *Catholic Church authorities in Ballarat* public hearing we heard one such example in the case of Monsignor John Day. The details of Monsignor Day's resignation as the parish priest of Mildura in Victoria are in Section 13.4. At the time of Monsignor John Day's resignation in 1972, Father Daniel Torpy and Father Peter Taffe were his assistant priests. Both knew of the allegations that Monsignor Day had sexually abused children in Mildura. We accepted the evidence of Mr Torpy that he and Father Taffe were instructed by Bishop Ronald Mulkearns not to disclose to the parish the true reason for Monsignor Day's resignation. The most probable reason to conceal the truth was to protect the reputation of Monsignor Day and to protect the Catholic Church from scandal. We found that it was unacceptable for Bishop Mulkearns to give such an instruction.[698]

We include a discussion of how religious institutions should communicate with affected third parties after receiving a complaint of child sexual abuse in Chapter 21.

Providing pastoral care and support to affected communities

In the *Melbourne Response* public hearing, we heard of the Catholic Church's response to the community of the Sacred Heart Catholic Primary School, Oakleigh, Victoria, in which Father O'Donnell had sexually abused numerous children while he was the parish priest. Mrs Foster, whose daughters Emma and Katie were sexually abused by Father O'Donnell, told us about the efforts of the school community to meet with representatives of the Catholic Church in 1996. By this time it was publicly known that O'Donnell had committed multiple offences of child sexual abuse.[699]

Mr and Mrs Foster and other parents communicated with their parish priest and the Archdiocese of Melbourne, requesting a meeting between parents and representatives of the Catholic Church. A meeting that came to be known as the 'Oakleigh Forum' was held on 29 July 1996 and attended by approximately 250 people.[700] Mrs Foster told us that she felt that the forum left many questions unanswered.[701]

In September 1996, Mrs Foster was invited by the Pastoral Response Office of the Archdiocese of Melbourne to become part of the Victims' Advisory Group. The group was created to assist with a public discussion at a proposed public meeting, which became known as the 'Melbourne Forum'. Mrs Foster understood that the Melbourne Forum was an initiative of the Pastoral Response Office and was intended to address Catholic clergy sexual abuse in the Archdiocese of Melbourne.[702]

The Melbourne Forum took place on 19 October 1996. It was attended by a number of Catholic Church leaders, including then Archbishop of Melbourne, George Pell. It was at this meeting that the Melbourne Response was announced, the development of which is discussed in Section 13.7.

Mrs Foster told us that the Catholic Church leadership did not engage with the audience during the forum and that they did not appear to want to listen to parents' descriptions of their experiences. Mrs Foster had written a letter for the Melbourne Forum, which she asked someone else to read out on her behalf. She said that while her letter was being read out the Catholic Church leadership stood up, walked off the stage and did not return. Cardinal Pell and Archbishop Hart, who attended the forum, told us that they had no recollection of anyone from the Church walking out. Notwithstanding these differing accounts, we accepted Mrs Foster's recollection.[703]

Mrs Foster said of the Melbourne Forum:

> In the days that followed, Anthony and I came to the view that the purpose of the Melbourne Forum had not been to facilitate communication between victims and the Catholic Church hierarchy as we had hoped. Rather, the event seemed designed to announce what we would later know as … the Melbourne Response. We reached this view because of the attitude demonstrated by the Catholic Church leaders in attendance on the day. They did not engage with the audience, they seemed standoffish and they were separated from us sitting up on the stage. They did not appear to want to listen to parents describe the horror of finding a sexual offender in the very heart of their parish.[704]

It is clear that the Melbourne Forum did not allay concerns that the Fosters and others had about the issues it was to address.[705]

In the *Catholic Church authorities in Ballarat* case study, we heard of the then Bishop of Ballarat's refusal to provide support or to openly communicate with the Mortlake parish in Victoria after Father Gerald Ridsdale was removed from his position as parish priest in late 1982.[706] As discussed in Sections 13.4 and 13.5, we were told that, at the time of his removal, there were rumours circulating around the town that Father Ridsdale had been 'interfering with children'.[707] Ridsdale has been convicted of multiple child sexual offences occurring in a number of parishes around Victoria, including Mortlake.[708]

Father Denis Dennehy replaced Father Ridsdale as parish priest of Mortlake in September 1982. Within a short time of his arrival, Father Dennehy was told by a number of people, including Sister Kathleen McGrath, that Father Ridsdale was alleged to have sexually abused a large number of children in the parish. We were satisfied that, sometime after he became parish priest, Father Dennehy spoke with Bishop Mulkearns and made him aware that Father Ridsdale's sexual abuse of a large number of children had had a lasting effect in the parish.[709]

Sister McGrath told us that, in the weeks after Father Ridsdale's removal from Mortlake, a 'stream of parents' went to see her to disclose that Father Ridsdale had sexually abused their children. A number of parents wanted to have a public forum to discuss the situation. Sister McGrath told us that:

> I do recall that I asked Bishop Mulkearns whether a public meeting could be held. He said there was to be no meeting. I also asked him what could be done for the children. He said nothing would be done for the children because that would be admitting guilt.[710]

A parent, BPE, told us that he asked Bishop Mulkearns if he would let the community know the Catholic Church was sorry the child sexual abuse had taken place. BPE said that Bishop Mulkearns responded that this would not be an appropriate thing to do at that time.[711] BPE said he 'thought Bishop Mulkearns would come to Mortlake to say sorry to the people who were affected but this never happened to my knowledge'.[712]

Similarly, we heard that Ms Ann Ryan, a former school teacher at Mortlake, corresponded with Bishop Mulkearns expressing concern about the events in Mortlake years earlier and seeking a response to the parish.[713] Ms Ryan said of her 30 October 1989 letter, 'I wrote to Bishop Mulkearns because I thought this would be an opportunity to initiate healing in the parish'.[714] In his response, Bishop Mulkearns wrote:

> I am sure that you will appreciate that it is simply not possible to enter into correspondence in any detail concerning the matter to which you allude. I assure you of my own concern for all members of the diocesan community. However, it is difficult to reach out to specific people when one hears only vague rumours of a very general kind.[715]

At around this time, Bishop Mulkearns was arranging for Father Ridsdale to be sent to the United States for treatment for issues relating to child sexual abuse.[716]

In another letter to Bishop Mulkearns, dated 27 February 1990, Ms Ryan requested that he meet with affected families when visiting Mortlake. Bishop Mulkearns refused Ms Ryan's request, stating that 'such a meeting would have more disadvantages than advantages' and noting 'possible legal implications'.[717]

Ms Ryan continued to seek a response from Bishop Mulkearns to the Mortlake parish through correspondence and in person.[718] In a letter to the Ballarat Diocesan Council of Priests, sent following her correspondence with Bishop Mulkearns, Ms Ryan described the Catholic Church's 'demonstration of care' to the Mortlake parish as 'invisible'.[719]

We found that Bishop Mulkearns' response to the people of Mortlake was completely inadequate. His priority was to protect the reputation of the Catholic Church and to avoid scandal, rather than responding to the pastoral needs of the children that Father Ridsdale had sexually abused and the wider community. We found that his response at the time was to shut down all talk about sexual abuse and its effects inside the parish.[720]

In the same case study we received evidence from the Bishop of Ballarat, Bishop Paul Bird, about his response to the Ballarat community. In written evidence, Bishop Bird told us that, since coming to the Diocese of Ballarat, his 'impression has been that the history of child abuse in this diocese hangs over the community like a dark cloud'.[721] Bishop Bird told us that the diocese held community engagement forums in Ballarat and Warrnambool in 2014 to encourage the community to talk about child sexual abuse issues and that he had 'addressed in one particular parish the sad history of that parish'. He said that in 2014, in Child Protection Week, a number of parishes allocated the week for prayers 'to lament that these crimes had been committed'.[722] Other efforts by Catholic Church authorities to provide collective forms of direct personal responses, including 'prayers of lament', in recent years are discussed in Chapter 22.

During the *Catholic Church authorities in Maitland-Newcastle* case study, we heard that the Healing and Support Team of Zimmerman Services (discussed above) 'provides a supportive response to those who have been directly affected by childhood sexual abuse perpetrated by personnel of the Diocese of Maitland-Newcastle'.[723] Ms Maureen O'Hearn, head of the Healing and Support Team of Zimmerman Services since December 2007, told us that the Healing and Support Team, along with representatives from the diocese, the community and members of the clergy, ran the 'Insights Program' for the wider community to 'assist them in dealing with their response to what was happening in this Diocese in relation to sexual abuse'.[724]

Ms O'Hearn told us that, under the Insights Program, a number of meetings were held across the diocese to give people in the community an opportunity to talk about child sexual abuse. Zimmerman Services then asked people what could be done to help them. In response to the feedback received, the Insights Program ran training sessions to assist the community to understand the process that takes place when a priest is charged or stood aside. In response to a request to hear about the experiences of survivors and their families, a DVD was also made on which a survivor and their mother spoke about their personal experiences.[725]

Bishop William Wright gave evidence that the Insights Program was an attempt 'to address the collective harm caused by historic child sexual abuse'.[726] In written evidence he told us that the meetings organised under the Insights Program were placed on hold in August 2012 due to concerns about their effect on criminal proceedings. He said that, following the work of the Royal Commission, he 'hope[s] to see and would encourage further community initiatives in this area'.[727]

We further discuss Zimmerman Services as a positive model of support service for survivors and their families in Chapter 21.

As outlined in Chapter 3 of Volume 7, *Improving institutional responding and reporting*, it is important that secondary victims such as family members are also provided with information, advocacy, support and therapeutic treatment as needed. In some cases, this will require provision of these supports to an entire affected community. The need for advocacy, support and therapeutic treatment is discussed in further detail in Volume 9, *Advocacy, support and therapeutic treatment services*.

In Chapter 21 of this volume, we suggest that support and assistance be provided to family members of victims and to any other secondary victims, including affected religious communities. In Chapter 22 we discuss more recent collective forms of direct personal responses to survivors and affected communities by religious institutions, including public apologies, permanent memorials and commemorative events.

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13.10 Catholic Church responses to child sexual abuse in schools

> I was just a normal kid, just going to school and all that, and then my parents sent me to this boarding school … I only stayed there for probably a year, a year and a half … because of all the sexual assaults … that kept going on to me and just made me really angry as a kid. The Brother … used to bash you with a big plastic stick and also he'd sexually assault us [in his office] … full-on sexual assault … I was just living in fear pretty much, because I was stuck in this school … I was just living on the edge the whole time I was there until I could finally just play up enough to get expelled.[1]
>
> **Private session, 'Drew Michael'**

Of the child sexual abuse we heard about that occurred in schools, a substantial proportion related to Catholic schools. As of 31 May 2017, of the 2,186 survivors who told us in private sessions about child sexual abuse in schools, 1,224 survivors (56.0 per cent) told us about child sexual abuse in Catholic schools.

The Catholic Church claims data showed that, of all claims made to Catholic Church authorities, 46 per cent related to abuse in a school.[2] The Catholic Church claims data also showed that, of the 1,049 named institutions where child sexual abuse was alleged to have occurred, 549 were schools.[3] Of all claims made in relation to child sexual abuse in a Catholic school, 74 per cent involved abuse alleged to have been perpetrated by religious brothers or priests.[4]

The Catholic Church has been, and remains, a significant provider of primary and secondary education in Australia. The size of the sector may go some way toward explaining the high number of allegations of child sexual abuse in Catholic schools. We have not been able to quantify the precise size of the Catholic education sector over time. In the absence of this information, the data sources available to us cannot be used to determine the incidence or prevalence of child sexual abuse in Catholic schools.

In this section we consider the institutional responses to child sexual abuse in Catholic schools. We have chosen to focus on this aspect of the institutional response to child sexual abuse because of the number of allegations and also because some specific issues arise in relation to the response to abuse in Catholic schools. Furthermore, while much of the abuse is historical, the Catholic education sector remains a major provider of primary and secondary education in Australia. More children attend Catholic schools than any other institution type managed by Catholic Church authorities.

We acknowledge that the governance of many Catholic schools and the approach to child safety in the Catholic education sector has changed considerably in recent decades. Schools that were formerly managed by religious institutes or orders are now managed by separate corporate entities. There are now significantly fewer people in religious ministry working in Catholic schools. Catholic schools, like all other schools, operate within a state or territory regulatory framework with the aim of child safety. Developments in the approach to the governance of Catholic schools are discussed in Section 13.11.4, 'Organisational structure and governance'. In that section we also make a specific recommendation in relation to the involvement of parish priests as employers of principals and staff in diocesan Catholic schools.

The Catholic Church claims data showed that, of all claims made in relation to child sexual abuse occurring in a Catholic school, 53 per cent involved an alleged perpetrator who was a religious brother and 21 per cent involved an alleged perpetrator who was a priest.[5] For this reason, in this section we focus on the institutional response to priests and religious brothers who were alleged to have sexually abused children in Catholic schools. Sections 13.5, 'Catholic Church responses to alleged perpetrators before the development of national procedures' and 13.8, 'Catholic Church responses to alleged perpetrators during and after the development of national procedures' also consider in detail how Catholic Church authorities responded to allegations against people in religious ministry, including those involved in schools.

Some aspects of the institutional response to child sexual abuse in Catholic schools are also found in the responses to child sexual abuse in schools in other education sectors. This is particularly the case in relation to the institutional response to allegations against lay people involved in schools.

Most claims regarding lay alleged perpetrators in Catholic institutions involve abuse alleged to have occurred in a school. The Catholic Church claims data showed that, of all claims of child sexual abuse made against lay people in Catholic Church institutions, 60 per cent related to abuse occurring in a school.[6] We discuss some aspects of the institutional response to allegations against lay staff and volunteers in Catholic schools below. These issues are considered in further detail in Volume 13, *Schools*.

13.10.1 Catholic education in Australia

As discussed in Part B, 'Background', the Catholic Church has a long history of operating schools in Australia.

The first Catholic school in Australia was established in the colony of New South Wales sometime between 1803 and 1806.[7] By 1833 there were 10 Catholic schools, all located in New South Wales. By 1848 this number had increased to 45 schools across the continent.[8] From the mid-1800s the Catholic Church also ran schools for Aboriginal and Torres Strait Islander children on some of their missions in Western Australia, Queensland and the Northern Territory.[9] For example, there was a school attached to the New Norcia mission in Western Australia.[10] The Catholic Church also established schools for children with disability.[11]

Until the late 1800s, governments of the colonies paid grants to religious organisations to fund schools, including Catholic schools. Between 1872 and 1893 all colonies passed education acts, which led to the formation of government-operated school systems.[12]

Without government funding, Catholic schools could no longer afford to engage as many lay teachers, and bishops appealed to religious institutes or orders to establish schools in Australia.[13] Religious institutes began to establish themselves from the 1880s, and in the early 1900s they further expanded their numbers.[14] Religious institute (order or congregational) schools were staffed mostly by the religious sisters and brothers, and priests, who were members of the institutes.[15] Some religious institute members also taught in parish schools.[16]

By 1950, there were 44 religious institutes involved in Catholic education in Australia. These comprised 27 institutes of religious sisters, eight of religious brothers and nine of priests.[17] Religious sisters always significantly outnumbered religious brothers and priests as teachers in Catholic education in the period between 1900 and 1950. By 1950, there were 11,245 religious sisters, 1,532 brothers and 124 priests in major teaching religious institutes in Australia.[18] By this time, over 215,000 students were enrolled at 1,613 Catholic primary or secondary schools in Australia.[19]

The Congregation of Christian Brothers (Christian Brothers) was the teaching religious institute with the highest number of religious brothers in Australia between 1930 and 1960. By 1960, in the major teaching religious institutes, there were 800 brothers in the Christian Brothers, 342 in the Marist Brothers, 200 in the De La Salle Brothers and 49 in the Patrician Brothers.[20]

Priests who occupied teaching roles in Catholic schools were largely members of religious institutes.[21] In 1960, in the major teaching institutes, there were 169 Jesuits priests, 168 Marist Fathers and 161 Missionaries of the Sacred Heart. Some of these priests may not have been engaged as teachers. However, the number of priests indicates each religious institute's relative involvement in Catholic education.[22]

By 1960, the coordination of schools across Australian dioceses had become 'more or less uniform'. Bishops exercised their authority over Catholic schools through diocesan school inspectors.[23] Dioceses had directors of catholic education, or catholic education offices (CEOs), to administer and oversee diocesan schools.[24] Schools that came under the direction of a CEO eventually became known as 'diocesan' or 'systemic' schools. Religious institute schools, and other Catholic schools that had greater autonomy from the diocese, became known as 'non-systemic' schools.

From the late 1960s, Catholic schools began once again to receive government funding.[25] The number of members of religious institutes began to decline, and more lay teachers were employed.[26] For example, in 1969 the proportion of lay teachers in Catholic schools was 30 per cent in Western Australia, 44 per cent in New South Wales and 46 per cent in Victoria. By the early 1980s, lay teachers made up 90 per cent of teachers in Catholic schools, and this increased further in the 1990s.[27] By 2005, the number of religious institute teachers in New South Wales Catholic schools had reduced to 0.9 per cent.[28]

From the early 1990s, the number of students with disability in Catholic schools grew significantly. In 2014, Australian Catholic schools had enrolled 33,655 students with disability, including 768 students in Catholic Special Schools.[29] According to the National Catholic Education Commission, the number of Indigenous students in Catholic schools also increased significantly from 1985, and by 2015 there were 20,904 Indigenous students in Catholic schools.[30] It has also stated that many Catholic boarding secondary schools enrol Indigenous students from remote and very remote communities.[31]

By 2016, there were 1,738 Catholic schools in Australia, and 20.2 per cent of all Australian school students attended one of these schools.[32] In 2013, 90 per cent of all Catholic schools were coeducational,[33] and there were 54 Catholic boarding schools operating in Australia, offering full-time or part-time boarding facilities for students.[34]

13.10.2 Private sessions and data about child sexual abuse in Catholic schools

The information we gathered through private sessions and the Catholic Church claims data provides an indication of the extent of child sexual abuse that has occurred in Catholic schools in Australia.

Of the child sexual abuse we heard about in relation to schools, a substantial proportion related to Catholic schools. As of 31 May 2017, of 6,875 survivors in private sessions, 2,186 survivors (31.8 per cent) told us about child sexual abuse in schools. Of those, 1,570 (71.8 per cent) told us about abuse in religious schools. And of those, 1,224 survivors told us about abuse in Catholic schools, representing 56.0 per cent of those who told us about abuse in all schools and 78.0 per cent of those who told us about abuse in religious schools.

Child sexual abuse in schools also represented a substantial proportion of the abuse we heard about in relation to Catholic institutions. Of the 2,489 survivors who told us during private sessions about child sexual abuse in Catholic institutions, 49.2 per cent told us about abuse in schools. This included 877 survivors who told us about abuse in Catholic day schools and 367 survivors who told us about abuse in Catholic boarding schools.

We conducted a survey of Catholic Church authorities regarding claims of child sexual abuse that they received between 1980 and 2015 (Catholic Church claims data).[35] There was no limit on the date of the alleged incidents of child sexual abuse. This data showed that, of the 4,756 claims of child sexual abuse, 2,209 (or 46 per cent) related to abuse alleged to have occurred in a school.[36] The next most common institution type was orphanages or other residential institutions (29 per cent of all claims).[37]

The highest number of first-alleged incidents of child sexual abuse in Catholic schools occurred in the 1970s, with over 600 claims relating to alleged child sexual abuse in Catholic schools in that decade.[38]

Catholic schools identified in claims of child sexual abuse

Of the Catholic Church authorities that received claims of child sexual abuse, the Christian Brothers received the highest number of claims relating to child sexual abuse alleged to have occurred in a school (728 claims). Other Catholic Church authorities that received a high number of claims relating to child sexual abuse in a school were the Marist Brothers (433 claims), the Archdiocese of Melbourne (178 claims) and the De La Salle Brothers (107 claims).[39]

Of the total 1,049 named institutions identified in the Catholic Church claims data, 549 were schools (52 per cent of all institutions). Of these 549 school facilities:[40]

- 15 were identified in 20 or more claims
- 96 were identified in five or more claims but fewer than 20 claims
- 25 were identified in four claims
- 37 schools were identified in three claims
- 94 were identified in two claims.

Of the 28 institutions which had the highest number of claims of child sexual abuse, 12 were schools. The table below lists these schools, the number of claims made in relation to each and the state where each institution was located.[41] St Joseph's Farm and Trade School (Bindoon) and St Mary's Agricultural School (Tardun) were also children's residential institutions (see further Volume 11, *Historical residential institutions*).

Table 16.20 – Schools identified in the highest number of claims of child sexual abuse

Institution	Number of claims	State
St Joseph's Farm and Trade School (Bindoon)	118	Western Australia
Marist College Canberra (Pearce)	63	ACT
St Mary's Agricultural School (Tardun)	49	Western Australia
St Pius X College (Adamstown)	46	New South Wales
Salesian College, Rupertswood (Sunbury)	44	Victoria
St Ann's Special School (Marion)	42	South Australia
St Joseph's College (Geelong)	39	Victoria
St Alipius Primary School (Ballarat east)	38	Victoria
St Joseph's College (Hunters Hill)	31	New South Wales
St Stanislaus College (Bathurst)	29	New South Wales
St Leo's College (Box Hill)	21	Victoria
Parramatta Marist High (Westmead)	21	New South Wales
Marist Brothers (Hamilton)	20	New South Wales
St Patrick's College (Ballarat)	20	Victoria

Victims of child sexual abuse in Catholic schools

Over the course of our inquiry, we heard that many children experienced sexual abuse in Catholic schools. This included boys and girls of both primary and secondary school age.

Of the 1,224 survivors who told us in private sessions about child sexual abuse in Catholic schools:

- the majority (997 survivors, or 81.5 per cent) were male and 224 survivors (18.3 per cent) were female
- the majority of those who provided information about the age of the victim at the time of the abuse (716 survivors, or 65.6 per cent) indicated that the victim was aged between 10 and 14 years at the time of first abuse.

The Catholic Church claims data showed that, of all claims of child sexual abuse occurring in schools, 85 per cent involved male claimants.[42]

Historically, male religious orders have operated schools for boys. Of all claims made against the five male religious institutes with only religious brother members, 97 per cent were made by males.[43]

The average age of male and female victims who made a claim of child sexual abuse occurring in a school, at the time of the alleged abuse, was 12 and 11 years old respectively. The average duration of the alleged child sexual abuse for those who made a claim of child sexual abuse occurring in a school was 1.7 years. This was lower than the average overall (2.4 years) and significantly lower than the highest average which was for those claims that identified an orphanage or other residential institution (3.7 years).[44]

Of the claims of child sexual abuse that identified abuse occurring at a school, 20 per cent also included allegations of physical abuse. The average number of years between the date of the first alleged incident of child sexual abuse and the date the claim was made by those who alleged abuse at a school was 31 years.[45]

Alleged perpetrators of child sexual abuse in Catholic schools

The child sexual abuse that we heard about in Catholic schools was perpetrated by a range of individuals, including males and females of various ages and who held various positions. However, a substantial number of perpetrators were adult males who were people in religious ministry.

While there is no typical profile of perpetrators in Catholic school settings, in private sessions we were told about some characteristics more often than others. Of the 1,224 survivors who told us in private sessions about child sexual abuse in Catholic schools:

- The majority (737 survivors or 60.2 per cent) provided information about the age of the person who sexually abused them. Of those, 687 survivors (93.2 per cent) told us about sexual abuse by an adult perpetrator (18 years or over).
- Of those who told us about sexual abuse by adult perpetrators, the vast majority (666 survivors or 96.9 per cent) told us about sexual abuse by a male adult and 28 survivors (4.1 per cent) told us about sexual abuse by a female adult. A small number of survivors told us about abuse by both a male adult and female adult.
- Of those who told us about the position held by a perpetrator, around two-thirds (68.0 per cent) told us about sexual abuse by a person in religious ministry and 51.0 per cent told us about sexual abuse by a teacher. Smaller numbers of survivors told us about sexual abuse by housemasters (5.6 per cent) or sports coaches (2.6 per cent). Some perpetrators held more than one position – for example, some people in religious ministry were also teachers.[46]

The Catholic Church claims data showed that the majority of claims of sexual abuse in Catholic schools involved a perpetrator who was a person in religious ministry. It also showed that, of all claims made in relation to child sexual abuse in a Catholic school, 74 per cent involved religious brothers or priests.[47]

The Catholic Church claims data showed that of all claims made in relation to schools, 53 per cent involved a religious brother. Schools were the most common location of alleged abuse by a brother, with 59 per cent of all claims involving a religious brother occurring in a school.[48]

Priests were identified as alleged perpetrators in 21 per cent of all claims of child sexual abuse in Catholic schools. Of all claims of child sexual abuse against priests, 23 per cent alleged sexual abuse that occurred in a school.[49] This included both diocesan parish priests and priests who were members of religious institutes.

Despite the prominent role that female religious sisters have played in the operation of Catholic schools in Australia, only 2 per cent of all claims that identified abuse occurring at a school identified a female religious sister as an alleged perpetrator.[50] The Catholic Church claims data indicated that 31 per cent of claims against alleged perpetrators who were religious sisters alleged child sexual abuse occurring at a school (58 per cent alleged child sexual abuse occurring at an orphanage or other residential institution).[51]

Lay people made up a quarter of the alleged perpetrators in claims about sexual abuse in Catholic schools.[52]

As discussed in Section 13.3, the Catholic Church claims data showed that as a proportion of alleged perpetrators in all Catholic institutions, those who were priests and non-ordained religious decreased over time, compared with those who were lay people. One factor that may have influenced this change is the significant decline in the number of priests and non-ordained religious teaching in schools from the late 1960s onwards.

Children with harmful sexual behaviours in Catholic schools

Of the 737 survivors who told us during private sessions about child sexual abuse in Catholic schools and who also provided information about the age of the person who sexually abused them, 58 survivors (7.9 per cent) told us about abuse by another child. A substantial proportion of this abuse (34.5 per cent) took place from 1990.

The vast majority (93.1 per cent) of those who told us in a private session that they were sexually abused by another child in a Catholic school said they were abused by a boy, and 6.9 per cent said they were abused by a girl.

The Catholic Church claims data did not capture information about children with harmful sexual behaviours.

Information from NSW Ombudsman reportable conduct scheme

In New South Wales the 'head of agency' of any school must notify the Ombudsman of any allegation of 'reportable conduct' against any employee, volunteer or other person that the school has engaged to provide services to children. This includes allegations of sexual misconduct or sexual offences involving children.[53]

Between 1 July 2010 and 30 June 2015, the Ombudsman received 1,152 reportable conduct notifications from New South Wales schools about sexual misconduct or sexual offences.[54] Catholic systemic schools made up 16 per cent of schools in New South Wales during that period, and they accounted for nearly 16 per cent of these notifications. Government schools made up 66 per cent of all schools in New South Wales, and they accounted for 67 per cent of these notifications.[55]

Between 1 July 2013 and 30 June 2015, 28 per cent of sexual misconduct or offence notifications from the schools sector as a whole that were finalised were sustained at comparable rates across the government (28 per cent), Catholic (26.5 per cent) and independent (28.5 per cent) sectors.[56]

13.10.3 Institutional responses to child sexual abuse in Catholic schools

In this section we consider what we have learned about how different Catholic Church authorities responded to allegations of child abuse in the schools that they operated. Institutional responses to child sexual abuse occurring in schools more broadly are considered in detail in Volume 13, *Schools*. Many, if not all, of the factors contributing to child sexual abuse in schools that are described in that volume can occur in Catholic schools. Many of the examples drawn upon in that volume relate to Catholic schools. This section considers some of the specific issues that arise in the context of the institutional response to child sexual abuse in Catholic schools.

We first consider institutional responses to allegations of child sexual abuse made against people in religious ministry, specifically priests and religious brothers, working in or associated with Catholic schools. We focus on how Catholic Church authorities failed to identify and manage the risk that these alleged perpetrators posed to children. The management of such complaints has often been the responsibility of the relevant Catholic Church authority, either an archdiocese or diocese, or a religious institute. In some cases the relevant CEO or school principal had limited authority to respond to allegations against people in religious ministry.

We then consider a number of areas where we found an inadequate institutional response to allegations of child sexual abuse in Catholic schools in relation to both people in religious ministry and to lay staff. In this section we consider institutional responses by Catholic Church authorities and at the school level.

Responses to alleged perpetrators who were priests

Parish priests have historically played an important role in the management and operation of parish schools.[57] As discussed above, some religious institute priests also taught in schools. The number of religious institute priests teaching in Catholic schools has decreased significantly since the 1970s. However, parish priests continue to have a specific role in relation to Catholic schools, and in dioceses in Victoria they have governance and employment responsibility for parish schools, including for employing principals and teachers, discussed further in Section 13.11.4.

Our case studies indicate that, historically, some parish priests had generally unrestricted access to schools in their parish as part of their role and visited these schools on a regular basis.[58] They sometimes recruited altar boys for the parish church from the parish school.[59] In many schools, they assisted in children's preparation for the sacraments, including the sacrament of reconciliation (or confession).[60] We heard of an instance where a teacher took children from schools to the church where a parish priest would hear their confession, sometimes in a private space.[61] We also heard of instances where priests removed children from school during class, recess or lunchtime.[62]

As set out below, we received evidence of a number of instances where allegations of child sexual abuse were made against a priest in relation to Catholic schools, particularly parish schools. In these cases, neither the school nor the relevant CEO had ultimate responsibility for managing complaints or for managing the risk that alleged perpetrators posed to children. This responsibility was held by the relevant bishop or archbishop – the only individual with the authority to restrict a parish priest's ministry or begin a disciplinary process.

Allegations against priests involved in schools were usually referred 'upwards' within the diocese, and there was a common understanding that the bishop was the ultimate decision-maker. It should be noted, however, that school staff members, principals and CEO officers could have reported alleged child sexual abuse by a priest directly to the police. However, our case studies involving Catholic schools show that this course of action appears to have rarely been taken.

We are aware of one instance where a CEO recommended restricting a priest's access to a parish school and where the diocese took action. In *Case Study 14: The response of the Catholic Diocese of Wollongong to allegations of child sexual abuse, and related criminal proceedings, against John Gerard Nestor, a priest of the Diocese*, there was one occasion in 1996 where a CEO was able to intervene to limit a priest's access to a school. The Director of Education in the Diocese of Wollongong, Mr Terry White, told the administrator of the diocese, Father Paul Ryan, that he did not want parish priest Father John Gerard Nestor to have any dealings with children at the parish school because of rumours he had heard about Father Nestor's conduct with boys. Father Ryan responded by directing that Father Nestor not have any involvement or contact with this school.[63]

However, in other cases, the principals and staff of Catholic schools faced barriers in ensuring that effective action was taken in relation to priests who were alleged perpetrators. Below we consider instances where neither school principals and staff nor CEO staff were able to ensure that appropriate action was taken in relation to alleged perpetrator priests associated with Catholic schools.

Archdiocese of Melbourne

In *Case Study 35: Catholic Archdiocese of Melbourne (Catholic Archdiocese of Melbourne)*, we examined how the archdiocese, including the CEO, responded to allegations against a priest, Father Peter Searson, who was parish priest at Sunbury and Doveton parishes and responsible for the Catholic school in each of these parishes. As discussed in Sections 13.4, 13.5 and 13.8, parishioners, teachers, principals and other priests made numerous complaints over many years about Father Searson's conduct in each of these parishes. We found failures in the response to these complaints by both Archbishop Thomas Francis Little and [redacted] the CEO.[64]

An allegation arose in late 1974, when a young woman told Archbishop Little that she had been raped by Father Searson.[65] The archdiocese received many more complaints about Father Searson's conduct, including allegations of the sexual abuse of children, but did not remove Father Searson from contact with children until 1997.[66]

Allegations made in relation to Father Searson's conduct at Sunbury parish included a complaint from a parishioner who had instructed his children to refuse to be called to Father Searson's office unless accompanied by another child or adult; and information, probably communicated to Archbishop Little, that Father Searson was conducting sex education with individual students in his bedroom.[67]

Father Searson was appointed to Doveton parish in January 1984.[68] We found that the decision to appoint Father Searson to Doveton parish was wrong and that it had tragic consequences. We further found that Archbishop Little's failure to recognise or respond to the indications that Father Searson posed a risk to children was appalling in light of the earlier complaint to him that Father Searson had raped a young woman in 1974.[69]

In 1984 parishioners from Doveton parish wrote to Archbishop Little that Father Searson had pointed a gun at two people. Monsignor Thomas Doyle, the director of the CEO, was also informed of the same or another allegation that Father Searson possessed a gun.[70]

During 1985, the principal of the Doveton parish school, Holy Family Primary School, Mr Graeme Sleeman, reported an incident to the CEO in which he suspected that Father Searson had sexually 'interfered' with a female student during confession. The same year, Mr Sleeman also reported to the CEO complaints from parents that Father Searson had tape recorded a child's confession and asked another child to kneel between his legs during confession. He also reported to the CEO that a teacher refused to take her class to confession. The teacher took this action because Father Searson was apparently tape recording the confessions.[71]

In late 1985, Mr Sleeman wrote to Monsignor Doyle about his concerns. In September 1986, Mr Sleeman resigned. We were satisfied that Mr Sleeman resigned in frustration because of the archdiocese's inaction in relation to Father Searson.[72]

Teachers and parents from Holy Family Primary School made multiple further complaints to both the CEO and the archdiocese between 1986 and 1996, before Father Searson was finally removed as parish priest in 1997. The complaints included the following:

- [redacted]
- In August 1991, a group of parents wrote to Monsignor Doyle listing a number of allegations against Father Searson, including cruelty to animals and that Father Searson was observing boys going through showers on camp.[74]
- In 1992, a nurse raised concerns, reported to teachers and recorded in a CEO report, that a girl aged 16 or 17 was undergoing counselling regarding an allegation that Father Searson had 'molested her'. We heard evidence that Father Searson had been masturbating as he was driving her home after school.[75]
- The nurse also reported in 1992 that, during a sex education class, Year 6 boys' responses were too mature and out of character for boys of their age and that the boys had said 'Father Searson has more than a bible under his cassock'.[76]
- In 1992, boys in Years 5 and 6 boys told a teacher that they did not want to serve as altar boys. The teacher asked the boys to write down their reasons. Their reasons included an allegation that Father Searson had 'felt' a child and fears that Father Searson could sexually assault them. The CEO reported these allegations to the archbishop.[77]
- In 1993, a teacher wrote to the vicar general, Monsignor Gerald Cudmore, that she had found herself 'continually confronted with complaints and disclosures' from senior students about Father Searson in 1992. She subsequently met Monsignor Cudmore and CEO officers and provided them with a file of documents. The teacher was told by the CEO that she should take the allegations to police if they were bona fide.[78]

We were satisfied in the *Catholic Archdiocese of Melbourne* case study that these matters were reported to Archbishop Little.[79]

In late 1996, the CEO informed Vicar General Denis Hart of a complaint that Father Searson had hit a boy around the head. As set out in Section 13.8, the vicar general sought legal advice and the matter was referred to the Melbourne Response Independent Commissioner for investigation. In 1997, Father Searson was placed on administrative leave and his faculties were withdrawn.[80]

We found that, by October 1986, the complaints that Archbishop Little was aware of in relation to Father Searson's conduct with children were sufficient for any reasonable person to form the view that he ought to be removed from parish ministry. Archbishop Little did not take that action. Instead, he chose to do nothing. In doing nothing, he failed to protect the children of the parish and the Holy Family Primary School. We found that each occasion after October 1986 that complaints were made against Father Searson to representatives of the archdiocese was a missed opportunity for action by Archbishop Little, with the consequence that children were left at risk of harm, including sexual harm, by Father Searson.[81]

While we recognised that only the archbishop had the authority to remove Father Searson from ministry, some Catholic Church personnel, including staff of the CEO, also failed to recognise the need for action. [redacted][82]

In the *Catholic Archdiocese of Melbourne* case study we also examined the case of Father Wilfred Baker. In 1992, Father Baker was appointed to North Richmond parish. A school was attached to the parish – St James Catholic Primary School in North Richmond. Ms Patricia Taylor was the principal at the time.[83]

As discussed in Section 13.4, by the time of Father Baker's appointment, Archbishop Little was aware of an allegation that Father Baker had sexually abused a child, BTO (this was reported to the archbishop in 1978).[84] There had also been a range of concerns regarding other types of misconduct on the part of Father Baker, including unprofessional behaviour, harassment of staff and 'destructive sermons', in the period between 1986 and 1992.[85]

Ms Taylor told us that, shortly before Father Baker commenced his appointment at North Richmond parish in 1992, a representative from the CEO met with her and gave her a number of specific warnings in relation to Father Baker. These included that he could not be left alone with children, including in the confessional, and could not be given any contact numbers of school staff. She was also told that she should never be in a room alone with Father Baker.[86]

Ms Taylor told us that she then received a phone call from a male person known to her who said Father Baker should not be allowed near children at the school and that 'he did it to me'. Ms Taylor understood this to mean that he had been sexually abused by Father Baker. She reported this to Bishop Peter Connors, who was the auxiliary bishop for the region, and also told him about the warning conveyed to her by the CEO. She told Bishop Connors that she had formed the view that the warning was in relation to allegations of a sexual nature.[87]

We found that Archbishop Little was informed of the complaints reported to Bishop Connors by Ms Taylor. Although he knew of the earlier complaint that Father Baker had touched BTO in a sexual manner, Archbishop Little took no action to restrict Father Baker's access to children or otherwise protect them from the risk of sexual abuse by Father Baker. He failed to protect the children given into the care of the archdiocese.[88]

Despite this lack of action by the archdiocese, Ms Taylor told us she put in place measures to restrict Father Baker's access to children at the school, including telling her teaching staff about the warnings from the CEO and instructing them that children were not to go to the presbytery without an adult. She also introduced a practice of having the sacrament of confession administered at the altar in full view rather than in the confessional. Ms Taylor told us that the reputation of the school was at stake and she did not want it to be known in the community that there was a paedophile in their midst. She agreed that the whole matter was secretive and protective of the school and the Catholic Church.[89]

Father Baker was charged with a number of child sex offences in July 1998. He was convicted and sentenced to a term of imprisonment of four years in 1999. Father Baker was charged again in 2013 with numerous child sex offences, but he died before the proceedings were determined.[90]

Diocese of Ballarat

As discussed in Section 13.4, in *Case Study 28: Catholic Church authorities in Ballarat (Catholic Church authorities in Ballarat)* we found that the Bishop of Ballarat, James O'Collins, received a complaint that Father Gerald Ridsdale sexually abused a boy in 1962.[91] We also found that by late 1975 Father Ridsdale had admitted to Bishop Ronald Mulkearns that he had offended against children.[92]

In 1982, Sister Kathleen McGrath was the principal of St Colman's School in the parish of Mortlake, where Father Ridsdale was the parish priest. Sister McGrath's evidence was that she recalled that she became concerned because Father Ridsdale would sometimes invite children, mainly boys, to the presbytery before and after school and during their recess and lunch times. She stated:

> I asked Ridsdale on more than one occasion not to invite the children to the presbytery during recess and lunch times. He disregarded this and did not stop. For this reason, I instructed the children in my class (Years 5 and 6) that no-one was to be at the presbytery before or after school or during school hours. I also gave the same instruction to the College students on campus. I told the children that when they arrived at school they were to come straight into the school grounds. I would have spoken to other members of staff about this particularly if they were doing yard duty. All staff were rostered for yard duty.[93]

During his 21 months at Mortlake parish, Father Ridsdale sexually abused a large number of children. Many years later, Ridsdale described his behaviour at Mortlake as 'out of control' and that he 'went haywire there. Altar boys mainly. They came over to the presbytery'.[94]

Bishop Mulkearns removed Father Ridsdale from Mortlake parish in late 1982. We found that, by this time, Bishop Mulkearns knew or suspected that Father Ridsdale had offended against children in various parishes and had probably done so over years. As discussed in Section 13.5, Father Ridsdale was then appointed to a position in the Archdiocese of Sydney, and another parish in the Diocese of Ballarat, until his faculties were withdrawn in 1988.[95] He has since been convicted of over 100 child sexual offences.[96]

Conclusions about responses to alleged perpetrator priests in Catholic schools

The cases outlined above demonstrate the difficulties that have been faced by some principals and school staff in ensuring the safety of the children in their care. In the case of Father Searson, despite the principal and staff of the parish school making multiple complaints to both the CEO and to the archdiocese about Father Searson's behaviour, Father Searson was not removed from the school until a decade after the time we found that any reasonable person would have formed the view that he should have been removed. In each of the other cases described above, the school principal or staff were actively involved in managing the risk posed to children by an alleged perpetrator priest, in some cases, in the absence of action by the relevant bishop. Principals and teachers instead took actions such as refusing to take children to confession, ensuring that no child was left alone with a priest and attempting to restrict the priest's access to the school.

Several of these cases involved a priest from a Victorian diocese, where, as noted above, the parish priest is the employer of the principal and school staff for parish schools, rather than the CEO. In our report on the *Catholic Archdiocese of Melbourne* we found this employment structure to be dysfunctional. We found that having the parish priest as the employer of staff of diocesan schools has the potential to adversely impact the open and effective reporting of complaints against priests.[97] We discuss this issue further in Section 13.11.4.

While a CEO cannot take disciplinary action against a priest, Monsignor Doyle, former director of the CEO in Melbourne, told us that staff at Catholic schools mostly turned to the CEO in the first instance if they held a concern about a parish priest. He agreed that principals and teachers were free and encouraged to raise concerns with the CEO, and they depended on the CEO for advice on how to deal with problems with priests and for support in seeking action where action was needed. The CEO in effect operated on behalf of the archbishop, who had the authority to give directions to the CEO if he chose to do so.[98]

In the case of Father Searson, we criticised aspects of the conduct of some officers of the CEO, including that CEO staff took the position that complaints in 1985 and 1986 were unsubstantiated or that there was insufficient evidence to act. We accepted that these views were honestly held but that they were unreasonable.[99] As set out above, officers of the CEO informed the Archbishop of Melbourne, the vicar general and other diocesan officials of concerns about Father Searson's behaviour on multiple occasions over many years and no action was taken. We concluded that, notwithstanding the fact that diocesan schools relied upon the advice and assistance of the CEO in responding to complaints, the CEO had no authority to take disciplinary action in respect of a priest.[100]

In the Archdiocese of Melbourne and Diocese of Ballarat cases described above, we found that the relevant bishop or archbishop did not respond adequately to complaints about alleged perpetrator priests in Catholic schools. Their lack of action left these priests in positions where they had ongoing access to children in Catholic schools. As set out above, it was left to principals and teachers to take action to manage the risk that these individuals posed to children.

We found that the manner in which Father Searson's conduct was handled within the archdiocese indicated a failure of the system in place to properly respond to complaints, including taking responsible action about those complaints. [redacted][101]

In the case of Father Baker, we found that Archbishop Little took no action to restrict Father Baker's access to children or otherwise protect them from the risk of sexual abuse by Father Baker. He failed to protect the children given into the care of the archdiocese.[102]

In the case of Father Ridsdale, we found that he had admitted offending against children to Bishop Mulkearns by late 1975. Nothing effective was done to restrict Father Ridsdale's access to children by Bishop Mulkearns until over 20 years later. We do not know how many boys and girls were sexually abused by Father Ridsdale over that time. However, the lives of dozens of children and their families, likely to be more than a hundred, were devastated by his conduct.[103]

Responses to alleged perpetrators who were religious brothers

As discussed above, a significant proportion of the alleged perpetrators in Catholic schools were religious brothers. It should be noted that, while a large number of religious brothers taught in Catholic schools in the past, comparatively few religious brothers hold teaching positions in 2017.[104] The relevant religious institutes largely held responsibility for responding to religious alleged perpetrators. Our case studies also showed that some of these religious institutes failed to remove religious brothers against whom allegations had been made from positions in Catholic schools where they had access to children.

The two religious institutes that had the largest number of religious brothers alleged to have perpetrated child sexual abuse in schools in Australia were the Christian Brothers and the Marist Brothers. The Christian Brothers managed both primary and secondary schools, while the Marist Brothers largely managed secondary schools.

The knowledge held by the provincial or the provincial council of each of these religious institutes in relation to brothers against whom allegations had been made is discussed in Section 13.4. In multiple cases, religious brothers continued to work in Catholic schools, or were transferred between Catholic schools, after allegations of child sexual abuse had been made, as set out in Sections 13.5 and 13.8.

Christian Brothers

In relation to the Christian Brothers (see further Section 13.4), this included:

- Brother BWX, in relation to whom Christian Brothers authorities were aware of complaints of child sexual abuse in 1960 and who remained in teaching positions until 1994
- Brother Peter Toomey, in relation to whom the Christian Brothers provincial was aware of concerns that 'he was too familiar in his touching of the boys' between 1973 and 1975, and who remained in teaching positions until 2000
- Brother Leo Fitzgerald, who the provincial censured in 1950 for kissing a boy and who remained in teaching positions until 1975. After his retirement from teaching in 1975, Brother Fitzgerald continued to live in retirement at the Brothers' residence on the grounds of St Patrick's College, Ballarat
- Brother Edward Dowlan – complaints of child sexual abuse were made against Brother Dowlan in 1973. He remained in teaching positions until 1993.

In addition, Catholic Church Insurance Limited (CCI) determined that the Christian Brothers had knowledge of the following brothers' propensity to offend, following which these brothers remained in teaching positions:

- Brother GLX told the Christian Brothers' lawyers in 2004 that in 1970 he had told the provincial that he felt 'seriously attracted to the children' and pleaded to be relieved from teaching duties.[105] CCI determined that the Christian Brothers had knowledge of Brother GLX's propensity to offend in 1970.[106] He remained in teaching positions until at least 1984.[107]
- Brother David Johnson was a teacher at a Christian Brothers school in 1975.[108] In a statement obtained by CCI, the father of a student at the school said that, after his son said he was 'fondled' by Brother Johnson, the father made a complaint to the provincial.[109] CCI determined that the Christian Brothers had knowledge of Brother Johnson's propensity to offend in 1975.[110] Brother Johnson was appointed to another Christian Brothers school, where he remained until further complaints were made in 1977 and he was refused admission to profess his sixth vows.[111] He then worked as a lay teacher and principal in schools in the Diocese of Wollongong between 1978 and 1996.[112]
- Brother William Obbens told CCI's investigators that, when he was appointed to a Christian Brothers school in the 1970s, a complaint was made about him to the principal. He said he 'admitted the truth of the matter' to the provincial and was sent for counselling.[113] Minutes of provincial council meetings from 1976 recorded that the provincial discussed the possible transfer of Brother Obbens with the provincial council.[114] CCI determined the Christian Brothers had knowledge of his propensity to offend in 1976.[115] Brother Obbens remained in teaching positions until 1989.[116]

We found that successive provincials of the Christian Brothers failed to properly manage the risk posed by several brothers who were alleged perpetrators. Provincials failed to remove religious brothers against whom allegations had been made from teaching positions and failed to pass information to subsequent school principals. Two such instances are those of Brother BWX and Brother Dowlan.

As discussed in Section 13.4 and in our *Catholic Church authorities in Ballarat* case study, Brother BWX admitted to touching the genitals of eight boys while he was a teacher at a school in Perth in 1960. He was then moved to multiple schools before being appointed to St Patrick's College, Ballarat, in 1971.[117] In 1973, he admitted to the principal, Brother Paul Nangle, that he had been involved in sexual activity with two boarding students at St Patrick's. Brother Nangle reported this to provincial Brother Chanel Naughtin. Brother Naughtin transferred Brother BWX to St Kevin's, Toorak, as the school's sports master and did not advise the St Kevin's principal about the allegation.[118]

We concluded that, in these circumstances, Brother Naughtin's conduct was particularly appalling. He placed Brother BWX in a school environment despite knowing the serious risk that he posed to students. Brother BWX was transferred to various locations over subsequent years, including to schools. We found that Brother BWX's continued appointment to schools after 1973 was inexcusably wrong. We also found that the absence of an adequate system whereby complaints and admissions were recorded and communicated to incoming provincials increased the likelihood of Brother BWX continuing to offend against children.[119]

In our *Catholic Church authorities in Ballarat* case study we also considered how the Christian Brothers appointed Brother Dowlan to many teaching positions between 1973 and 1993, as the number of allegations against him kept growing.[120]

In 1973 and 1974, the principal of St Patrick's College, Ballarat, Brother Nangle, received information that Brother Dowlan had been 'putting his hands down students' pants, was 'hurting' a boarder, had administered excessive corporal punishment on a boy at school and had touched a boy on the genitals. A distressed boarder's parents were also called to the school at night, where their son told Brother Nangle, 'they were a heap of poofters and get me out of here'.[121] We found that there was no effective response to any of the reports or complaints about Brother Dowlan at St Patrick's, in order to manage the risk that he posed to children.[122]

In 1975, Brother Dowlan was transferred from his teaching position at St Patrick's College, Ballarat. He was appointed to a number teaching roles in different schools between 1976 and 1988.[123]

In late 1988, the provincial, Brother Francis Chappell, appointed Brother Dowlan as principal of St Vincent's Special School at South Melbourne. By this time, Brother Chappell and at least three of the four members of the provincial council who nominated Brother Dowlan for the appointment suspected or knew of allegations of Brother Dowlan's sexual behaviour towards

children. St Vincent's Special School catered to boys from 10 to 16 years of age, who were in the care of the Department of Human Services and unable to live in family settings. Usually, the boys had behavioural issues and learning difficulties and they resided at the home during the week.[124]

We found that Brother Dowlan's appointment was a complete failure by the Christian Brothers to protect the most vulnerable children in their care. Brother Dowlan was removed from a further teaching position towards the end of 1993 only after the Christian Brothers received calls from the police. Brother Dowlan was convicted in 1996 of 18 counts of child sexual offences committed between 1971 and 1982. In 2015, he was convicted of a further 34 counts of child sexual offences against 20 boys between 1971 and 1985.[125]

Marist Brothers

The leaders of the Marist Brothers allowed the following religious brothers to continue to work in Catholic schools, or transferred them between schools, after they became aware of allegations of child sexual abuse against these brothers (see further Section 13.4):

- Brother John (Kostka) Chute: a Marist Brothers community superior knew in 1962 that Brother Chute had admitted to sexually abusing a child. The provincial council knew in 1969 that he had admitted to touching a child. He remained in teaching positions until 1993 and in other Marist Brothers work until 2007.[126]
- Brother Ross Murrin: Brother Murrin admitted to the Marist Brothers provincial in 1981 that he had inappropriately touched two male students. He remained as dormitory master until the end of that school year.[127]
- Brother Patrick (Thomas) Butler: The Marist Brothers provincial knew in 1991 that Brother Butler was the subject of a historical sexual abuse complaint.[128] Brother Butler remained in teaching or tutoring positions until 2001.[129]

In addition, CCI determined that the Marist Brothers had knowledge of the following brothers' propensity to offend, following which these brothers remained in teaching positions:

- Brother Keith Farrell was a teacher at a Marist Brothers school in Queensland in 1975.[130] Brother Alexis Turton told CCI's lawyers he received a complaint from some male students when he was principal of the school that Brother Farrell had tried to 'get them to go to bed with him'.[131] CCI determined that the Marist Brothers had knowledge of Brother Keith Farrell's propensity to offend in 1975.[132] He remained in teaching positions until at least 1979.[133]
- Brother GLW taught at Marist Brothers schools in New South Wales and Queensland in the 1970s and 1980s.[134] A Special Issues Allegation Report by the Marist Brothers said that in 1988 an allegation was reported to the provincial that Brother GLW had 'inappropriate sexual contact' with a boy.[135] CCI determined that the Marist Brothers had knowledge of Brother GLW's propensity to offend in 1988.[136] Brother GLW was later appointed to teaching positions until 1992.[137]

We found that some Marist Brothers principals, and successive provincials of the Marist Brothers, failed to adequately respond to allegations.[138] Marist Brothers provincials also did not share information about allegations with school principals or with successor provincials.[139] At the time of the events considered in our case studies, the provincial of the Marist Brothers was responsible for responding to allegations of child sexual abuse against Marist Brothers.

In *Case Study 13: The response of the Marist Brothers to allegations of child sexual abuse against Brothers Kostka Chute and Gregory Sutton (Marist Brothers*), we considered the case of Marist Brother Chute. We concluded that in about 1969 the provincial, Brother Othmar Weldon, and his successor as provincial, Brother Alman Dwyer, knew that Brother Chute had admitted to inappropriately touching a child while he was a class teacher at St Joseph's School, Lismore, in 1967. Brother Chute was then appointed as primary school principal at Marist College Penshurst in 1969, as a teacher at Marcellin Junior College in Coogee in 1973, as principal of Marist Brothers Parramatta in 1975 and as a teacher at Marist College Canberra in 1976.[140]

The headmaster of Marist College Canberra, Brother Terence Heinrich, received an allegation in 1986 that Brother Chute had touched a boy's penis in the dark during a film night. He did not bring the complaint to the attention of his successor at Marist College Canberra on handover of the role, but he did tell the then provincial, Brother Dwyer, about the allegation. We concluded that the response of the provincial was woefully inadequate and that, in not removing Chute, the provincial put more children at risk of being sexually abused by him.[141]

After Brother Chute's removal from teaching in 1993, the Marist Brothers received complaints from 48 of his former students alleging that Brother Chute had sexually abused them when they were children. Forty of these complainants attended Marist College Canberra. In 2008, Brother Chute was charged and convicted of 19 sexual offences involving six children he taught at Marist College Canberra.[142]

Conclusions about responses to alleged perpetrators who were religious brothers

The common feature of these cases is that the provincials of these religious orders allowed religious brothers teaching in Catholic schools to remain in positions where they had access to children despite allegations – in some cases, numerous allegations – of child sexual abuse being made against them. These cases also demonstrate instances where the relevant provincial did not inform either the principal of a school to which an alleged perpetrator was transferred or a religious superior of the allegations made against the alleged perpetrators. In many of the cases we examined, as set out in detail in Section 13.4, a religious brother who was not removed from access to children after an allegation of child sexual abuse was made went on to sexually abuse more children.

The highly centralised structures for decision-making within the Marist Brothers and Christian Brothers at the time of the case studies contributed to the failures of senior staff to respond appropriately to allegations of child sexual abuse.

In the *Marist Brothers* case study, a school headmaster said that it was not his role but the role of the provincial, Brother Dwyer, to decide if Brother Chute should be removed from teaching.[143] During *Case Study 50: Institutional review of Catholic Church authorities,* Brother Peter Carroll, the Provincial of the Marist Brothers in Australia, was asked what particular characteristics of the Marist Brothers might explain why the order's response to abuse was inadequate. He responded that 'There was also a very hierarchical model where everything had to be taken back to the leader, and the leader had to make the decisions. So I think that's another factor that led to the reasonably poor management of these things'.[144]

In the case of Brother BWX, in our *Catholic Church authorities in Ballarat* case study, former superior of the St Patrick's community Brother Nangle was asked whether he was concerned when he learned that Brother BWX had been transferred to another school. He said:

> It wasn't my business. I just assumed, took for granted, that the Provincial would take whatever steps were necessary to attend to the Brother, his needs and the needs of others – it wasn't my concern. I would never have been invited by the Provincial to engage with him in any conversation on that matter.[145]

We accepted that Brother Nangle acted reasonably in reporting Brother BWX's conduct with the two boarders to the provincial, the parents of the boys concerned and Bishop Mulkearns. The Truth, Justice and Healing Council submitted this exemplifies a hierarchical system whereby even senior persons such as principals and superiors had limited authority and where only the provincial had power in matters such as the appointment or removal of brothers. We agreed that a system which gives ultimate power to one person, without checks and balances, has the obvious potential for mismanagement or abuse of that power.[146]

However, it must be acknowledged that in recent years the governance of many religious institute schools has changed, as discussed further in Section 13.11.4. Members of several religious institutes traditionally involved in education have less direct involvement in the governance and management of schools in 2017. The Marist Brothers provincial no longer has a direct role in the governance of Marist Brothers schools, as these responsibilities are carried out by Marist Schools Australia (MSA).[147] Principals of MSA schools select and employ all school staff apart from the deputy principal.[148] MSA regional directors oversee principals' investigations of any child abuse allegations against staff and report progress on these matters to the MSA national director.[149] Edmund Rice Education Australia (EREA), a public juridic person separate from the Christian Brothers, is responsible for the governance and operation of most schools established by the Christian Brothers.[150] Furthermore, very few religious brothers and sisters remain in teaching positions in Australia.

On 1 June 2017, EREA issued the first apology from a Catholic religious institute education authority on behalf of all its schools for the sexual abuse of students in its schools. EREA Executive Director, Mr Wayne Tinsey, acknowledged 'a history of denial, secrecy, suppression and diminution in relation to sexual abuse crimes' in EREA schools.[151] During the *Marist Brothers* case study Brother Jeffrey Crowe, the provincial at that time, apologised to the victims of Brothers Chute and Sutton,[152] and during *Case Study 43: The response of Catholic Church authorities in the Maitland-Newcastle region to allegations of child sexual abuse by clergy and religious*, the Marist Brothers provincial, Brother Carroll, further apologised to all survivors affected by sexual and physical abuse of the Marist Brothers, including survivors of abuse that occurred in schools.[153] The Congregation of the Mission (Vincentians), De La Salle Brothers, Salesians of Don Bosco and the Jesuits have also acknowledged the abuse that occurred in their schools and have apologised to victims.[154]

Further institutional responses to allegations of child sexual abuse in Catholic schools

Our case studies have revealed further institutional responses to child sexual abuse in Catholic schools that have compromised the safety of children. Some of these were responses to allegations against lay teachers and volunteers in Catholic schools. The Catholic Church claims data showed that, of all claims of child sexual abuse occurring in a school, 25 per cent involved a lay person.[155] The issues raised by these responses are not specific to Catholic schools – they could be found in schools in all education sectors. However, given the very large number of children who attend Catholic schools, it is important to set out what we have learned about further institutional responses to child sexual abuse in these schools.

Reporting to police

The failure of the leaders of some Catholic Church authorities to report allegations of child sexual abuse to the police is also discussed in Sections 13.5 and 13.8 above. The leaders of dioceses and religious institutes and the staff of CEOs were among those who failed to make these reports. These included allegations made in relation to people in religious ministry who worked in or were associated with Catholic schools.

In *Case Study 6: The response of a primary school and the Toowoomba Catholic Education Office to the conduct of Gerard Byrnes (Toowoomba Catholic school and Catholic Education Office)*, we found that in 2007 the principal of a school, Mr Terence Hayes, did not report allegations against teacher Gerard Byrnes to police, when this was required by the school policies.[156] We also found that Mr Hayes 'sought to avoid responsibility for reporting to the police these allegations of sexual abuse by maintaining that the responsibility to do so was that of the TCEO [Toowoomba Catholic Education Office]'.[157]

Mr Hayes prepared a draft of a disciplinary letter to Byrnes that included some of the allegations against him.[158] Mr Christopher Fry, the senior education officer at the CEO responsible for the school, received a copy of this draft letter and he showed it to another senior education officer, Mr Ian Hunter.[159] We found that Mr Fry and Mr Hunter should have ensured that the allegations contained in the draft disciplinary letter were reported to the police.[160]

In November 2009, Mr Hayes was tried on a single charge of failing to comply with his mandatory reporting obligations. Mr Hayes successfully defended the charge 'on the basis that he had reported to the TCEO … and that the obligation to report the information to police lay with a person in the school's governing body, not himself'.[161]

In our *Catholic Church authorities in Ballarat* case study, we found that in 1973 Brother BWX admitted to Brother Nangle that he had sexually abused two boarders at St Patrick's College. Brother Nangle was the superior of the St Patrick's Community of Christian Brothers and also the headmaster of St Patrick's College at the time.

Brother Nangle did not report the matter to police. He told us that in those days he would have felt that he did not have the authority to report such matters to the police himself, and he expected the provincial 'would report it to police if he thought it was necessary'. Brother Nangle did not recall any mention of reporting to police in discussions with either the provincial or the parents of the two boys.[162]

Policies and procedures

Historically, some schools, or the authorities that managed those schools, did not recognise any need to have child protection policies or procedures in place. In other cases, staff did not adopt or follow existing policies and procedures, which put children at risk.

In our *Marist Brothers* case study we found that in 1962 the community superior, Brother Des Phillips, knew that Brother Chute had admitted to sexually abusing a child at St Anne's Primary School in Bondi. Brother Phillips did not inform the provincial, as required by the Marist Brothers policy on reporting at that time. That failure meant that the provincial at the time could take no action to protect other children from Brother Chute's sexually abusive behaviour.[163] The Marist Brothers told us that they had no written policies or procedures on the handling of complaints of child sexual abuse until the 1990s.[164]

In our *Catholic Archdiocese of Melbourne* case study the director of the CEO, Monsignor Doyle, stated that, to the best of his recollection, between 1977 and 1996 the CEO did not have any written or formal policies, procedures or guidelines for the handling of complaints against priests or other people in religious ministry.[165]

In *Case Study 9: The responses of the Catholic Archdiocese of Adelaide, and the South Australian Police, to allegations of child sexual abuse at St Ann's Special School (St Ann's Special School)* we found that in 1986 the CEO did not have a policy on the engagement of volunteers.[166] St Ann's did have a policy that a registered teacher was required to supervise volunteers at the school at all times. Brian Perkins, who was employed as a bus driver by the school and also performed volunteer work at the school, had unsupervised access to children in the woodwork shed contrary to the applicable policy. The school's failure to comply with this policy created further opportunity for Perkins to sexually abuse children in his care.[167]

In *Toowoomba Catholic school and Catholic Education Office*, we heard that in 2007 the school in question possessed a Student Protection and Risk Management Kit that set out policies and procedures for student protection, including disclosures of harm, sexual abuse and reporting to police.[168] We found that the safety of children at the school was nonetheless put at risk because the principal, Mr Hayes, did not comply with the reporting procedures set out in the kit, did not report allegations of child sexual abuse against teacher Gerald Byrnes to the police, and did not inform the TCEO of the most serious allegation against Byrnes.[169]

Training

We also heard evidence that suggested principals and staff did not receive adequate training that would equip them to carry out their child protection responsibilities. Evidence in our *Marist Brothers* case study indicated that, in the 1980s, brothers with extensive teaching experience were not able to identify that child sexual abuse was a criminal offence. Brother Anthony Hunt, deputy principal of Trinity Catholic College from 1985 to 1988, and former superior of the community in Lismore, gave evidence that as deputy principal of a school of 600 students he appreciated that children were at risk of being sexually assaulted by adults. When asked whether he understood in 1985–1988 that sexual assault of a child was a crime, he said that he did not 'associate' sexual assault of a child with a crime.[170]

Also in *Marist Brothers,* Brother John Holdsworth, who had significant experience teaching in schools since 1953, gave evidence that he was not sure whether in 1989 he understood that committing a sexual act upon a child was a crime. He said he could not 'put a time line' to when he became aware that children were at risk of adults behaving in a sexual way towards them and has 'no clear memory' of being exposed to such a concept through media reporting.[171] We were told that until the 1990s there were no initial or ongoing programs of education and training in child protection for the Marist Brothers.[172]

In our *Toowoomba Catholic school and Catholic Education Office* case study the principal, Mr Hayes, gave evidence to the effect that one annual training day was held for all school staff. The duration of instruction and discussion about child protection matters 'depended on the questions you got, or whatever' but, generally, it was '45 minutes to an hour'.[173] We heard that Ms Catherine Long, the learning support teacher and one of two student protection contacts at the school, discussed with the principal allegations about Byrnes, including that he was 'giving out lollies' and 'having girls hanging off him in the playground'. She agreed that she had not received any specific training about these kinds of 'inappropriate behaviour'.[174]

Ms Megan Wagstaff, an assistant principal who acted as deputy principal when Mr Hayes was away, had no recollection of any of the training sessions that she had attended dealing with the question of how to deal with an allegation which may have been attended by some doubt.[175] We found that the Queensland Non-State Schools Accreditation Board, which assessed the adequacy of training programs or other initiatives for the implementation of written processes for child protection, did not apply any articulated standards or benchmarks during its assessment.[176]

Recruitment of staff

Pre-employment checks, including of a prospective employee's referees and criminal history, can assist to identify people who, if employed, may pose a risk to children. Some Catholic schools failed to conduct appropriate pre-employment checks and consequently did not identify that prospective employees had prior convictions for relevant offences. This issue is discussed further in Volume 13, *Schools*.

In our *St Ann's Special School* case study we examined the institutional responses to allegations of child sexual abuse in a school that catered for students with intellectual disabilities, many of whom had limited communication abilities.[177] We found that, when the school principal, Mr Claude Hamam, was recruiting bus driver Brian Perkins in the late 1980s, he did not conduct the pre-employment checks contained in the South Australian *Catholic schools handbook,* including the requirement to conduct reference checks with previous employers and not simply rely on written references.[178]

There was no requirement at the time that a police clearance check be conducted as part of the St Ann's employment process. We found that Mr Hamam did not conduct a police check, despite evidence that he had previously conducted police checks on other prospective employees. Had a police check been conducted, it would likely have revealed that Perkins had three prior convictions for sexual offences.[179] Perkins later pleaded guilty to five sexual offences in relation to three St Ann's Special School students.[180]

As noted above, in our *Toowoomba Catholic school and Catholic Education Office* case study the school principal, Mr Hayes, did not report allegations of sexual abuse against school teacher Gerard Byrnes to police, as required by the school's policy.[181] Mr Hayes later sought and enabled the reappointment of Byrnes as a relief teacher in Catholic schools, despite knowing of the allegations of child sexual abuse against him.[182] Byrnes later pleaded guilty to child sexual abuse offences regarding 13 girls who were students at the school.[183] The Diocese of Toowoomba has since changed its procedure for appointing relief teachers and requires pre-employment checks to be conducted that are equivalent to those for new teachers.[184]

In another case, CCI determined that the Diocese of Maitland-Newcastle had knowledge of a lay teacher's propensity to offend in 1974, when he was employed as a teacher within the diocese.[185] The lay teacher, GKI, stated in an affidavit that he had been dismissed from a former role teaching in a public school due to his conviction for 'sexual assaults on boys' in 1962.[186] GKI

stated that, when he applied to teach in the diocese in 1974, he told both Monsignor Vincent Dilley, the Director of Catholic Education, and Father Frank Coolahan, who was about to take over as director, about his conviction.[187]

GKI was then employed for 14 years in different Catholic primary schools.[188] In a draft affidavit, the principal of one of the primary schools said that in 1986 a parent complained that GKI had children sitting on his knee in the classroom at lunchtime. The principal said she reported the complaint to Monsignor Coolahan, who was the Director of Catholic Education at the time.[189] After further complaints were made by parents at the same primary school, GKI was suspended and then dismissed in 1988.[190] In September 1988, GKI was charged and later convicted of two counts of indecent assaults on two boys at the primary school in 1988.[191]

Supervision of staff

Adequate supervision of staff is fundamental to the protection of children from child sexual abuse. We heard about some instances where the inadequate supervision of staff contributed to child sexual abuse in Catholic schools.

Adequate supervision is important to limit opportunities for grooming. We heard about teachers who groomed children in Catholic schools. For example, one teacher, later convicted of sexual offences against children, said in a letter that 'trying to break down the barriers of the teacher–student relationship' was the first stage of his method for targeting victims who were his students. He acknowledged that he was 'was blatantly misusing my power'.[192] Commissioned research suggests that proper supervision of staff, including whether they are complying with school policies, is one of the 'broader organisational and cultural conditions' that can prevent grooming such as this from occurring.[193]

Adequate supervision of staff and volunteers can also limit the opportunity for child sexual abuse to occur. In the *St Ann's Special School* case study, Perkins was employed to drive the school bus, but he also performed some volunteer work in the woodworking area at school and provided respite care to certain students at St Ann's. We found that between 1986 and 1991 there were no policies or procedures at St Ann's about the supervision of staff members who were alone with children and that Perkins was not supervised when he was driving the bus. We also found that in 1986 the CEO did not have a policy on the engagement of volunteers and, while St Ann's policy was that a registered teacher was required to supervise volunteers at the school at all times, Perkins had unsupervised access to children in areas such as the woodwork shed.[194]

From 1986 until 1991, the CEO did not have a policy on respite care by employees or volunteers.[195] While the school did not authorise Perkins to provide 'respite care' to children, the principal, Mr Hamam, told us that he did know that Perkins was providing this service to LH and MX but considered this to be a private arrangement.[196]

The account of LK, a parent of one of the victims of Perkins, shows how parents assumed the school was supervising Perkins. LK told us that parents trusted Perkins because of his position at the school. LK said, 'you know, you trust these people. They're supposed to be looking after your children and you're supposed to trust them so you're not going to go and check up on them'.[197] LK believed that the school was aware, and approved of, Perkins' level of involvement with the children: 'It's just that the school – Mr Perkins was so loved by the school that he got us believing that anything he did was sanctioned by the school and the school did nothing to dispel any of that either.'[198]

We also heard evidence of schools managed by religious institutes failing to properly supervise religious brothers in their duties at school, even where they had been the subject of past allegations of child sexual abuse. In our *Marist Brothers* case study two headmasters of Marist College Canberra gave evidence that Brother Chute received minimal supervision. Brother Heinrich, who was principal from 1983 to 1988, told us that Brother Chute reported directly to him. In our *Marist Brothers* report, we noted that this involved Brother Heinrich having face-to-face meetings monthly in Brother Chute's office. There was no regular process of monitoring him in his classroom. There were no school inspectors that inspected Brother Chute's classes, and Brother Heinrich visited his class once or twice a year at most. Brother Heinrich accepted that Brother Chute had a high degree of autonomy and was trusted in his interaction with boys. Brother Chute supervised the film club and the photography club and coached rugby during Brother Heinrich's time at the school.[199]

We heard from a survivor, AAM, that Brother Chute had unsupervised contact with children:

> It was considered normal for kids to go to Brother Kostka's office when they had nothing to do … If a student wanted to skip a class and watch television or read books, Brother Kostka would make it alright for a student to do so.[200]

Internal reporting

As set out in Volume 7, *Improving institutional responding and reporting*, an appropriate response to a complaint requires that individuals within an institution should bring any complaint to the attention of a senior person and that an identified person should be responsible for handling the complaint.

We heard of instances in Catholic schools where the full extent of allegations, or the full extent of the risk that had been assessed, was not reported internally to more senior staff. In our *Catholic Archdiocese of Melbourne* case study, we found that Mr Allan Dooley, the CEO's regional education consultant, did not record in an October 1986 letter to CEO director Monsignor Doyle (or any other document) his understanding of the seriousness of the situation and the threat posed by Father Searson to the children of the school.[201]

In our *Toowoomba Catholic school and Catholic Education Office* case study the principal, Mr Hayes, was informed of allegations against teacher Gerard Byrnes by a female student, KH, including that Byrnes 'kisses' another student, KA, 'on the cheek when she goes for help', 'put his hand in my shirt twice', 'puts his hand around my shoulders and rubs my chest' and 'puts his hand up our skirts'.[202] Mr Hayes reported several of the allegations that KH made against Byrnes to staff at the TCEO (Mr Fry and Mr Hunter).[203] We found that Mr Hayes did not inform TCEO staff about the most serious disclosure by KH – that Byrnes 'puts his hand up our skirts' – and that 'the failure to communicate this most serious disclosure to those from whom he sought professional advice and guidance contributed to that advice being compromised'.[204]

The *Marist Brothers* case study also provided an example of information not being reported further within an institution, as it was regarded as a moral issue rather than an allegation that needed factual investigation. In 1962, a father complained to Brother Phillips that Brother Chute had sexually abused his son, AAI. When interviewed about the matter by lawyers acting for CCI in 2008, Brother Phillips stated that Brother Chute admitted 'straight out' that AAI's complaint was correct. Brother Chute then said he would go and see Father Cox, his 'spiritual director and confessor', and would 'rectify it all'. Brother Phillips said he regarded Brother Chute's admission as 'just a moral problem that [Brother Chute] had to do something about'. He did not raise the issue with Brother Chute again or report the matter to the provincial.[205] Forty-three people made claims to the Marist Brothers that they were sexually abused by Brother Chute in the years after this occurred.[206]

In our *St Ann's Special School* case study, we heard that the principal, Mr Hamam, failed to report allegations about St Ann's school bus driver Perkins to the director of the CEO and the board of management or board of governors.[207] Allegations about Perkins were first made directly to police on 15 August 1991, before the school was aware of the allegations.[208] Police informed Mr Hamam on 25 August 1991.[209] Mr Hamam contacted the coordinator of resources for the CEO, Mr Michael Critchley and informed him of the allegations against Perkins.[210]

We found that Mr Hamam did not inform the director of the CEO of the allegations against Perkins as he was required to do under the policies set out in the *Catholic schools handbook*.[211] We found that the CEO did not have a specific policy in place that imposed any specific responsibilities on employees of the CEO who were notified of allegations of sexual abuse of students.[212] There was also no officer at the CEO who had a specific responsibility to attend to issues relating to non-systemic schools or schools that received funding directly from the government.[213]

We also found that Mr Hamam and acting principal Mr Martin Aartsen did not inform the board of management or board of governors (as a board) of the allegations against Perkins despite the requirement of the school's constitution to do so.[214] This meant that the board of management and board of governors were not able to consider a response to the allegations, including whether the broader school community should be informed.[215]

Information sharing between Catholic Church authorities

We received information that some alleged perpetrators moved to new teaching roles in schools managed by different Catholic Church authorities in circumstances where information about allegations of child sexual abuse was not shared with the new authority or school.

In our *Catholic Church authorities in Ballarat* case study, as discussed in Section 13.4, Brother Stephen Farrell's first teaching appointment was to St Alipius Primary School in Ballarat in 1973.[216] In 1974, a parent complained to Brother Nangle about Brother Stephen Farrell's behaviour with her son, which had a sexual element. When Brother Nangle spoke to Brother Stephen Farrell about the substance of the complaint, he admitted it was true. We found that the Christian Brothers provincial, Brother Naughtin, was informed of the complaint and Brother Stephen Farrell did not apply to renew his vows at the end of that year.[217]

In 1975, after leaving St Alipius and the Christian Brothers, Stephen Farrell applied for and obtained a lay teaching position at a diocesan Catholic primary school in Pascoe Vale, Victoria. There was no evidence that anyone within the Christian Brothers, including the provincial, took any steps to notify other Catholic schools in diocese, the St Alipius school community or the wider Ballarat community of Stephen Farrell's admission in relation to his sexual abuse of children at St Alipius. We found that it was unacceptable for Brother Naughtin to fail to notify the St Alipius school community about the complaint against Stephen Farrell in 1974 and, had this been done, further abuse may have been prevented.[218]

In 1997, Stephen Farrell was charged with and pleaded guilty to nine counts of indecent assault against two boys. In 2013, Farrell was convicted of a further charge of indecent assault.[219]

In Chapter 23, 'Recordkeeping and information sharing in religious institutions', we consider how information sharing by religious institutions, including Catholic Church authorities, can be improved through new legislative arrangements, better policies and enhanced information sharing mechanisms.

13.10.4 Conclusions about Catholic Church responses to child sexual abuse in schools

Our case studies clearly demonstrate multiple failures by Catholic schools in their responses to the sexual abuse of students.

It is apparent that the culture within the schools and Catholic Church authorities that we examined was largely oriented towards maintaining the position and reputation of people in religious ministry who worked in schools instead of responding effectively to children and parents who raised allegations of child sexual abuse.

In relation to priests against whom there were allegations of child sexual abuse, we found that in some cases the school principal or staff were actively involved in managing the risk posed to children. In a case where we examined the response of the CEO in the Archdiocese of Melbourne, we found that the CEO had limited capacity to ensure that effective action was taken in order to manage the risk to children. When complaints reached the bishop or archbishop, we found that they did not respond adequately to priests who were alleged perpetrators. As a consequence, these priests were left in positions where they had access to children and these children were placed at risk.

We found that successive provincials of both the Christian Brothers and the Marist Brothers allowed religious brothers teaching in Catholic schools to remain in positions where they had access to children despite allegations, sometimes numerous allegations, against children. The highly centralised structures for decision-making within these religious institutes contributed to the failures of senior staff to respond appropriately to allegations of child sexual abuse. The consequence of these failures was that some religious brothers against whom allegations had been made remained in positions where they had access to children for many years and in some cases abused further children.

Our inquiry has shown a number of other failures in the institutional response to allegations of child sexual abuse in Catholic schools. These included failures to put child protection policies or procedures in place, to adequately train principals and staff in their child protection responsibilities, to conduct appropriate pre-employment checks and to adequately supervise staff, including lay staff and religious brothers. Finally, we found failures to report allegations within an institution and failures to appropriately share information between Catholic Church authorities. All of these failures compromised the safety of children.

There have been some significant changes and improvements to the governance arrangements and child safety policies in Catholic schools since the period examined in several of our cases studies. In Section 13.11.4, we consider the current approach to the structure and governance of Catholic schools and make a recommendation in relation to the arrangement where a parish priest is the employer of principal and staff in Catholic schools. In Part E, 'Creating child safe religious institutions' we examine and make recommendations about some issues relating to child safety in religious schools, including schools managed by or affiliated with the Catholic Church.

In Chapter 5 of Volume 13, *Schools*, we also consider how all schools can improve their approaches to child safety through prevention education; supporting boarding schools to meet child safe standards; preventing and responding to online child sexual abuse; improving the accountability of school leaders; improving their responses to, and reporting of, child sexual abuse; improving recordkeeping and information sharing; and helping teachers to be child safe.

Endnotes

1 Name changed, private session, 'Drew Michael'.
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4 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 75.
5 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 75.
6 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, pp 75–6.
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19 R Fogarty, *Catholic education in Australia 1806–1950*, Volume 2, Melbourne University Press, Melbourne, 1959, pp 304–5.
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40 Royal Commission into Institutional Responses to Child Sexual Abuse, *Analysis of claims of child sexual abuse made with respect to Catholic Church institutions in Australia*, Sydney, June 2017, p 190.
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59 Transcript of C Rafferty, Case Study 35, 25 November 2011 at 13329:47–13330:4, 13336:44–13337:7; Exhibit 28-0093, 'Statement of BWA', Case Study 28, STAT.0733.001.0001_R at 0002_R; Exhibit 28-0159, 'Statement of BPL', Case Study 28, STAT.0738.001.0001_R at 0001_R.
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104 Approximately 35 of the total 214 Marist Brothers in Australia in February 2017 were involved full-time or part-time in schools, including eight who were school principals. See Transcript of P Carroll, Case Study 50, 22 February 2017 at 25865:6–19. Approximately four of the total 280 Christian Brothers in Australia in February 2017 were engaged in roles in schools through Edmund Rice Education Australia. See Transcript of P Clinch, Case Study 50, 22 February 2017 at 25840:30–34, 25843:4–7. There are two De La Salle brothers teaching full-time in schools in Australia and two who are principals. See Transcript of K Payne, Case Study 50, 22 February 2017 at 25887:25–27. None of the 19 brothers of the St John of God Order have roles in schools. See Transcript of T Graham, Case Study 50, 22 February 2017 at 25898:28–39. In 2009 in Australia 12 per cent of all religious institute members worked in education, reduced from 48 per cent in 1976. There were 144 religious institute members (brothers, sisters or priests) working in Catholic primary schools and 314 religious institute members (brothers, sisters or priests) in Catholic secondary schools; many of the 314 in secondary schools are priests at schools owned or run by their religious institutes. See S Reid, R Dixon & N Connolly, *See, I am doing a new thing! A report on the 2009 survey of Catholic religious institutes in Australia*, John Garratt Publishing, Mulgrave, 2010, pp 2, 15–16, 20.
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108 Exhibit 50-0012, 'Extract from Johnson's personnel documents', Case Study 50, CCI.0056.00001.0123_R; 'Transcript of interview between CCI's investigators and Brother Garvan', Case Study 50, CCI.0056.00001.0168_R at 0168_R; 'Statement by Brother McGlade', 8 July 2005, Case Study 50, CCI.0268.00010.0033_R at 0039_R.
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110 Exhibit 50-0012, 'Letter from CCI to Christian Brothers', 28 July 2004, Case Study 50, CCI.0018.00010.0032_R. See further Exhibit 50-0012, 'Letter from CCI to Christian Brothers', 24 March 2004, Case Study 50, CCI.0056.00001.0005_R.
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13.11 Contributing factors in the Catholic Church

> I am not convinced that we as a Church, through our leadership, have admitted the problem. That is, we know that there are complaints. We have sought to deal with those complaints. But we have not, as a Church, stood and said what needs to change within ourselves. This is essential, I think. Because apology is not enough and I think people are tired of hearing apologies. Apologies fall hollow unless, at the same time, the Church can say, 'We have done great wrong. We are in the wrong. There is something wrong in us and we need to change what is wrong'. And the test of this I think will be to the extent that we as a Church can stand in front of those who have been abused in such horrific ways and say to them, 'You become our teachers. You teach us, through your pain, what we need to do'.[1]
>
> **Dr David Ranson, theologian and Vicar General, Diocese of Broken Bay**

This section considers factors that may have contributed to the occurrence of child sexual abuse in Catholic Church institutions or to inadequate institutional responses to this abuse. We have based our analysis on what we heard in case studies and public hearings, submissions, our review of previous overseas and Australian inquiries, and a review of relevant literature.

As set out in Section 13.3, the Catholic Church claims data indicates that a significant majority of alleged perpetrators of child sexual abuse in the Catholic Church were clergy or religious. Consequently, this section focuses on factors that may have contributed to abuse by, or inadequate responses to, child sexual abuse by clergy or religious.

Some studies have asserted that the crisis of child sexual abuse by Catholic clergy is a recent historical problem that has been influenced by societal changes in the late 20th century.[2] However, as addressed in Chapter 3, 'Child sexual abuse in the global Catholic Church: early history and previous inquiries', we are satisfied that there is significant documentary and archival evidence of a long history of child sexual abuse by clergy and religious going back to the earliest centuries of the Church. We note the relevance of that history in our examination of current contributing factors.

13.11.1 A combination of factors

Single or multiple factors as contributors to child sexual abuse?

In explaining child sexual abuse by Catholic clergy and religious, Catholic Church authorities have tended to focus on a single factor, that of the individual 'bad' priest or religious who suffers from psychosexual distortions. In his evidence to the Royal Commission, Cardinal George Pell stated:

> I think the faults overwhelmingly have been more personal faults, personal failures, rather than structures.[3]

Eamonn Conway, Head of Theology and Religious Studies at Mary Immaculate College, University of Limerick, Ireland, has written that:

> Responsibility for the child sexual abuse crisis in the Catholic Church is generally considered by church leadership to lie entirely with a small number of individual priests whose crimes resulted from personal failure and sinfulness. Similarly, church leadership tends to hold individual bishops responsible for the fact that cases of abuse were not dealt with adequately, rather than consider possible institutional failure.[4]

However, in 1999, the report of an Australian study sponsored by the Australian Catholic Bishops Conference and Catholic Religious Australia, entitled *Towards understanding: A study of factors specific to the Catholic Church which might lead to sexual abuse by priests and religious*, acknowledged that 'there is more to the issue of child sexual abuse than the failings of individuals'.[5]

In her evidence to the Royal Commission, Dr Marie Keenan, Irish psychologist, researcher and author of the 2012 study *Child sexual abuse and the Catholic Church: Gender, power, and organizational culture*,[6] said that sexual abuse by clergy 'must be understood within the unique context of their lives and ministries as Roman Catholic ministers within the Roman Catholic Church'. Dr Keenan noted a number of issues that have been identified as contributing to the occurrence of child sexual abuse by clergy and to the responses of the Catholic Church, including theology, clerical culture and seminary formation.[7]

Dr Keenan has also written in relation to her own research with perpetrator priests that:

> It is my thesis that some of the factors that contributed to a climate in which clerical men could sexually offend also contributed to the conditions that made it possible for the Church hierarchy to act as they did in handling the abuse complaints. In essence, they were both part of the same institutional culture.[8]

We also heard evidence from Dr Michael Whelan SM, Marist Father and Director of the Aquinas Academy in Sydney, pointing to patterns in the response of Catholic Church authorities to allegations of child sexual abuse across the world. Dr Whelan said that following the publication of reports into the Irish Government's Commission to Inquire into Child Abuse (Ryan Commission) and Dublin Archdiocese Commission of Investigation (Murphy Commission), as well as this Royal Commission, the Catholic Church is 'being prompted to raise the systemic questions with some urgency'.[9]

Likewise, Irish cultural historian Gerard Montague has written that 'The universal nature of the problem is confirmed by parallel problems in dioceses as far apart as Sydney, Munich, Boston or Ferns'.[10] As addressed in Chapter 3, it is now clear that child sexual abuse by clergy is a worldwide issue.

We are satisfied that a combination of individual and systemic factors enabled child sexual abuse in the Catholic Church and contributed to inadequate institutional responses to allegations or instances of abuse.

We are also satisfied that child sexual abuse in the Catholic Church is a worldwide phenomenon, not one limited to a few countries.

Systemic, institutional and cultural factors

American psychologist Paul Dokecki argues that any thorough investigation of the causal factors of child sexual abuse in the Catholic Church should acknowledge and address the various theories that have been proposed to account for it. He refers to an article by Fran Ferder and John Heagle in the United States-based *National Catholic Reporter* that summarised various theories which have been put forward to 'explain' child sexual abuse in the Catholic Church. These include theories that: such abuse is 'ancient history' (that most of the incidents occurred 20 or 30 years ago); it has been caused by a 'few bad apples'; it is primarily a problem of materialistic, self-indulgent Western cultures; homosexual priests are primarily responsible; child sexual abuse by clergy is the outcome of permissive attitudes towards sexuality promoted by liberal theologians in the Catholic Church; there is unfair attention paid to abuse in Catholic institutions compared to other institutions due to a media conspiracy; and that some priests are driven to sexually abuse children out of frustration caused by mandatory celibacy.[11]

Ferder and Heagle conclude that while a few of these theories 'contain some elements of truth, they all have serious limitations when used in isolation to explain (or explain away) the crisis'.[12] Dokecki comments that, except for the celibacy theory, the other common theories 'have typically been advanced to defend the basic soundness of the Church as an institution'.[13] He rejects the idea that any single theory is adequate without careful consideration of the others and of 'many additional ethical, human science, and ecclesiological factors'.[14]

Reiterating Montague's point, Dokecki further states that the number of countries where issues of child sexual abuse by clergy have arisen points to evidence that the problem is systemic throughout the Catholic Church internationally. He lists Ireland, Mexico, Austria, France, Chile, Australia, Poland, Argentina, Brazil, Canada, Costa Rica, Germany, Guatemala, Hong Kong, Italy, Malta, New Zealand, the Philippines, Puerto Rico, Scotland, South Africa, Switzerland and the United Kingdom, adding that 'New countries seem to enter the list regularly'.[15]

Evidence we received and review of the literature and previous inquiries suggest that a combination of theological, historical, cultural and structural or organisational factors in the Catholic Church enabled child sexual abuse to occur in Catholic Church institutions in Australia and contributed to inadequate institutional responses.

In her evidence to the Royal Commission, Dr Keenan wrote:

> The features of the institutional church that are said to contribute to a climate in which sexual abuse by Catholic clergy becomes possible includes the theology of sexuality, the ecclesiastical structure of power relations and hierarchical authority, clerical culture and seminary formation. These aspects of the institution are influenced in turn by its traditions and teachings that are seen by some scholars to have rendered sexual abuse by clergy and the subsequent responses of the Catholic hierarchy almost inevitable.[16]

Theologian and Vicar General of the Diocese of Broken Bay, Dr David Ranson, emphasised that while it is important to consider 'Church structures as a whole', the factors that have contributed to abuse in the Catholic Church are also 'localised within particular communities':

> It is going to be absolutely incumbent on each community that is a constituent of the thing that we call Church to ask itself: why has abuse occurred in our own community? What are the factors pertinent to our own particularity that have occasioned abuse? And it's not until every single community within the Church asks that hard question for itself that change will actually occur.[17]

Throughout Section 13.11 we consider how theology has intersected with factors that have contributed to the occurrence of child sexual abuse in Catholic Church institutions and inadequate institutional responses to this abuse.

In general, theology refers to foundational ideas, theories, language, or ways of thinking about the existence and nature of God. Specific branches of Catholic theology that are relevant to our consideration of causal factors include:

- ecclesiology – ideas about the nature of the Church and its mission, including leadership roles and ministry
- theology of priesthood – including ideas of the priest as an *alter Christus* (another Christ), of ontological change (that the priest is changed by ordination so that he is no longer like ordinary human beings), that ordination is indelible, and that ordination is only open to men
- theology of sexuality – ideas about gender, human sexuality, the body, and sexual ethics
- moral theology – ideas about right and wrong, good and evil

- theology of sin and forgiveness – ideas about human sinfulness and redemption; mortal (major) and venial (minor) sins, including the view that all sexual sins are mortal sins; public sins (with a social impact or which are publicly known); and private sins
- sacramental theology – including the significance and operation of the sacraments of baptism, holy orders and confession (or reconciliation).

Dr Ranson told us that theology was 'a highly sophisticated imaginative framework' which influences how the Church is understood, and also influences behaviour:

> It is the way we imagine the nature of God, and the way in which we imagine the nature of God overflows to the way in which we imagine the nature of the Church, just as it overflows into the way in which we imagine the nature of ourselves.[18]

Throughout this chapter, theological issues will be addressed in each section wherever they are relevant to specific contributing factors.

Summary

From what we have heard, and our review of past inquiries and the literature on factors that have contributed to the occurrence of child sexual abuse in the Catholic Church and to inadequate institutional responses to this abuse, we are satisfied that there is wide agreement that:

- multiple factors are involved
- a combination of individual and systemic factors are involved
- these individual and systemic factors are tightly intertwined or overlapping.

The contributing factors considered in Section 13.11 are:

- Individual factors – we consider personal or individual factors, as opposed to systemic or cultural factors, including different types of perpetrators; the mental health of priests and religious; issues related to sexuality and sexual orientation; developmental maturity; narcissism; and other personality traits.
- Clericalism – we consider clericalism as a contributing factor in the context of the theology of priesthood; the theory of 'ontological change'; the theological view of the Catholic Church as a 'perfect society'; canon law; the interaction of clericalism with narcissism; ideas of power and powerlessness; the intersection between clericalism, the avoidance of scandal and a culture of secrecy in the Church; and how clericalism informs interactions between the Church and the wider community and the civil authorities.

- Structure and governance – we discuss the hierarchical structure of the Catholic Church; the power, role and oversight of bishops; the governance of Catholic religious institutes; the role of senior clergy and religious in advisory positions; the role of the Holy See in responding to child sexual abuse; the impact of structure and governance on the national response of the Catholic Church in Australia to child sexual abuse; the involvement of lay people and women in governance; the governance of Catholic schools; and what might be learned from the governance of Catholic community services.
- Leadership – we consider the selection of bishops for leadership; training or education for leadership; and the impact of that selection, training and education on the responses to child sexual abuse.
- Canon law – we examine the system of canon law and the extent to which it has contributed to the inadequate responses to child sexual abuse. We consider the framing of child sexual abuse-related offences in canon law; whether canon law played a role in the failure of Catholic leaders to report child sexual abuse to civil authorities; the secrecy provisions of canon law; and the adequacy of canon law as a disciplinary system.
- Celibacy – we consider the history, purpose and value of clerical celibacy and vowed chastity for members of religious institutes; the evidence regarding celibacy as a contributing factor to child sexual abuse; sexual dysfunction associated with mandatory celibacy; the Church's theology of sexuality and the body; the relationship between celibacy and psychosexual immaturity; the interrelationship between celibacy and clericalism; and the role of celibacy in the minimisation of child sexual abuse and the culture of secrecy in the Catholic Church.
- Selection, screening and initial formation – we consider whether approaches to selection, screening and initial training (or 'formation') of Catholic clergy and religious may have contributed to an increased risk of child sexual abuse. We consider the role of human formation and formation to live a celibate life; the challenges of sexuality and sexual orientation; the relationship between formation and clericalism; pastoral formation; previous admission to seminaries and houses of religious formation; and the issue of seminarians and candidates who have trained overseas.
- Oversight, support and ongoing training – we consider the power dynamics involved in religious and pastoral ministry and the role of ministerial ethics; the working environment of clergy and religious; and the institutional oversight and support that clergy and religious in ministry receive. We consider what reforms to oversight, support and ongoing training of people in religious and pastoral ministry could promote the safety of children.
- Sacrament of reconciliation – we consider understandings of child sexual abuse as a sin or moral failure; the theology of sin and forgiveness; and the operation of the sacrament of reconciliation; including issues related to the confessional seal, granting absolution for child sexual abuse, and child sexual abuse committed during confession. We also consider what we learned about confessors' responses to disclosure during confession.

In each of these sections we ask to what extent these issues contributed to the occurrence of child sexual abuse in the Catholic Church or to inadequate institutional responses to this abuse.

While we acknowledge that effecting cultural change is a complex task, we note that some Catholic Church leaders have welcomed the Royal Commission's entry into this area of reform.[19]

13.11.2 Individual factors

> Based on an analysis of the literature on 'normal' and offending clergy and my own research on this subject my conclusion is that individual pathology is insufficient to explain sexual offending by Roman Catholic clergy and alternative interpretations must be explored. When comparing clergy offenders with non-clergy offenders a similar conclusion is reached. The broad consensus in the psychological literature is that Roman Catholic clergy sexual offenders represent an atypical group of child sexual offenders and that situational and contextual factors must be considered significant in their sexual offending.[20]
>
> **Dr Marie Keenan, Irish psychologist and researcher**

In this section, we focus on the personal or individual factors, including psychosexual factors, as opposed to the systemic or cultural factors, that may lead Catholic clergy and religious to sexually abuse children. We consider the evidence we received as well as relevant research on the question of whether there are individual factors unique to Catholic clergy and religious that may influence their sexual abuse of children.

As addressed in Volume 2, *Nature and cause*, and Chapter 7, 'People we heard about in religious institutions', there is no typical profile of an adult who sexually abuses a child, and perpetrators do not fit neatly into discrete categories.[21] Nonetheless, researchers have developed various typologies as tools to help understand perpetrator characteristics. Typologies are broad categories used by researchers and practitioners to assist understanding of people's behavioural characteristics, patterns and motivations. Much of the information about those who sexually abuse children, particularly past research, has been derived from incarcerated or convicted offenders, who are mostly male.[22]

But, while perpetrator typologies provide a useful means of understanding patterns against a background of considerable diversity, they are not sufficiently specific to develop perpetrator profiles and should not be used as a diagnostic tool.[23] Individual perpetrators may exhibit motivations or actions that are characteristic of more than one perpetrator type or may exhibit elements of different categories at different points in time.[24]

As addressed in Volume 2, while recognising the limitations of perpetrator typologies, we have identified three broad 'types' of adult perpetrators of child sexual abuse, drawn from research, that reflect the behaviours and characteristics of perpetrators we frequently heard about during private sessions: 'fixated, persistent' perpetrators, 'opportunistic' perpetrators, and 'situational' perpetrators. In this section we first consider the characteristics of these three types of perpetrators and then discuss a number of issues relevant to the psychological profile of Catholic priests and religious who sexually abuse children.

As we outline in Volume 2, a heightened risk of child sexual abuse arises when specific pre-existing factors in relation to an individual's motivation combine with certain situational and institutional factors.

In this section we consider the intersection of individual motivation and psychosexual dynamics with factors such as clericalism, celibacy and the selection, screening and formation of candidates for religious ministry.

There is wide and varied research and literature on identifying unique psychosexual factors specific to Catholic clergy and religious that may influence their motivation to sexually abuse children. Some researchers have identified a number of common features of the personality types or circumstances of priest and religious perpetrators. The presence of these features appears to increase the risk that some priests and religious will sexually abuse children.

'Fixated, persistent' Catholic clerical and religious perpetrators

As addressed in Volume 2, *Nature and cause*, 'fixated, persistent' perpetrators tend to have a longstanding sexual attraction to children.[25] 'Fixated, persistent' perpetrators are often repeat offenders, abusing multiple children throughout their lives.[26] Their sexual attraction to children often begins in adolescence.[27] They are more likely than other perpetrators of child sexual abuse to have a 'paedophilic' interest in children,[28] and they are less likely to have age-appropriate sexual relationships.[29] According to Clinical and Research Fellow at John Hopkins University, Gerard McGlone, research on paedophiles has shown these individuals to be fixated on a certain age and type of child and to have victims that could number into the hundreds.[30]

Various studies, including our own analysis of the claims data supplied by Australian Catholic Church authorities, suggest that only a small proportion of Catholic clergy and religious who have sexually abused children are 'fixated, persistent' perpetrators.

One indicator of 'fixated, persistent' perpetrators is the number of children they sexually abuse. As addressed in Chapter 7, 'People we heard about in religious institutions', the Catholic Church claims data shows that, out of the overall number of priests and religious brothers in Australia who were the subject of child sexual abuse allegations, 5 per cent of the priests and 8 per cent of the religious brothers were the subject of 10 or more claims. The vast majority of alleged perpetrators identified in the Catholic Church claims data (74 per cent) were identified in only one claim.[31] This suggests that it is likely that only a small minority of priests or religious brothers who sexually abused children in Catholic institutions in Australia were 'fixated, persistent' perpetrators who offended frequently and consistently throughout their religious lives.

This is consistent with the findings of the 2004 study by the John Jay College of Criminal Justice at the City University of New York, *The nature and scope of sexual abuse of minors by Catholic priests and deacons in the United States 1950–2002* (2004 John Jay College report). This study showed that serial perpetrators made up a small percentage of the total number of priest child sexual abusers in the United States (perhaps 1 to 5 per cent). However, their victims were many, with this small group accounting for 26 per cent of all allegations.[32]

'Opportunistic' and 'situational' Catholic clerical and religious perpetrators

As set out in Volume 2, *Nature and cause*, most adult perpetrators of child sexual abuse do not fall within the 'fixed, persistent' typology.[33] Rather, they have a pre-existing inclination to sexually abuse a child when an opportunity arises.[34]

'Opportunistic' perpetrators tend to be less fixated on the sexual abuse of children and may engage in criminal behaviour other than child sexual abuse.[35] They may not have a greater sexual attraction to children over adults, but use children for sexual gratification.[36] Research we commissioned suggests that opportunistic perpetrators exploit situations where they have access to and authority over children to sexually abuse them.[37] However, they are less likely than other adult perpetrators to intentionally create situations in which children can be sexually abused by manipulating the environment; rather, they sexually abuse children when the opportunity arises.[38]

'Situational perpetrators' do not usually have a sexual preference for children. Instead, they tend to have similar patterns of sexual arousal to men who do not sexually abuse children.[39] Research suggests that situational perpetrators sexually abuse children in response to 'stressors' in their own lives.[40] These may include social isolation, lack of positive adult relationships and low self-esteem.[41] They are likely to be older when they first sexually abuse a child, usually victimise females, tend to have fewer victims and tend to continue the abuse over an extended period of time.[42]

It is apparent that certain aspects of the situational and contextual factors that lead perpetrators to sexually abuse children are particularly relevant when it comes to child sexual abuse by clergy and religious.

In her evidence to the Royal Commission, Irish psychologist and researcher Dr Marie Keenan highlighted the importance of situational and contextual factors in understanding child sexual abuse perpetrated by priests and religious. Dr Keenan referred to research from the United States, where researcher Karen Terry analysed the data from the 2004 John Jay College report, which explained that Catholic clergy perpetrators represent an atypical group of perpetrators of child sexual abuse and that situational and contextual factors must be significant:

> Following her exhaustive analysis of all of the available data in relation to sexual abuse of minors by Catholic clergy in the United States, Terry concluded 'There is little information that relates to identifiable pathologies of the offender (e.g., clear indications of paedophilia), and there is much information that indicates an opportunistic selection effect.'[43]

A study by Bettina Böhm from the University Hospital in Ulm, Germany, and Hans Zollner from the Institute of Psychology at the Pontifical Gregorian University in Rome expressed the view that most priest perpetrators began abusing children later in life, the majority had only one allegation of child sexual abuse and they abused pubescent children.[44] Böhm and Zollner concluded that the majority of child sexual abuse was not caused by a chronic pathology (such as paedophilia).[45]

Clergy and religious perpetrators as an 'atypical' perpetrator group

The research literature on Catholic clergy and religious who sexually abuse children suggests that their psychological profile is different from non-clerical perpetrators.

Dr Keenan has written that, within the methodological limitations of the existing data, several studies have helped to identify a number of factors which distinguish clerical perpetrators from non-clerical perpetrators. These include that they are older, better educated, less antisocial, and have little history of other kinds of criminal activity. They are more likely to have sexually abused adolescent boys and more likely than other perpetrators of child sexual abuse to report an adult homosexual orientation. They tend to have fewer victims than other perpetrators of child sexual abuse and have higher rates of endocrine disorders than other perpetrators of a similar age or the general population. They are more sexually under-informed and immature than other perpetrators.[46]

During our *Case Study 50: Institutional review of Catholic Church authorities (Institutional review of Catholic Church authorities)* hearing, Dr David Ranson, theologian and Vicar General of the Diocese of Broken Bay, told us that, in the case of those who have offended, while psychological causes are obvious, it is important to consider less apparent factors within the personality which, while not causative of child sexual abuse, may nonetheless predispose an individual to abusive patterns of behaviour in ministry.[47] Dr Ranson identifies clericalism as a contextual factor, which he describes as a 'dependency on a status that has become a fantasy to defend the person from the vulnerability of intimacy and relationships'. He gave evidence that needs for intimacy cannot be quashed and that they 'simply seek their expression in covert and distorted ways and can become sexualised'. He also noted that many clergy and religious in ministry have found themselves working in situations beyond their capacity and that '[a]n arrested sexual development conjoined to situational anxiety and anger is explosive'.[48] We consider clericalism in more detail in Section 13.11.3.

As discussed in Volume 2, *Nature and cause*, a variety of factors may influence an adult to sexually abuse a child in any setting. These are often referred to as 'risk factors', or factors that explain the 'propensity' of an individual to sexually abuse a child.

While useful for understanding perpetrator motivation and behaviour, these factors cannot be used to identify, screen or diagnose potential perpetrators. Risk factors do not identify causality. The presence of one or more factors does not mean an adult will inevitably sexually abuse a child, and these factors are not present in all perpetrators. There is no consensus among researchers about the significance of some factors over others.

In 1990, Richard Sipe, a psychotherapist, former priest and member of the Department of Psychiatry at Johns Hopkins University, published a model that identified a range of factors or predispositions which make individual priests vulnerable to sexually abuse children. Sipe used the term 'lock' to describe each predisposition category or pathway to offending. However, he emphasised that the term does not mean that the presence of any of these factors will inevitably mean that a priest will sexually abuse a child. He suggested that the four factors may be interactive and reinforce each other, but they may also be mitigated by other factors.[49] These 'locks' are:

- the genetic lock, referring to biogenetic factors such as sexual orientation and level of sexual desire – Sipe said that research has demonstrated that, in some perpetrators, sexual attraction to children is biogenetically determined[50]
- the psychodynamic lock – Sipe argued that factors in early childhood and adolescence, including experience of child sexual abuse and sexualisation, may make perpetrators extremely vulnerable to regress to a sexual attraction to minors[51]
- the social/situational lock, a specifically clergy-related factor – Sipe said ecclesiastical institutional factors foster a pre-adolescent stage of psychosexual development[52]
- the moral lock – Sipe said this describes a group of perpetrators who 'coldly, calculatedly, by design involve themselves sexually with minors because they want to'.[53]

American priest and psychologist Stephen Rossetti, in his 1996 book *A tragic grace: The Catholic Church and child sexual abuse*, also sought to identify characteristics of the psychosexual makeup of priest perpetrators. Rossetti, considering clergy from a number of denominations, identified six 'red flags', or warning signs of a risk that priests may sexually offend against children: confusion about sexual orientation; childish interests or behaviour; lack of peer relationships; extremes in developmental sexual experiences; personal history of childhood sexual abuse and/or deviant sexual experiences; and an excessively passive, dependent, conforming personality.[54] Crucially, Rossetti emphasised that these 'red flags' in themselves do not constitute a definitive indication that the person will sexually abuse children but that a combination of some of these factors could well mean that the person is at risk of sexually abusing children.[55]

Similarly, Australian clinical psychologist and former Clinical Director of Encompass Australasia, Dr Gerardine Robinson, in her evidence to our *Institutional review of Catholic Church authorities* hearing, described prominent 'flavours' in the personalities of priest and religious perpetrators with whom she has worked. She explained that, historically, the Catholic Church 'attracts and rewards' priests who have the following personality traits: [56]

- dependent: an over-representation of dependency in a person's personality style can lead to a locus of control being external to the person so that they look to authority figures in terms of decision-making and identity; they appear very deferential
- compulsive: a person is depressed and anxious because of their overwork and inability to self-soothe or self-care
- schizoid: a person has a desire to be connected to people but also a fear of intimacy
- narcissistic: a person has a sense of entitlement – a sense of superiority and exclusion.

In a submission to the Royal Commission, the Truth, Justice and Healing Council (the Council) described factors that may contribute to a risk of a priest or religious sexually abusing children. The Council suggested that, in the case of a person who is 'mandatorily required to live a celibate life', the potential risk of child sexual abuse is greater if one or more of the following factors are present:[57]

- a confused sense of priestly identity
- a general motivation that is characterised by (immature) compliance rather than by (mature) internalisation
- uncertainty about the nature of one's sexual orientation beyond the age of 25 (the earliest age of ordination)
- any personality disorder of moderate or greater severity, but especially antisocial personality disorder; borderline personality disorder; narcissistic personality disorder or any concealed sexual disorder.

In summary, research shows that the psychosexual characteristics of some priests and religious brothers seem to both attract them to religious life and contribute to their propensity to sexually abuse children.

The following characteristics are explored further below:

- the mental health of priests and religious
- the experience of child sexual abuse or sexualisation
- issues related to sexuality or sexual orientation
- a lack of psychosexual development and maturity from childhood
- narcissism
- dependency and cognitive rigidity
- fear of intimacy.

We note that the research in this area is limited and often based on small sample sizes.

The mental health of priests and religious

Mental health and treatment professionals have found that it is not uncommon for perpetrators of child sexual abuse to demonstrate other behavioural and psychological conditions as well.[58] Studies on co-occurrence of sexual offending and other problems have consistently found high rates of personality dysfunction as well as conditions such as anxiety or depression.[59]

In her evidence, Dr Robinson explained that, when a person has a psychosexual disorder typically there are other psychological conditions that are comorbid (meaning a medical condition which occurs together with another).[60]

Dr Robinson gave evidence that when a person has a psychosexual disorder, comorbid conditions such as depression and anxiety are typically present, and that it is very rare for a person to have only one paraphilia.[61] Dr Robinson also said that her research 'suggests that, typically, clergy have been ill-equipped to deal with the psychological and emotional demands of their calling'.[62] Dr Robinson concluded that, for the clergy in her study, 'problematic sexual behaviours have been expressions of profound intrapsychic dilemmas'.[63]

The 2004 John Jay College report found that nearly one in three clerics who were the subject of allegations of child sexual abuse showed a history of substance abuse, questions about their 'fitness for ministry', or behavioural problems.[64]

As outlined above, the Council suggested in its submission that, in relation to clerics, a relevant factor to the risk of child sexual abuse is mandatory celibacy when combined with 'any personality disorder of moderate or greater severity, but especially antisocial personality disorder, borderline personality disorder and narcissistic personality disorder'.[65]

In their 2017 report, *Child sexual abuse in the Catholic Church: An interpretive review of the literature and public inquiry reports,* Desmond Cahill, professor in the School of Global, Urban and Social Studies at RMIT University, and researcher Peter Wilkinson, noted that research in relation to the mental health of Catholic priests and religious has been undertaken since the 1930s. They referred to a study in the United States published in 1936 by priest psychiatrist Dom Thomas Verner Moore, which found that – using the terminology of the times – insanity rates for diocesan priests (503.94 per 100,000) were almost four times the rate for married adults (158.83 per 100,000), and insanity rates for cloistered (or enclosed) nuns (1,034.04 per 100,000) were much higher again.[66]

Cahill and Wilkinson also referred to a number of other studies, including a 1990 study conducted by the Bishop of Auckland, Patrick Dunn, which reviewed the professional literature concerning Minnesota Multiphasic Personality Inventory investigations with Catholic priests. According to Cahill and Wilkinson, it 'found priests to be more perfectionistic, more anxious and introverted and, in extreme cases, more isolated and withdrawn than other men'.[67] Cahill and Wilkinson also referred to a study by Thomas Haywood and his colleagues which they said 'found that abusing clergy were generally not suffering from any psychiatric condition',[68] and a national random study of priests in the United States by Sarah Knox and Stephen Virginia at Marquette University in 2007, which found that one-half of the priests in a national sample of 225 priests had reported psychological problems, including 'interpersonal sensitivity, anxiety and depression'.[69]

The 2011 report of the Commission of Inquiry into Sexual Abuse of Minors in the Roman Catholic Church in The Netherlands, *Sexual abuse of minors in the Roman Catholic Church* (the Deetman report), demonstrated that, from the 1940s, Dutch bishops were actively trying to address the problem of child sexual abuse by clergy and religious and were calling on the advice of Dutch psychologists and psychiatrists, some of whom advised that mandatory celibacy was a threat to mental health. According to the Deetman report, Dutch-American psychiatrist Conrad Baars and Dutch psychotherapist Anna Terruwe provided research on the psychological health of the United States priesthood to the Synod of Bishops in Rome in 1970. They estimated that 20 to 25 per cent of American priests had serious psychiatric problems and 60 to 70 per cent suffered from psychosexual immaturity.[70]

Experience of child sexual abuse or sexualisation

We heard that some research suggests that the experience of sexual abuse during their own childhood is a key predictor of child sexual abuse in priest and religious perpetrators. As noted above, one of the six 'red flags' identified by Rossetti in relation to a risk that priests will potentially sexually offend against children is a 'history of childhood sexual abuse and/or deviant sexual experiences'.[71]

Dr Keenan's evidence was that several studies have reported that clergy who have sexually abused minors have experienced sexual abuse themselves in childhood, sometimes by another priest or religious. Dr Keenan also said that this was the case with respect to six of the nine participants in her own research (five had been sexually abused in childhood and one had been abused as a seminarian).[72] Dr Keenan commented that:

> This is an important finding and although sexual abuse in childhood can never be accepted as an excuse for sexual offending in adulthood, and many people who experience childhood sexual abuse never abuse anyone, it is important that many clergy who had experienced sexual abuse in childhood had never discussed these experiences until they were in treatment for sexual offending.[73]

Dr Keenan has noted that her research is drawn from a small sample size, but that case studies can provide important insights.[74] As noted above, both Sipe and Rossetti identified a history of sexual abuse or sexualisation in childhood as a factor in relation to a risk that priests will potentially sexually offend against children. Researchers Anthony Perillo, Cynthia Mercado and Karen Terry analysed the data from the 2004 John Jay College report and found that a history of sexual victimisation during childhood was one of the strongest predictors for clerics to become repeat offenders (that is, perpetrators who reoffend following some form of correctional intervention).[75] Dr Keenan gave evidence that this is an important observation because, while the literature on perpetrators in the general population does not support the finding:

> Priests and religious who have experienced childhood sexual abuse may be different in this regard. Priests who had experienced childhood sexual abuse were seen as particularly at risk for subsequent sexual offending against minors in the John Jay study and my own research has pointed to the role of childhood experiences of sexual abuse in the sexual offending histories of five of the men who took part in my research.[76]

The 1999 Australian Catholic Social Welfare Commission report, *Towards understanding: A study of factors specific to the Catholic Church which might lead to sexual abuse by priests and religious* (*Towards understanding* report), also noted research by Sipe on the high incidence of sexual abuse in childhood of priest perpetrators of child sexual abuse. Sipe found, based on his review of 473 priests or histories of priests in the United States who had sexually abused children, that 70 to 80 per cent had themselves been sexually abused as children, some by priests. Ten per cent of Sipe's population of priest perpetrators reported that they had been approached sexually by a priest in a seminary training system.[77]

Issues related to sexuality and sexual integration

We heard that research suggests that some young men are attracted to the priesthood or religious life as a means of escaping from their anxiety or confusion about sexual feelings, urges or sexual orientation, which they construct as deviant through a religious lens.

As noted above, Rossetti included confusion about sexual orientation as one of the six 'red flags' that may indicate a risk of child sexual abuse.[78] The Council also told us in a submission that uncertainty about the nature of one's sexual orientation beyond the age of 25 (the earliest age of ordination) is a relevant factor when determining whether clerics are at risk of sexually abusing a child.[79]

Australian psychiatrist and former Franciscan priest Dr Peter Evans gave evidence in the *Case Study 28: Catholic Church authorities in Ballarat (Catholic Church authorities in Ballarat)* public hearing, that:

> Celibacy in the priesthood and religious life may be perceived by some as a means of escaping from overwhelming and deviant sexual thoughts and desires. In the short-term this may provide some temporary relief in the setting of a strict and regular training program in the seminary.[80]

Similarly, Associate Conjoint Professor Carolyn Quadrio, Associate Conjoint Professor in Psychiatry, University of New South Wales, and consulting forensic and child and family psychiatrist, gave evidence to the *Catholic Church authorities in Ballarat* public hearing, that:

> young men who are perhaps troubled in their sexual development and are not developing along the usual lines will obviously be attracted to an environment where they don't have to prove themselves as sexually adjusted in the conventional sense, so that's of great assistance.[81]

Dr Robinson, in her evidence to our *Institutional review of Catholic Church authorities* hearing, explained that her research showed that:

> if young men in the seminary have an unintegrated sexuality – and that's not to say they have yet a sexual disorder, but perhaps they're not comfortable with their orientation or they have some sexual struggles, or if they have a sexual behaviour – typically they will act out just before diaconate ordination and within two years of ordination, and that also applies to religious clergy who typically act out just before first vows and within two years of final vows and ordination.[82]

We consider sexuality and the Catholic theology of sexuality in more detail in Section 13.11.7, 'Celibacy'.

Homosexuality

As addressed in Volume 2, *Nature and cause*, research suggests that child sexual abuse is not related to sexual orientation: perpetrators can be heterosexual, homosexual or bisexual.[83] Research has also indicated that 'men who identify as heterosexual are just as likely as men who identify as homosexual to perpetrate child sexual abuse'.[84] It is a common misconception that all perpetrators who sexually abuse children of the same gender as themselves are primarily same-sex-attracted and identify as a homosexual man or woman.

In her evidence, Dr Robinson stated that:

> Statistically, far more heterosexual men would abuse children than homosexual men, and I want to be very clear here that homosexuality is not a disorder, and homosexuality and paedophilia are two totally separate things. One is an orientation which can be healthy and life-giving and usually is. The other is a diagnosable psychiatric disorder.[85]

In her evidence to the Royal Commission, Dr Keenan stated that, 'In the general child sexual offender field, adult heterosexuality is still reported as the predominant sexual orientation of men who sexually abuse pre-pubertal children, both males and females, whilst adult males who sexually abuse adolescent males are much more likely to be men of homosexual orientation'. However, she commented that 'these data may not be relevant anyway for clergy men who represent a distinct group'.[86]

American psychologist Virginia Goldner has written that, if there is an 'explosive' finding emerging from all the studies on child sexual abuse in Catholic institutions and from the historical record:

> It is that most minors, both boys and girls, are abused by heterosexual priests. This should not seem entirely far-fetched since the sexual abuse of minors is a crime of opportunity, and the selection of boys by abusive priests may be due, in part, to their ready availability in contrast to girls, who are in the Catholic context, even more 'off limits'.[87]

There is no conclusive data on the sexual orientation of priests and clergy. Cahill and Wilkinson noted that there are various estimations of the proportion of homosexual priests and religious in the Catholic Church. They observed that the better estimates are in the 20–50 per cent range, which is considerably higher than in the general population.[88] In a 2001 study of 80 randomly selected non-offending priests in the United States, McGlone found that 31 per cent identified as homosexual and 9 per cent identified as bisexual. Of the overall sample, 36 per cent were sexually active and 22 per cent were sexually active with a male partner.[89] Cahill and Wilkinson also refer to a 2006 study in the United States by Joseph Nines, who received responses from 79 priests, 49 of whom were in active ministry. Overall in Nines's study, 30.3 per cent reported a sexual orientation other than heterosexual. Of the 49 priests in active ministry, 42.8 per cent were homosexual or bisexual.[90]

The Catholic Church claims data and the 2004 John Jay College report have shown a very high proportion of victims of priests and male religious to be male.[91] The 2004 John Jay College report found that, where gender was reported, approximately 80.9 per cent of children sexually abused by priests were male and 19 per cent were female.[92] Overall, 67.4 per cent of the victims were between the ages of 12 and 17 at the time of the first instance of sexual abuse.[93] In the Catholic Church claims data, of those people who made a claim of child sexual abuse, where gender was reported, 78 per cent were male and 22 per cent were female.[94]

The *Towards understanding* report stated that responses to consultations 'strongly reinforced the contention that most sexual offences against children committed by priests and religious can be described as instances of homosexual ephebophilia [a sexual preference in adults for adolescent partners]. Therapists were firm in their conviction on this matter'.[95]

In her evidence to the Royal Commission, Dr Keenan stated:

> My research suggests that the challenges of celibacy were no greater or less for men of a homosexual orientation than they were for heterosexual men, and concealment of sexual desire was evident for all men, regardless of sexual orientation. The fear of unmasking was, however, a constant fear for men of a homosexual orientation, and their identity and self-confidence was severely constrained by such fear.[96]

Six of the nine men included in Dr Keenan's study were homosexual. Each had acknowledged their homosexuality late in their lives, in some cases during therapy for sexual offending. Almost all had no prior sexual experience when they started abusing and many feared abandonment if they were discovered.[97]

According to Dr Keenan:

> Their narratives suggest that for all of them their difficulties in coping with celibacy and sexuality were compounded by a denial and fear of their homosexuality … The religious and cultural mores of their day made acknowledging homosexuality something the men could not contemplate … The analysis of their narratives suggests that aspects of their concealed sexuality and struggles with celibacy and emotional loneliness, and not sexual orientation *per se*, must be considered significant for their sexual offending.[98]

Dr Keenan has written that the existing literature on sexual abuse by Catholic clergy:

> does not give sufficient prominence to the important issue of what might be referred to as homophobic tendencies within the Catholic Church and in the broader society and how this disables the development of human sexuality and the natural expression of sexual desire and relationship.[99]

In relation to discussion of sexual orientation during seminary formation, Dr Robinson questioned why seminarians would talk about their sexual orientation and sexuality when Catholic Church teachings around sexuality induce shame:

> Why would a young man who is struggling sexually with sexual challenges or even with a sexual disorder volunteer that information to people who have the right to say, 'Yes, you can be ordained' or, 'No, you can't'? So, in fact, the environment itself is duplicitous.[100]

In her evidence, Dr Robinson said that the impact of the homophobic environment within the Catholic Church on homosexual men within the Catholic Church has been horrendous:

> The hierarchical structure in the seminary, the atmosphere, can be very homophobic, and Marie Keenan made the comment – and I completely concur with her – that the abuse that homosexual men have suffered spiritually, emotionally, psychologically, because of the homophobic atmospheres in the Church, in Church teachings, in the seminary, is horrendous. I have been witness to it in people that we've treated.[101]

During our *Institutional review of Catholic Church authorities* hearing, we heard evidence in relation to the 2005 document *Criteria for the discernment of vocations for persons with homosexual tendencies*, published by the Vatican's Congregation for Catholic Education, which states that:

> The Church, while profoundly respecting the persons in question, cannot admit to the seminary or to holy orders those who practise homosexuality, present deep-seated homosexual tendencies or support the so-called 'gay culture'.[102]

The document states that these norms have been 'made more urgent by the current situation'.[103] When asked whether the 'current situation' was the issue of child sexual abuse, Dr David Leary OFM, Provincial Secretary of the Province of the Holy Spirit, Order of Friars Minor (Franciscans) and lecturer at the University of Divinity, Victoria, told us that he believed this was so.[104] Dr Leary told us that, in spite of what is stated in the 2005 document, he knew that homosexuality would not be regarded as a barrier to being accepted into the Franciscan order:

> My experience tells me that a person's sexuality is not relevant until the point where we discern that they don't have a mature sexuality, that they aren't emotionally mature. That's where it becomes problematic … Again, I don't think that homosexuality is a barrier to good ministry, and I know that from personal experience. I think if we go down that path, what we are doing is pathologising a way of being in the world, and I don't think that's good theology and it's certainly not good psychology.[105]

Dr Leary told us that he did not understand the notion of 'deep-seated homosexuality', referred to in the 2005 document: 'I have no idea what that means, and I have no idea what it means to have inclinations versus a deep-seated understanding'.[106]

Dr Robinson told us that she was 'alarmed' by the 2005 document. She said, 'some of the Church's teachings on sexuality, and that document in particular, I think, contributed to feelings of shame and a need for secrecy around sexual orientation, around sexual struggles'.[107]

In her evidence, Dr Keenan rejected the Holy See's proclamations which have linked child sexual abuse by clergy to the issue of homosexuality. She stated:

> The proclamations by the Catholic Church in the 1990s, which essentially linked child sexual abuse by clergy to the issue of homosexuality, are fundamentally flawed and have no basis in empirical or respectable research, scientific knowledge, common social mores or a theology of justice. Indeed, this misinformation and the frequently homophobic condemnation by Church hierarchy contribute significantly to an obfuscation of the facts about child sexual abuse and human sexuality and *de facto* to opportunities for the recurrence of abusive behaviours.[108]

Sister Lydia Allen rsm, a member of the Religious Sisters of Mercy and Director of Human Formation at Sydney's Seminary of the Good Shepherd, agreed during our *Institutional review of Catholic Church authorities* hearing that, by 1992, well before the Congregation for Catholic Education document was published in 2005, research had established that the sexual abuse of boys and girls was as much an issue with heterosexual men and women as with homosexual men and women.[109] Sister Allen told us there were later documents from the Holy See in regard to child sexual abuse and that in her opinion it had 'taken the Church a while' to work its way through to a better understanding of the situation.[110] Sister Allen gave evidence that the policy at the Good Shepherd Seminary in Sydney was that a candidate with a 'deep-seated homosexual orientation' would probably be rejected, 'because he would not be willing to be formed'.[111] Sister Allen said that the phrase 'deep-seated homosexual attraction' derives from the 2005 Vatican document.[112]

Lack of psychosexual maturity

Evidence we received and our research of the literature has shown that inadequate psychosexual development may increase the risk of adults sexually abusing children.

Cahill and Wilkinson observed that various studies of the personality profiles and emotional and psychological health and development of Catholic clergy and religious have provided 'a general picture of a struggle to achieve psychosexual maturity and well-being and to arrive at a priestly identity that they were comfortable within their celibacy commitment'. They noted that research in this area is 'notoriously difficult because of the taboos and secrecy surrounding the sexuality and sexual activities of Catholic religious', and the difficulties in achieving serious disclosures and reasonable response rates.[113]

One of the best-known studies in this area is the 1971 study of the United States priesthood commissioned by the United States Conference of Catholic Bishops and conducted by Eugene Kennedy and Victor J Heckler, *The Catholic priest in the United States: Psychological investigations*. This study of a random national sample of 271 priests found that only 7 per cent of priests were psychosexually mature and 18 per cent were developing, while another 66 per cent were underdeveloped and 8 per cent were maldeveloped.[114]

In her evidence during our *Catholic Church authorities in Ballarat* public hearing, Associate Conjoint Professor Quadrio explained an important link between priests and religious men who are psychosexually immature and their attraction to religious life. She said that:

> an immature young man would also be attracted to an environment where there's a highly organised structure and he immediately gets some status from his profession.[115]

Associate Conjoint Professor Quadrio also focused on the nature of adolescents in an institutional context, stating that 'an adolescent male is much more easily inducted into any organisation that he becomes a part of, any adolescent is more malleable'.[116]

Dr Ranson has expressed a similar view in relation to initial formation in a seminary or novitiate – that 'Institutional life is bound, by its nature, to fragment a personality, particularly that of a young adult', at a time when a young adult 'maturationally requires to develop his own identity and authority'.[117]

Goldner suggested that, 'Until very recently, when changes were introduced as a result of the scandals, seminaries typically produced many priests who were developmentally, socially, and sexually immature'. She commented that this phenomenon 'should not be surprising', because many clerical abusers entered seminaries in their teens and were ordained with no education or counselling about sexuality, celibacy or how to maintain boundaries.[118]

Historically, psychosexual underdevelopment may also be linked to a lack of sexual knowledge and sex education – an aspect of the socialisation of clergy and religious which Cahill and Wilkinson suggested has been poorly studied.[119] Mark D Jordan, Andrew Mellon Professor of Christian Thought at Harvard Divinity School, has written that seminary admissions policy encouraged a lack of sexual experience as a predictor and safeguard of celibacy, based on the theory that 'What they don't know couldn't tempt them'.[120] Dr Keenan has written of the participants in her own research that, as young men:

> they had little understanding of sexuality, except that it had something to do with purity, and purity caused considerable anxiety … However, the men's narratives suggest that the instruction on purity was vague … the men had little information regarding sexuality, as they tried to prepare their pathway into priesthood or religious life.[121]

We further consider psychosexual immaturity in Section 13.11.7 'Celibacy', and Section 13.11.8, 'Selection, screening, and initial formation'.

Narcissism

Evidence that we received and our research of the literature suggest that there may be a link between pathological narcissism and child sexual abuse by clergy and religious. According to psychologists Gerald Kochansky and Murray Cohen, individuals with narcissistic personality disorder can be exploitative, extremely manipulative, charismatic and/or grandiose, with an intense need to be admired and loved.[122] Dr Keenan has written that narcissists are 'likely to have deficits across a wide range of empathetic situations. Usually such men are exceptionally resistant to entering treatment'.[123]

As set out above, the Council told us in its submission that 'narcissistic personality disorder' was one of the character traits which, in combination with mandatory celibacy, may contribute to a risk of a priest or religious sexually abusing children.[124]

Dr Robinson also gave evidence that narcissism was one of the prominent personality 'flavours' she had encountered in priests and religious perpetrators in Australia with whom she had worked.[125] She explained that diocesan clergy working particularly in rural areas need to have strong resilience in their character, 'so narcissism in that sense is good. But when it comes with a sense of entitlement ... a sense of superiority and exclusion – that's a very dangerous combination'.[126] Dr Robinson went on to explain:

> Some people want the priesthood too much … Often they want the power, they want the status that is given to them by laypeople, and often which they insist on.[127]

According to American Dominican priest, canon lawyer and survivor advocate Dr Thomas Doyle OP, clerical narcissism 'plays a significant role in the sexual abuse scandal':[128]

> The narcissistic cleric fails to grasp the devastation his sexual abuse causes his victims, their families and the church community in general. Many victims have testified that their perpetrators convinced them that the sexual activity was special because it was 'with Father'. Others have testified that the perpetrators actually intimidated and threatened them with divinely inspired retribution in this life or the next for speaking ill of a priest.[129]

In relation to narcissism, Goldner has written that:

> Beyond issues of arrested psychosexual development, narcissistic disturbances are commonly noted in the psychological profiles of abusive priests, who often present with severe narcissistic vulnerability and compensatory grandiosity. Kochansky and Cohen connect priestly narcissism to the self-selection of [inadequate] men who were 'drawn to the priesthood to … neutralize feelings of inadequacy, impotence and inferiority through a social role that allowed them ... to feel superior, special, admired, and powerful'.[130]

We consider the links between narcissism and the culture of clericalism in the Catholic Church in Section 13.11.3, 'Clericalism'.

Dependency and cognitive rigidity

Both expert evidence provided to the Royal Commission and our research of the literature suggest that 'dependent' personality traits are often characteristic of priest and religious perpetrators. As noted above, Rossetti included within his six 'red flags' an excessively passive, dependent, conforming personality.[131] In its submission to the Royal Commission, the Council suggested that a risk factor in the context of child sexual abuse is a general motivation of a priest or religious that is characterised by (immature) compliance rather than by (mature) internalisation.[132]

In her evidence to the Royal Commission, Dr Robinson discussed the over-representation of dependency in priest and religious perpetrators, which she said can lead to the locus of control being external to the person.[133] Dr Robinson explained that the result of this dependency is that the individual looks to authority figures in terms of decision-making and their identity and that they appear very deferential.[134] Dr Robinson referred to this type of personality as having a 'rigid cognitive style'. She said:

> One of the most telling indications of unsuitability is a rigid cognitive style … And, look, there are some very healthy people who go into seminaries and come out fairly healthy, but if one is cognitively rigid, sexually unintegrated and that person needs the external structure, whether it be – not just the structure but the role... That's a very dangerous sign, I think.[135]

Dr Robinson suggested that, in the past, the Catholic Church's hierarchical system has chosen and rewarded that type of a personality style.[136] Similarly, Dr Keenan identified that the resultant way of 'doing' priesthood involved strategies such as adopting a submissive way of relating to others.[137]

Organisational psychologist Dr Michelle Mulvihill also gave evidence that the Catholic Church's insistence on control, including its insistence on the use of sex for procreation purposes only, is deeply damaging:

> Any hierarchical organisation which demands total obedience by its members, which denies members any capacity to answer to their individual conscience and which focuses heavily on controlling the personal sexuality of its members and limiting human sexuality as a means of loving (rather than procreation), will produce paedophiles and ephebophiles of both genders whose activity is hidden deep within the organisation.[138]

Dr Robinson gave evidence of the impact of the transition when a priest moved from the rigid structure of the seminary to diocesan life:

> The system rewarded compliance and the inhibition of both aggression and libidinal energy; encouraged repression and dependence; and promoted a preoccupation with short-term goals, namely ordination or Final Profession. When a candidate transitioned from the rigid, formal structure to a more open system, and when there were no longer any external goals or structures, some clergy found that they lacked the internal resources for self-direction, self-monitoring and self-maintenance.[139]

In her evidence, Dr Keenan noted that researchers have reported that anger and over-controlled hostility is part of the profile of clergy who sexually abuse minors.[140] Dr Keenan wrote:

> Anger was also implicated in the offending of the men who participated in my own research – anger that came from a lifetime of submission and attempts at living a life that was impossible to live.[141]

Fear of intimacy

Cahill and Wilkinson highlighted that all psychosexual studies of offending priests and brothers refer to the lack of formation for intimacy and continuing deprivation in relation to intimacy.[142] As noted above, a 'lack of peer relationships' was also one of the six 'red flags' warning of offending by priests identified by Rossetti.[143]

Dr Robinson gave evidence that a common flavour in the personality of priests and religious is 'schizoid', which she described as 'a push and pull, a desire to be connected to people but also a fear of intimacy'. Dr Robinson also explained that, typically, clergy had lots of acquaintances but very few real friends.[144]

Dr Keenan told us about the role that fear of intimacy played in the lives of the clerical men who have sexually abused children. She told us that the participants in her study constructed their priestly and religious vocations on fear of breaking with celibate commitment and fear of displeasing others, including:

> avoiding relationships with women and avoiding particular friendships with men. In essence, these men avoided intimacy. Such strategies produced poor adult attachments, a fear of emotional and physical intimacy and prolonged emotional loneliness.[145]

Dr Keenan has written that the priests in her study 'saw children as potential "friends" and "equals"'.[146] In evidence, Dr Keenan identified that the acting out of priests manifests itself in various forms when clergy neither achieve psychosexual maturity nor have adequate relational support to live emotionally and sexually healthy lives.[147] She explained in her evidence that:

> Clerics and former clerics have told me that many of their contemporaries drank or drink heavily to compensate, others gambled, others used their power 'to lord it over people', and many engaged in physical relationships with [a] 'consenting' adult … these ways of coping to my mind continue. We now have advances in the internet and technology for deviant sexual purposes too …. which has not escaped the clergy.[148]

We consider these issues in more detail Section 13.11.7, 'Celibacy'.

Interplay of psychological and institutional factors in child sexual abuse by Catholic clergy and religious

On the basis of the evidence that we received and our review of the literature, it is apparent that individual factors, including psychosexual factors, are inadequate on their own to explain the level of child sexual abuse which has occurred in Catholic Church institutions.

As set out at the head of this section, Dr Keenan has stated that her conclusion, based on an analysis of the literature and her own research, 'is that individual pathology is insufficient to explain sexual offending by Roman Catholic clergy and alternative interpretations must be explored', including situational and contextual factors.[149]

This is consistent with the view of American psychologist John C Gonsiorek. On conceptualising sexual exploitation by clergy in terms of psychopathological behaviour on the part of the individual cleric, he has written that:

> Although this approach captures some important features of abuse by clergy, it is insufficient and incomplete as an explanatory mechanism. Clergy abuse, like abuse by any helping professional, is situated in a variety of organisational or institutional contexts that, to varying degrees encourage or discourage exploitative behaviour.[150]

In their report, Cahill and Wilkinson noted that a number of explanatory models have emerged since the 1990s in an attempt to better understand why priests and religious sexually abuse children. These explanatory models have been developed based on original research and/or studies of the research literature.[151]

Among these models, three in particular emphasise the interplay of individual psychosexual factors and systemic and cultural institutional factors. In chronological order, they are:

1. the 1990 German Drewermann model
2. the 1997 Australian Ranson model
3. the 2012 Irish Keenan model.

The Drewermann model

According to Cahill and Wilkinson, German Catholic theologian, psychologist, psychoanalyst and former priest Eugen Drewermann has argued that the clerical sexual abuse of children has occurred as a direct consequence of the Catholic Church's ideal of priesthood being based on a deeply flawed psycho-spiritual model. Drewermann has suggested that the Catholic Church's priesthood ideal is very likely to produce an infantile clergy susceptible to sexual repression and acting out, including assaulting children, inasmuch as priests are forbidden to love and to be themselves.[152]

According to Cahill and Wilkinson, Drewermann has suggested that three factors prevent an appropriate resolution of the psycho-spiritual conflicts experienced by Catholic clergy. The first of these relates to the young man's experience of a 'divine calling' to join the priesthood. Drewermann has suggested that, because of the transference of the unconscious onto God in answering this divine calling, any subsequent attempt to question one's role as a priest may lead to serious doubts about one's faith. Second, as the cleric becomes psycho-spiritually trapped in his chosen way of life, his psychic alienation gets reshaped into religious alienation and God becomes an overpowering opponent. Third, the contradiction between God's demands and the priest's human needs and desires has the effect of reducing the persona of the cleric to his official or outer public self. This leads to the emergence of clericalism.[153]

We consider clericalism in further detail in Section 13.11.3.

The Ranson model

Dr Ranson, in his evidence to the Royal Commission, emphasised that:

> Sexual abuse, however private its exercise, is never entirely personal. Nor is abuse an isolated incident. Whether it occurs within a family, or within an institution, sexual abuse occurs within both a concrete social context and specific patterns of relationship. The experience of abuse emerges from a dysfunctional milieu which is constituted by various factors.[154]

According to Dr Ranson, child sexual abuse in the Catholic Church occurs in the intersection of the dysfunctional elements, or distortions, in three matrices: the theological, the psychological and the social.[155]

Within the theological matrix, Dr Ranson has referred to dysfunctional attitudes and behaviours that emerge out of inadequate or distorted conceptions of God, the Catholic Church and human sexuality: 'Such frameworks construct a certain theological imagination that underpins ways of relating to others and works to sustain unhealthy and abusive patterns of relationship'.[156] He also referred to 'inadequate theologies of sexuality' which 'become institutionalised in celibate cultures … In these cultures, sexuality is something "dark", "secretive" and "troublesome"'.[157]

The second matrix is the psychological. Here, Dr Ranson has referred to 'psychological pathology' in the individual personality but also to other less apparent factors, including unresolved issues of insecurity and anxiety associated with feelings of inadequacy or guilt which may be temporarily dealt with through spiritual sublimation; and dependency on status as a way of defending the person 'from the vulnerability of intimacy and relationships'.[158] Other issues for Catholic clergy and religious include denial of eros, or the life impulse, and denial of the feminine. According to Dr Ranson, without a mature affirmation of eros, the life of desire 'becomes distorted, and at worse perverted'.[159]

The third matrix is the social, comprising 'those structures in and by which we relate to others and by which clergy and religious are formed'.[160] Dr Ranson lists a number of dysfunctional elements in the social matrix which are 'collusive with abuse': exclusion of the feminine, particularly through the unhealthy practice of celibacy; sexual dysfunction fostered by the tridentine structure of seminaries, which promote theological literacy but not sexual or emotional literacy; dysfunctional and conflictual life within religious communities; the idealisation of the priesthood; and a lack of professional accountability of clergy and religious in ministry.[161]

The Keenan model

Dr Keenan has provided a gender and institutional culture-oriented perspective based on her long experience working with offending priests and her in-depth qualitative research study of nine such priests. She has argued that the institutional culture that contributed to the climate in which men could sexually offend was also one in which the Catholic Church hierarchy could respond to child sexual abuse as they did.[162]

She has concluded that the sexually deprived priest offenders have been led to 'sex-obsessed lives of terror in which the body is disavowed and regarded as a problem to be overcome'. She has said that the loss of sexual intimacy is never grieved over and is buried during their seminary training under a theology of sacrifice and self-mortification.[163]

As Cahill and Wilkinson have observed, Dr Keenan's view is that the loss of sexual intimacy is reinforced by the clerical silence that is demanded in relation to matters of sexuality.[164] The priests in her study learned that 'purity, like celibacy, was a "gift" from God, and they tried the recommended lessons of praying to the Blessed Virgin for the gift of purity … The problem was that they had to ask and pray for the "gift", but when they didn't receive it, the failure was internalized'. Dr Keenan has written that 'Further spirals of prayer and personal failure, shame,

and guilt became the norm'.[165] Dr Keenan found that compensation for a lack of intimacy takes the form of heavy drinking, gambling, lording it over others and having relationships with consenting adults. She explained that, for the psychologically immature, this can contribute to unhealthy relationships with children.[166]

Dr Keenan's model examined the interplay between power and powerlessness in the Catholic clerical and hierarchical system, the idea of ontological change at ordination, and a culture of autocratic clericalism. She has identified problems with the clerical role and sense of identity, along with an over-intellectualised training in moral theology and consequent lack of moral judgment. She has also examined as a factor the emotional loneliness and isolation of her priest interviewees and their consequent immersion in secrecy, silence and self-neglect.[167]

Conclusions about individual factors

In summary, there is no typical profile of a Catholic clerical or religious perpetrator. Perpetrator categories include 'fixated-persistent', 'opportunistic' and 'situational' perpetrators.

Those who fall into the 'fixated-persistent' group have many victims and long offending histories. This type of perpetrator is rare, both in the general literature about clergy perpetrators and the Catholic Church claims data.

The great majority of clerical and religious perpetrators committed a sexual offence against one or a few children. This group committed a sexual crime against a minor when an opportunity arose ('opportunistic' perpetrators) or out of personal vulnerabilities in their own lives ('situational' perpetrators).

Compared with perpetrators of child sexual abuse in the general community, clergy who sexually abuse children are an atypical group. Research suggests that they tend to be older (they begin offending later in life), better educated, less antisocial, and to commit fewer other crimes than other groups of perpetrators of child sexual abuse. They are more likely to sexually abuse pubescent or adolescent boys than girls.

Factors that may have an influence on whether a priest or religious is susceptible to sexually abusing a child may include confusion about sexual identity, childish interests and behaviour, lack of peer relationships, and a history of having been sexually abused as a child.

Further, some clergy and religious perpetrators appear to have been vulnerable to mental health issues, substance abuse, and psychosexual immaturity. We heard that personality factors that may be associated with clergy and religious perpetrators include narcissism, dependency, cognitive rigidity and fear of intimacy.

For some clergy perpetrators of child sexual abuse, when they committed to a celibate lifestyle as sexually unintegrated and immature adolescents or young adults, their sexual development remained 'stuck'. Similarly, in some cases personal and psychological development remained immature. Unintegrated sexuality and psychosexual immaturity may have been exacerbated by inadequate formation and the homophobia of the Catholic Church.

Although most of the perpetrators of child sexual abuse in the Catholic Church that we heard about were male adults, and most victims were boys or adolescents, it is a misconception that all perpetrators who sexually abuse children of the same gender as themselves are same-sex attracted. Research suggests that child sexual abuse is not related to sexual orientation: perpetrators can be straight, gay, lesbian or bisexual. Research has indicated that men who identify as heterosexual are just as likely as men who identify as homosexual to perpetrate child sexual abuse.

Finally, individual pathology on its own is insufficient to explain child sexual abuse perpetrated by Catholic clergy and religious. Instead, a heightened risk of child sexual abuse arises out of the interplay between specific pre-existing factors in relation to an individual's psychosexual immaturity or psychosexual dysfunction and a range of situational and institutional factors.

13.11.3 Clericalism

> O, how great is the priest! ... If he realised what he is, he would die ... After God, the priest is everything![168]
>
> **St John Vianney (1786–1859), known as the Curé of Ars, quoted by Pope Benedict XVI, Letter proclaiming a year for priests, 16 June 2009**

We have heard that the culture of clericalism in the Catholic Church has been a significant contributing factor both to the sexual abuse of children and to the failure of Catholic Church leaders and other Catholic Church personnel to respond appropriately to allegations of child sexual abuse.

Numerous scholars and commentators have pointed to clericalism as a contributing factor that has enabled child sexual abuse in the Catholic Church.[169]

American Dominican priest, canon lawyer and survivor advocate Dr Thomas P Doyle OP has written extensively on the links between clericalism and child sexual abuse. Dr Doyle gave evidence that:

> If one had to isolate one single factor that has contributed to the toxic response of Catholic Church leaders to victims of sexual abuse it would be clericalism … The 'scandal' of the sexual abuse phenomenon in the Catholic Church is first and foremost a problem of the profound abuse of ecclesiastical power.[170]

Dr Doyle told us that clericalism is:

> a virus that has infected the Church, or any church, whereby it is believed that the churchmen, the priests, the bishops, are in some form or way sacred and above ordinary people, and because of this sacredness, because of their importance, they must be held as more important and protected more.[171]

The Catholic reform group, Catholics for Renewal, also described clericalism as a 'virus' in its submission, telling us that:

> it is equally vital to look deeply into the nature of the church and the meaning of priesthood to uncover the causal factors for the disastrous way the institutional church and the hierarchy have consistently and systematically mishandled this immoral scandal. To do so would require exposing the toxic virus of clericalism.[172]

We received similar evidence from Sister Eveline Crotty rsm, Sister of Mercy and Co-ordinator of the Urban Ministry Movement in Sydney. Sister Crotty told us during our *Case Study 50: Institutional review of Catholic Church authorities* (*Institutional review of Catholic Church authorities*) hearing that 'the deepest questions to be addressed at all levels in the Church are around the malaise of clericalism with its misunderstanding of power and authority and the specialness of ordination'.[173]

What is clericalism?

We heard that clericalism is the idealisation of the Catholic priesthood and, by extension, the idealisation of the institutional Catholic Church.

In a submission to the Royal Commission, the Truth, Justice and Healing Council (the Council) referred to a frequently cited definition of clericalism from a 1983 report by the United States Conference of Major Superiors of Men, *In solidarity and service: Reflections on the problem of clericalism in the Church*. According to the Council, the report stated that:

> The conscious or unconscious concern to promote the particular interests of the clergy and to protect the privileges and power that have traditionally been conceded to those in the clerical state. There are attitudinal, behavioural and institutional dimensions to the phenomenon of clericalism.[174]

The report continues:

> Clericalism arises from both personal and social dynamics, is expressed in various cultural forms, and often is reinforced by institutional structures. Among its chief manifestations are an authoritarian style of ministerial leadership, a rigidly hierarchical worldview, and a virtual identification of the holiness and grace of the church with the clerical state and, thereby, with the cleric himself.[175]

The starting point of any discussion of clericalism in the Catholic Church is the fact that, as discussed in Section 13.1, the power of governance in the Catholic Church is reserved to members of the clergy, and membership of the clergy is restricted to males.[176] A further source of clerical power is that the clergy have a monopoly over the administration of the sacraments to the laity. The Catechism of the Catholic Church states that it is through the ordained ministry that the presence of Jesus Christ as head of the Catholic Church is made visible to the community of believers.[177]

The Council, in its submission, told us that the priest 'inherits all of the social advantages of being male', together with 'additional power' through his seminary education, his status as a public figure, his position in the Catholic Church as a 'representative of Christ', his privileged access to people's inner lives through the pastoral relationships he has with them, and the 'largely unquestioned perception within the Church that church leaders always tell the truth':

> All of this can and often does lead to an attitude of superiority. This attitude can start to develop from the earliest years of seminary training if the training delivers the sense that seminarians are 'special' and superior to lay people.[178]

Writing in 2010 about the causal factors behind the clergy sexual abuse crisis, Adjunct Associate Professor of Theology at the Loyola Institute, Trinity College Dublin, Dr Gerry O'Hanlon SJ, quoted Irish clinical psychologist Maureen Gaffney:

> the Catholic Church is a powerful homo-social institution, where men are submissive to a hierarchical authority and women are incidental and dispensable ... it has all the characteristics of the worst kind of such an institution: rigid in social structure; preoccupied by power; ruthless in suppressing internal dissent; in thrall to status, titles and insignia, with an accompanying culture of narcissism and entitlement; and at great psychological distance from human intimacy and suffering.[179]

In his written evidence, Dr Doyle stated that the Catholic Church's hierarchical and monarchical governance structure had 'created a clerical aristocracy'.[180] He set out the following common identifying elements of the culture of clericalism:[181]

a. 'Belief that priests are unique and special because of the supernatural effects of ordination.
b. Consciousness of a special bond that exists among all priests because of the sacred nature of their ordination.
c. Authority with which all priests are invested. This authority does not have to be connected to their ecclesiastical office or position. It is the authority the priest has derived from his role as sacramental minister.
d. The public perception of priests as men set apart, as men entitled to deference because of their 'calling' and as men who are entitled to respect and credibility because of their priesthood.
e. Life in a homosocial environment. Priests are celibate. They may interact with women, married people and families on a daily basis but their essential living environment … is all male with no truly intimate relationships permitted.
f. Priests are part of an institutional culture that is monarchical in practice and socially stratified. The very nature of the hierarchical–monarchical structure has created a clerical aristocracy.
g. Priests have a high degree of discretion in their behaviour and a very low degree of supervision and actual accountability.
h. Priests' official dress sets them apart. When exercising their ministry in the celebration of the Eucharist and other sacraments they are the central focus [of] rituals that are generally medieval in nature.'

We note that Australian Jesuit priest and theologian Andrew Hamilton has written about clericalism that:

> Its features include a formality of address, distinctiveness of dress, a sharp and religiously sanctioned distinction between grades, and an emphasis on authority and obedience in relations between higher and lower grades. This was reflected in an aura of awe surrounding the bishop, the assumption that bishops and priests knew best, and in a reluctance to acknowledge or report misconduct by clerics.[182]

Marist Father and Director of the Aquinas Academy in Sydney, Dr Michael Whelan SM, gave evidence that clericalism is born of two forces – desire for power and desire for privilege: 'In a word, clericalism is a lifestyle, that seeks and expects both power and privilege to be given simply because one is a cleric'.[183] Dr Whelan stated that this sense of entitlement to power and privilege is 'patently at odds with the life and teaching of Jesus'.[184]

The Archbishop of Brisbane, Archbishop Mark Coleridge, linked clericalism to misuse of power when he told us that 'Clericalism isn't just power; it's power used destructively'.[185]

We also heard that clericalism is an issue for non-ordained religious. The Provincial Superior, Congregation of the Passion, Father Thomas McDonough CP, gave evidence that 'clericalism and a sense of entitlement is a common challenge for religious men and women, too. It's not just for diocesan clergy'.[186]

We note that Pope Francis has been reported as stating in 2014 that clericalism is 'one of the worst evils' and that 'we need to conquer this propensity toward clericalism in houses of formation and seminaries too … Otherwise we are creating little monsters. And then these little monsters mold the people of God. This really gives me goose bumps'.[187]

Discussion of clericalism in this volume

As addressed in Section 13.11.1, 'A combination of factors', based on our consideration of all our case studies, private sessions, submissions and our review of relevant literature and previous Australian and overseas inquiries regarding child sexual abuse, we have identified a tightly interconnected cluster of systemic structural and cultural factors that appear to have contributed to both the occurrence of child sexual abuse and to poor institutional responses to child sexual abuse in the Catholic Church.

These relevant factors include:

- theological factors, including a patriarchal imagery of God, theology of the Church and theology of priesthood
- the culture of clericalism in the Catholic Church
- the organisational structure and governance of the Catholic Church
- the limitations of canon law
- celibacy
- screening, selection and initial formation of clergy and religious for ministry
- oversight, support and ongoing formation of people in religious and pastoral ministry
- a culture of secrecy in the Catholic Church.

Among these factors, it appears to us that clericalism sits at the centre, where it is interconnected with, and in some instances is the root or foundation of, the other contributing factors.

The theological factors that underpin the culture of clericalism, and the culture of secrecy which is one of the manifestations of clericalism, will be considered in detail in this section. The other factors will be considered briefly in this section and in more detail in Sections 13.11.4 to 13.11.10.

Theological factors relating to clericalism

> Much of our current pain has been caused by a model of priesthood in which individuals are presented as sacred personages with sacred powers. The priest was understood to represent in his person the perfect body of Christ. This meant he had to be totally flawless, all weaknesses and failure banished and kept from sight. The faithful wanted this, and we priests for the most part bought into it … This understanding of priesthood is now clearly bankrupt.[188]
>
> **Eamonn Conway, Professor of Theology, University of Limerick, Ireland**

We heard that clericalism is, in part, the product of theological ideas about the nature of God, the nature of the priesthood, and the nature of the Catholic Church and its relationship with the wider society. We discuss these ideas below.

Not only do these theological ideas provide a foundation for the culture of clericalism, they also provide the framework upon which the Catholic Church's organisational structure, governance and internal system of canon law are based.

Patriarchal imagery of God

Dr David Ranson, theologian and Vicar General of the Diocese of Broken Bay, told us during our *Institutional review of Catholic Church authorities* hearing that clericalism was a direct consequence of an exclusively patriarchal way of imagining God that 'does not stand corrected by other ways of understanding God'.[189] Dr Ranson wrote in 1997 that, when ideas about the exercise of religious ministry are 'tied to notions of lordship and control, domination and subservience are subliminally inherent, however benevolently ministry is exercised. The horizon of abuse is established'.[190]

Similarly, based on her own research with priest perpetrators, Irish psychologist and researcher Dr Marie Keenan has written that they frequently work out of a harsh and negative God imagery that is based on fear and guilt rather than unconditional love.[191]

The 1990 report of the *Commission of Enquiry into Sexual Abuse of Children by Members of the Clergy* in the Catholic Archdiocese of St John's Newfoundland in Canada (Winter report), noted that:

> Many have argued that patriarchal thinking is one of the contributing factors to the sexual abuse of children within the Archdiocese because of the power and position it confers upon the members of the patriarchal establishment, in particular the ordained clergy. In our culture this has been linked to the power over women and children which males have traditionally exercised. Such arbitrary assignment of authority, whether to men generally in a male-dominated society, or to priests specifically in a patriarchal church, can preclude freedom of insight and liberty of action.[192]

The Council, in its submission, accepted that the comments in the Winter report were applicable to circumstances in Australia.[193]

Theology of the priesthood

We heard that the culture of clericalism in the Catholic Church is associated with theological ideas about the nature and meaning of the Catholic priesthood.

Dr Whelan gave evidence that lay people in the early centuries of the Catholic Church took an active part in all the internal workings of the Church, including the election of bishops and the nomination of priests. They also contributed to making Church laws and took part in Church councils. He said, 'There was no monopoly on the part of the clerics'.[194]

Dr Whelan told us that a process of increasing 'exaltation of the clergy' and 'clericalisation of the Church', when 'the laity became non-entities', began from the early 4th century, when Christianity became the state religion of the Roman Empire.[195] He stated that it would be hard to overestimate the impact this historical moment had on the later culture and governance of the Catholic Church.[196]

This led to the emergence of new structures and saw a growing tendency to place all Catholic Church affairs into the hands of the clergy. Ultimately, the clergy emerged as 'a special category of Christians, an order set apart and distinguished' by its celibate way of life and its 'juridical privileges'.[197] Meanwhile, the Church's self-understanding shifted, as it 'moved away from a community of pilgrims to an empire understanding'.[198] Dr Whelan told us that an imperial understanding of governance is 'deeply embedded' in the Catholic Church's culture of governance today.[199]

Dr Whelan used the term 'Constantinianism' to describe the internal culture generated by these changes, which he said is characterised by lack of accountability, transparency and professionalism; insufficient involvement of women in decision-making and articulation of moral teachings; triumphalism (the 'arrogant sense of being "right", leading in turn to a felt need to cover up any signs that we are not "right"'),[200] and 'a predominant focus on the system – specifically doctrine and law – with an inadequate focus on the person and relationships'.[201]

Consistent with Dr Whelan's evidence, we note that Dr O'Hanlon has written that the fine dress associated with clericalism 'dates back to the paraphernalia of the Roman senate, reinforced by the 4th century Constantinian settlement between Church and State'.[202]

We heard that the Catholic Church's celibacy rule plays a key role in the culture of clericalism. In its submission, the Council told us that:

> Throughout the history of the Church, power associated with sex has had considerable symbolic meaning. Power was accrued to those who overcame sex. Sex was banished to the person's unconscious; it became not so much controlled as denied. The man who attained this total mastery was acknowledged as a spiritual master. But the very radical nature of such a belief meant that it could be managed only by especially estimable people who were all the more admirable because they were exceptional. The link was established between celibacy and purity, ensuring the priest's position of superiority. With a strict system of behavioural control reinforcing an attitude to sex in this way, the church reinforced its own power. In a system of this kind, the setting apart of the priest based on the rule of celibacy was the sign of power exercised over a laity treated as less significant. When this model dominates thinking and behaviour, the priest's identity becomes equated with his role. As a consequence, his person is hooked by power itself.[203]

The link between clericalism and celibacy as a contributing factor in relation to child sexual abuse in the Catholic Church is considered in more detail in Section 13.11.7, 'Celibacy'.

The notion of 'ontological change'

We heard that a particular theological notion – that the priest is 'ontologically changed' by ordination – has contributed to the culture of clericalism.

Dr Christopher Geraghty, a retired judge of the District Court of New South Wales, former priest and seminary lecturer, explained that the language of 'ontological change' refers to the notion that, when a priest is ordained, an 'indelible seal … goes on the soul' so that there is 'a change in the very being, in the very essence of somebody', and the priest becomes 'different in his very being':[204]

> So you are a human being when you are born; when you are ordained you are a priest. So that puts you on a pedestal of perfection. You are an image of Jesus, of Christ.[205]

Dr Keenan provided evidence that, according to this theology of priesthood, the priest is not just a minister of the sacraments: 'He acts *in persona Christi*, not as a mere instrument of Christ's work but rather as Christ's real image and representative'.[206]

Dr Keenan drew our attention to a passage from a book written in 2008 by the Archbishop of Hobart, Archbishop Julian Porteous, who at that time was Rector of the Good Shepherd Seminary in Sydney:

> A man once ordained is ontologically changed. He is a priest. Something mysterious happens. It is an action of grace, and something quite real … The priesthood is not just the deputing of an individual to take on a particular role. It is more than a function; it is a radical reorienting of the whole reality of the person. He is changed at the level of his being … Ordination is not just the power to exercise the priestly office in the Church; it is such a transformation of the person that a distinctly priestly character can be identified in him.[207]

Dr Keenan commented that:

> Influenced by this theology of priesthood, it is little wonder that priesthood was construed by clergy and laity alike as a personal gift and a permanent sacred calling, rather than a gift of service to the community. It is also little wonder that a corrosive culture of clericalism was to be borne from such a theology, which was to [effect] clergy and laity alike.[208]

Dr Keenan stated that she is 'coming to the view' that the theology of 'ontological change' not only 'sets otherwise healthy men … apart from ordinary men in an unhealthy manner', but also participates in the culture of clericalism, which 'has been part of the sexual abuse crisis in the Catholic Church':[209]

> this ecclesiology gives rise to a dual model of Church in which the Church of the clergy is superior and more 'holy' when compared with the Church of the laity. This version of Church can be seen as creating part of the climate in which the sexual abuse of minors became possible in the first instance and in which it remained undetected for far too long.[210]

The Director of Mission and Formation at Centacare Brisbane and former seminary rector, Dr John Chalmers, also told us that it was dangerous 'if a priest settles for ordination as his deepest identity', or holy orders 'is seen as making one "ontologically" different and superior to others. Such clericalism engenders a false sense of entitlement'.[211]

Archbishop Coleridge told us that 'the language of ontology is simply born of another time and is very foreign to us, and I wouldn't adopt it'.[212] Archbishop Coleridge told us that, in his view, what changes radically when a man is ordained is 'the pattern of his relationships ... he relates differently literally to everyone'.[213]

The Archbishop of Adelaide, Archbishop Philip Wilson, gave evidence that 'ontological change doesn't mean making a person superior'. Rather, as 'we have always understood this, correctly', it means that, through ordination, priests are 'more radically committed to the service of God's people than they are from the moment of their baptism'.[214] Archbishop Wilson said he thought it was highly possible that 'even into modern times, people might have had the wrong idea' that ordination 'separated you and elevated you. I think in my lifetime, that is an idea that has been really fought against'.[215]

Dr Doyle's evidence was that clericalism is a product of the concept of 'ontological change':

> Though this concept is impossible to define and, in the words of more than one reputable theologian, is no more than philosophical gibberish, it is nevertheless used by the clerical world to define the distinguishing factor. Although people (including priests) do not understand what it means they believe it justifies the entitlement, trust, protection and privileges enjoyed by priests.[216]

The Catholic Church as a 'perfect society'

We heard that the clericalisation of the priesthood was accompanied by the clericalisation of the Catholic Church.[217] That is, the culture of clericalism also feeds into certain theological ideas about the nature and meaning of the Catholic Church.

In the Middle Ages the Catholic Church began to think of itself as a *societas perfecta* or 'perfect society', meaning that it saw itself as superior to all other institutions and accountable to no one but God.[218] *Societas perfecta* theology remained dominant in the Catholic Church up to the mid-20th century.[219]

In relation to the internal structure and governance of the Catholic Church, 'perfect society' theology is associated with the view that the Catholic Church is a two-tiered society of the ordained and the non-ordained, where leadership is restricted to the clergy, clergy are only accountable to other more senior clergy, and the pope and the bishops are accountable only to God.

In a submission on behalf of the Council, canon lawyer Dr Rodger Austin drew our attention to a passage from Pope Pius X's 1906 encyclical letter, *Vehementer nos*, as an example of the two-tiered vision of the Catholic Church associated with 'perfect society' theology:[220]

> The Church is essentially an *unequal* society, that is, a society comprising two categories of persons, the Pastors and the flock, those who occupy a rank in the different degrees of the hierarchy and the multitude of the faithful. So distinct are these categories that with the pastoral body only rests the necessary right and authority for promoting the end of the society and directing all its members towards that end; the one duty of the multitude is to allow themselves to be led, and, like a docile flock, to follow the Pastors.[221]

The Bishop of Parramatta, Bishop Vincent Long Van Nguyen OFM Conv, gave evidence during the *Institutional review of Catholic Church authorities* hearing that clericalism in the Catholic Church is a by-product of 'perfect society' theology. He told us that the 'perfect society' model of the Catholic Church was operational during the pontificates of Pope John Paul II and Pope Benedict XVI and that it was a model that was 'no longer relevant' to the needs of the Catholic Church.[222] Bishop Long gave evidence that:

> I see the clericalism as a by-product of a certain model of Church informed or underpinned or sustained by a certain theology. I mean, it's no secret that we have been operating, at least under the previous two pontificates, from what I'd describe as a perfect society model where there is a neat, almost divinely inspired, pecking order, and that pecking order is heavily tilted towards the ordained. So you have the pope, the cardinals, the bishops, religious, consecrated men and women, and the laity right at the bottom of the pyramid.[223]

In terms of the Catholic Church's relationships with the external world, 'perfect society' theology is associated with the view that the Catholic Church is superior to the other churches, self-sufficient and independent of the authority of the secular State, and separate from and above the wider society, which is essentially viewed as sinful and hostile.[224]

In terms of the Catholic Church's relationship with the wider world, Dr Whelan gave evidence that Catholic triumphalism had contributed to the 'difficulties Roman Catholicism has both with change and admitting error, and the compulsion to cover up when threats to the system appear'.[225] In relation to the emphasis of 'perfect society' theology on the Catholic Church's autonomy and self-sufficiency, Dr Whelan, Dr Ranson and Dr Geraghty all gave evidence during our *Institutional review of Catholic Church authorities* hearing that part of the clericalist mindset is that (in Dr Ranson's words) it 'doesn't have anything to learn from outside of itself'.[226]

We heard that clericalism has a direct bearing on dysfunctional governance in the Catholic Church. For example, Dr O'Hanlon has written that 'The dominant culture of our Church remains that of a dysfunctional, autocratic clericalism'.[227]

Governance and management consultant Dr Maureen Cleary OAM gave evidence during our *Institutional review of Catholic Church authorities* hearing that 'some of those who exercise authority' in the institutional Catholic Church 'may believe they are the guardians of that structure and substitutes for God whom the structure represents'.[228] Dr Cleary quoted from a book by American Jesuit theologian David Stagaman SJ, *Authority in the Church*:

> Authority figures become substitutes for God, believed to possess authority directly from God with no reference to community purposes and values and responsible to no one in the exercise of that authority.[229]

The role of organisational structure and governance as a factor in the Catholic Church's inadequate response to child sexual abuse is considered in Section 13.11.4, 'Organisational structure and governance'.

A number of canon lawyers have suggested that the notion of the Church as a 'perfect society' is reflected in canon law.[230] We heard that the Catholic Church's canon law system privileges the interests and rights of the clergy above the interests of the non-ordained and the interests of victims. According to Dr Doyle, canon law 'enshrined the basic tenets of clerical privilege', including the notion that clerics are special and deserve to be protected and dealt with by a separate set of standards from lay people.[231]

The 1917 Code reasserted the so-called 'privilege of the forum', sometimes also referred to as the 'privilege of clergy'.[232] This was a right given to the clergy by the Roman emperor Constantine in about 312 AD to be tried exclusively in Church courts, rather than civil courts.[233] Throughout the 19th and 20th centuries, the Holy See entered into a number of concordats (treaties) with states. In doing so, the Holy See sought agreement, where possible, that bishops were not to be tried in civil courts without its permission, and if clergy were to be tried in the civil courts that they would not to be tried in public or detained in common prisons.[234] A civil lawyer who has published in the area of canon law, Mr Kieren Tapsell, told us in his submission that these treaties were a reflection of the theology that priests are 'ontologically changed beings', and that as 'special people' they should 'not have to spend time in jail like every other convicted citizen', but instead 'in a place more appropriate to their status … namely monasteries'.[235] The concordats also reflected the Church's concern about the effects of 'scandal'.[236] The 'privilege of the forum' never applied in Australia, and was removed in the 1983 Code.[237]

We provide more detailed consideration of canon law processes for responding to clergy accused of child sexual abuse, and how they differ from processes for responding to other Catholic Church personnel accused of child sexual abuse, in sections 13.2, 'Canon law provisions relevant to responding to child sexual abuse' and 13.11.6, 'Canon law'.

Alternative model of Catholic Church proposed by Second Vatican Council

According to Dr O'Hanlon, the Second Vatican Council (1962-1965), in its theology, tried to undercut the older theology of the priest as 'ontologically changed':

> It had said, look, the most important sacrament in the Catholic Church is baptism, and that means that we're all equal before God as brothers and sisters of Jesus Christ. But that older theology of the priest as somehow above or superior to proved very hard to eradicate and lingered on, and I think it lingered on sufficiently to cause great passivity in the face of this egregious scandal which we now know was occurring.[238]

Dr O'Hanlon gave evidence that, in the 10 years after the Second Vatican Council, sections of the Catholic Church worked against the theological insights proposed by the council and, when things 'settled down in the late 1970s, what took over, in fact, was an older model of Church'.[239] Dr O'Hanlon told us that:

> It looks like what happened was that the people who were put in charge of the reform post Vatican II were the people who were opposed to the reform in Vatican II. So there was a small minority which was very tenacious in its opposition to the movement in Vatican II towards a new kind of Church. They were predominantly part of the Vatican civil service, the curia, and they were put in charge of managing the reform.[240]

We heard that the Catholic Church's failure to implement the changed model of Church envisaged by the Second Vatican Council in the 1960s played a role in the inadequate response of the Catholic Church leadership to the child sexual abuse scandals. Dr O'Hanlon said that as a result of the Roman Curia's successful opposition to the Second Vatican Council reforms, the Catholic Church was left 'very poorly equipped' in the 1980s and 1990s to 'deal with a scandal which had affected the top of the organisation'. He said this 'left the lower ranks and the bottom of the organisation voiceless in expressing their concern, because there didn't seem to be any outlet for the expression of concern'.[241]

Clericalism as a factor in the occurrence of child sexual abuse

> Unhealthy ideas concerning power and its exercise are always relevant to the question of abuse. Spiritual power is arguably the most dangerous power of all.[242]
>
> **Bishop Geoffrey Robinson, retired Auxiliary Bishop, Archodiocese of Sydney**

We heard that the theology of priesthood and its relation to clericalism, together with the sense of entitlement, resistance to accountability and potential for abuse of power, were all relevant factors in relation to the occurrence of child sexual abuse by Catholic clergy and religious.

'Pedestalisation' of clergy and abuse of trust

Dr Ranson told us that the idealisation of the Catholic clergy was one factor that contributed to child sexual abuse.[243] Dr Ranson has written that, because of the culture of clericalism, there had been little suspicion of clergy in their interactions with children:

> A man is not rendered holy by ordination. Nor is he given an infusion of maturity or integrity. And yet, I suggest, the majority of people, who for so long have been kept in tutelage to a clerical caste, somehow perceive this to be the case.[244]

We heard from a number of expert witnesses that the culture of clericalism provided clergy and religious who had an inclination to abuse children with the opportunity to do so. Dr Doyle told us that priests were able to use their status as 'in some form or way sacred and above ordinary people' in order to sexually abuse minors, in the knowledge that they would be protected:

> They used this stature, this belief on the part of people that they were higher beings, oftentimes, to seduce, to groom the victims, to lead them in. The victims didn't know what they were getting into. They had no idea. I can't tell you how many have said, 'I thought it was a tremendous honour that he was picking me out, because he's a priest. He's on a pedestal. He's higher than others.' And he's on that pedestal because this concept of the institutional Church has built that pedestal for him.[245]

In Chapter 9, 'Characteristics of child sexual abuse specific to religious institutions', we set out what we heard during private sessions about the status of people in religious ministry and the connection of this status to the occurrence of child sexual abuse. We heard that some children who were sexually abused thought they were being abused by a representative of God, or even by God.

In this respect, Dr Doyle provided evidence that 'profound spiritual trauma and damage'[246] to abuse victims, which is lasting, 'is made much more acute and painful by the effects of the belief systems that form the basis for the culture of toxic and narcissistic clericalism'.[247] Dr Doyle told us that:

> Priests take the place of God – which is another crazy belief that a lot of people have … so 'God is doing this to me. What did I do to offend God?' All of this comes from this structure … and the victims believe that. That concept also is what has protected the disclosure, where parents would be afraid to disclose that their child had been abused because they are intimidated, oftentimes.[248]

In a submission to the Royal Commission, Australian psychologist Alex Nelson told us that clericalism brings to the priest a secure place in the Church's hierarchy and 'generates an expectation that the laity will be compliant':

> Many Catholics have been inducted, through family life and education at Catholic schools, into doing without protest what the priest says or asks of them. In previous decades when sexual abuse had occurred and become known through whispered rumours there was reluctance among Catholics to complain or say anything critical about priests. They anticipated that voicing a complaint would be likely to bring disapproval from their own family members and from others in the local parish.[249]

The Winter report observed that:

> The position the offenders occupied in the community provided them many opportunities for sexual abuse because they were given unquestioned and unsupervised access to male children. But their status as priests was used in other ways as well … When priests of this Archdiocese sexually abused children, they exploited special power that derived from their positions as spiritual and community leaders.[250]

The Winter report observed that, in the Catholic Church in Newfoundland, the power of the priest had 'reached a position of nearly absolute authority in everyday life'.[251] The report stated that this pattern of unchecked power precluded a 'healthy scepticism':

> Such misplaced faith in individuals not only gave the offenders the opportunity and power to effect the abuses, but also encouraged suppression and denial of the disclosures. Who would believe a mere boy who said bad things about a priest?[252]

The 1992 report of the Canadian Conference of Catholic Bishops, *From pain to hope: Report from the Ad Hoc Committee on Child Sexual Abuse (From pain to hope* report) observed that the status of priests and their ministry gave them 'excessive power, unchecked by any kind of social control', which 'placed certain individuals beyond the reach of legitimate questioning and made it possible to prevent detection',[253] and that this provided 'a more favourable environment for committing and continuing acts of child sexual abuse'.[254]

Similarly, the 1999 Australian Catholic Social Welfare Commission report *Towards understanding: A study of factors specific to the Catholic Church which might lead to sexual abuse by priests and religious* (*Towards understanding*), prepared for the National Committee for Professional Standards, stated that there are some specific occupation-related factors that are peculiar to priests and which intensify and foster an addictive cycle amongst this group. These include:

> pedestalisation of clergy by congregations whose expectations only serve to enhance feelings of sexual obsession and reinforce the need for secrecy…
>
> … [and] the trusted position clergy enjoy as guardians and champions of morality, which places them in dependency relationships with vulnerable people.[255]

Towards understanding noted that 'the risk of offending is increased when the potential perpetrator confronts a person, who by virtue of their subordinate position or emotional state is vulnerable to exploitation'.[256]

The 2013 report of the Victorian Parliament Family and Community Development Committee, *Betrayal of trust: Inquiry into the handling of child abuse by religious and other non-government organisations,* noted that the 'combination of unquestioning trust, absolute authority and lack of supervision created a high-risk environment' in religious institutions. The report continued, 'Today, this type of unconstrained engagement between children and representatives of the Catholic Church is less extensive. The Committee considers, however, that the dynamics of these risks is still a critical matter'.[257]

The 2005 report on sexual abuse in the Diocese of Ferns in Ireland commented that most clerical abusers were perceived as 'pious and holy' or 'gentle and inoffensive', enabling them to be readily accepted in their communities and to befriend families of their victims with ease. This resulted in parents failing to appreciate the risk and abuse being allowed to continue undetected for long periods of time.[258]

Writing about how the idealisation of the clergy contributed to the child sexual abuse crisis in the Catholic Church, Eamonn Conway, Professor of Theology and Religious Studies at Mary Immaculate College, University of Limerick, Ireland, has commented on the 'exclusively male monarchical model of priesthood' in which priests are regarded as 'sacred personages'. He states that 'This understanding of priesthood is now clearly bankrupt, and has been for some time', and that it is 'Good News that this destructive model of Church leadership is crumbling'.[259]

Interaction between clericalism and narcissism

Individuals with narcissistic personality disorder can be exploitative, extremely manipulative, charismatic and/or grandiose, with an intense need to be admired and loved.[260] In Section 13.11.2, 'Individual factors', we addressed narcissism as a psychosexual factor in the occurrence of child sexual abuse by individual Catholic clergy and religious. Here we consider how narcissism interacts with clericalism and how it is manifested within the Catholic Church at a systemic or cultural level.

As addressed in Section 13.11.2, clinical psychologist and former clinical director of Encompass Australiasia, Dr Gerardine Robinson, gave evidence during our *Institutional review of Catholic Church authorities* hearing that her clinical research has demonstrated that, historically, narcissism has been one of the traits in clergy that the Catholic Church selects and rewards.[261]

Dr Whelan's evidence was that what is 'most immediately worrying' about the culture of clericalism is that, 'especially when it is implicitly or explicitly affirmed by the system', this sense of entitlement to power and privilege:

> can be very attractive to inadequate personalities and/or those who are seeking refuge from the serious demands of being an adult in the world and/or those who are bent on being 'someone' in the eyes of family and society.[262]

Dr Doyle's evidence was that a 'cursory review' of the literature on narcissism and a reflection on some of the aspects of the Catholic clerical world point to a pervasive degree of narcissism, not just on the level of individuals but also on the corporate level. For example, Catholic liturgical rituals do not merely appeal to the individual cleric who needs to be 'centre stage', they institutionalise that need:

> Clerical dress advertises the identity and elaborate public ceremony that dignifies prelates in impressive rich robes. Such distinction attracts (or draws) one to identify with the whole church institution, suffused as it is with power, arrogance, vanity, and inordinate self-esteem. There are men with strong personalities who can escape indoctrination to one degree or another and function maturely in the system. There are not enough, however, to alter the clerical system at this critical level.[263]

Writing about the links between clericalism and the occurrence of child sexual abuse and a lack of empathy or awareness of the impacts of those offences, American psychologist Mary Gail Frawley-O'Dea has described clericalism as 'a close relative of pathological narcissism':

> Clericalism justifies rigidly hierarchical power arrangements by declaring that, by virtue of his papal or ecclesiastical caste, the individual is *entitled* to the power he wields and the deference he demands. It is a phenomenon that divides people into categories, emphasizing status differences rather than the commonalities of the human condition. Clericalism is likely to correlate with diminished capacity for human empathy.[264]

According to American clinical social worker Myra Hidalgo, the hypothesis that the culture of clericalism may foster self-serving attitudes and narcissistic personality traits in sexually immature clerics, who then act with a sense of entitlement in exploiting their positions of trust with the laity, 'is well supported by clinical evidence and professional literature describing the dynamics of sexual exploitation of vulnerable adults by clergy, psychotherapists, and health care professionals'.[265]

Culture of obedience and the interplay of power and powerlessness

Dr Doyle's evidence was that obedience and loyalty are at the centre of the culture of clericalism:

> As a man moves up in the ecclesiastical system more conformity and obedience are expected and demanded for further advancement. Obedience that binds an individual (even blindly) to authority is the ultimate test of loyalty and proof that the individual can now justly assume institutional identity. There is little psychic distinction between self and institution and thus one's value is subsumed by identification with the power, prestige, and status of the church.[266]

In her study, *Child sexual abuse and the Catholic Church: Gender, power, and organizational culture*,[267] Dr Keenan has written that 'obedience is one of the central features of governance for the Roman Catholic Church in exercising authority',[268] and that 'the role of obedience in the current crisis of child sexual abuse hitting the Catholic Church cannot be underestimated'.[269]

Dr Keenan provided evidence about the interplay of power and powerlessness within the Catholic Church's clerical and hierarchical system. She said that the priest perpetrators who participated in her research felt personally powerless even though they had the strong sense that, as priests, they were set apart from the non-ordained. They were working in a pastoral environment where power was unregulated and where they were unsupervised, unsupported and unchallenged. However, they also lacked a sense of autonomy within a governance system that was framed within a theology of obedience, especially to their bishops, on whom they were dependent for accommodation and salary. Dr Keenan's evidence was that:

> The clerical perpetrators lived out of an unreflective script of private powerlessness whilst ministering in a site of unsupervised and unchallenged public dominance. This paradox is at the core of their sexual offending. A feeling of private powerlessness that eclipsed an awareness of the power context, from which and in which they operated as adult males and as ministers of the Catholic Church, became a deadly combination of circumstances that resulted in the sexual abuse of minors. This is at the heart of the abuse problem of the Roman Catholic Church. [270]

Dr Keenan stated that her research suggests that:

> the practices of obedience and the absence of personal autonomy in clerical and religious life must be considered significant in the sexual offending of Roman Catholic clergy – especially if obedience becomes an instrument of oppression in the hands of Church leaders who work in a spirit of power and control rather than a spirit of guiding leadership.[271]

Dr Keenan's research also suggested that, in the minds of the priest perpetrators, there were not clear boundaries between their sacred identity as priests and their human identity as male human beings, which led to a denial of the reality of their sexual and emotional lives. It also led to an inability to distinguish between their work as priests and their personal lives.[272]

The Council referred to Dr Keenan's analysis in its submission, stating that:

> The disparity between the actual (structural) power that the minister has and the powerlessness he feels can lead to conditions conducive to sexually abusive behaviour. In the frustration that an immature priest feels he may begin to act out in irresponsible ways, unaware of the damage he does with the real structural power he possesses. Abusive priests rarely see themselves as personally powerful people. The power of the ministry becomes a compensation for what they lack personally.[273]

Professor Neil Ormerod, Professor of Theology at the Australian Catholic University, gave evidence that, in relation to the lived experience of Catholic clergy and religious, 'most religious life does leave people feeling very inadequate'. He agreed with Dr Keenan's conclusions about the combination in religious life of public unsupervised dominance and feelings of private powerlessness, and the interaction in ministry with vulnerable people, which he described as 'a really potent mix'.[274]

Professor Ormerod also provided evidence that:

> The culture of the church's governance is shaped by bonds of obedience (priests to bishops, bishops to pope, religious to community superior) and loyalty to the church itself to which they are personally committed … and an internal system of rewards and punishments. Such cultures are prone to self-protection, denial of problems, and resistance to change.[275]

The Archbishop of Perth, Archbishop Timothy Costelloe SDB, gave evidence that one reason for very careful initial and ongoing discernment in selecting candidates for the priesthood was that a 'poorly integrated person' may have:

> a rather poor sense of self and then they find themselves completely powerless they may then look for ways to exercise that power in very damaging, destructive and even criminal ways.[276]

We heard that abusive patterns of domination and submission are one of the negative aspects of a clerical culture based on obedience. Dr Ranson has written that religious communities are, by nature, 'conflictual forums', and that the relationship between clergy and their bishops or religious and their superiors 'has itself on occasions been marked by abusive patterns'.[277] Brother Peter Clinch, Province Leader of the Oceania Province of the Christian Brothers Congregation, gave evidence during our *Institutional review of Catholic Church authorities* hearing. He confirmed that, historically, violence and humiliation were a feature of the culture and formation practices of the Christian Brothers during his early years in the congregation.[278]

Asked whether harmful aspects of formation and community life of the Christian Brothers may help to explain levels of abuse perpetrated by members of the congregation, Brother Clinch told us that factors such as a culture of violence and humiliation had been 'very' significant.[279] He told us these elements had entered into the culture very early in the history of the Christian Brothers and had been built on until there had 'been an implosion'.[280]

We note that in Ireland, the 2009 *Final report of the Commission to Inquire into Child Abuse* (Ryan report) was critical of the regime of obedience and humiliating punishment in the Irish Christian Brothers, which resulted in the reluctance of members to criticise their superiors and report any suspicions.[281]

Clericalism as a factor in the inadequate response by Catholic Church personnel to child sexual abuse

> One need look no further than rampant clericalism for an explanation of the fear, secrecy, and arrogance so prevalent in the clerical elite's inadequate response to the sexual abuse crisis.[282]
>
> **Dr Thomas P Doyle OP, American Dominican priest, canon lawyer and survivor advocate**

Identification with perpetrators rather than with victims and their families

Some witnesses told us that, in responding to allegations and information about child sexual abuse, bishops and religious superiors often identified with the abusers rather than the victims.

Professor Ormerod told us that:

> The priest-perpetrator is a member of the same clerical club, with whom those in authority spontaneously identify. They do not normally identify with the victim who is viewed as attacking not only the perpetrator, but the whole authority and credibility of the church. The 'problem' is then not the perpetrator of abuse, but the victim who speaks out who threatens the culture.[283]

Professor Ormerod told us that the tendency to spontaneously identify with the perpetrator rather than the victim is what has to be broken down:

> But it's a very tight cultural group. They have all sorts of associations, common training, common backgrounds, common lifestyles, that they identify with one another ... I think you'll probably find the same in military situations and armed forces, police forces, and so on, that there's this esprit de corps, there's this sort of bonhomie between priests. They are part of, and as we say, it's a clerical club … So it's very difficult for them to make assessments about their brother priests or religious, because they're the ones whom they spontaneously identify with when complaints are made, when action has to be taken.[284]

The 2004 United States Conference of Catholic Bishops National Review Board's *Report on the crisis in the Catholic Church in the United States* (National Review Board report) made a similar observation. The report stated that clerical culture and a misplaced sense of loyalty contributed to the unwillingness of members of the clergy to condemn the conduct of a fellow priest:

> A significant cause of the inadequate response of Church leaders to allegations of sexual abuse was the fact that in assessing allegations against accused priests, presumptions rooted both in theology and Church culture heavily favoured the accused priest. Surveying the landscape in certain dioceses, one bishop noted, 'There is a larger pattern of protection of priests first, rather than protecting the children first'.[285]

The report observed that clericalism could be blamed 'for the fact that, to a great degree, bishops and other Church leaders engaged in massive denial':

> Church leaders often were reluctant to acknowledge that a priest, a man ordained to be 'another Christ', could have engaged in the horrific acts of which he was accused.[286]

In relation to the Catholic Church's theology of priesthood, the report observed that there is a theological notion that when a man is ordained, he is 'permanently marked with the sign of Christ and ontologically changed' and that, unless his ordination is somehow invalid, he remains always a priest, even if laicised. This notion gave rise to 'an unfounded perception that a priest had a "right" to his ministry and caused unwillingness or reluctance on the part of bishops to take steps to remove a priest from ministry'.[287]

Avoidance of scandal and the protection of the reputation of the Church

It is now apparent that many Catholic Church leaders, in protecting priests and concealing their criminal behaviour, sought to avoid scandal and to protect the reputation of the Church. This is a manifestation of clericalism.

In protecting the status of the priesthood itself and protecting the institution of the Catholic Church, Catholic Church leaders sought to avoid scandal in a number of ways that often allowed child sexual abuse to continue, including:

- by moving clergy or religious brothers when allegations arose against them, sometimes into positions where they would continue to have access to children
- by not informing Church or school communities when complaints arose
- by not reporting allegations to civil authorities or discouraging victims and their families from doing so.

The Archbishop of Sydney, Archbishop Anthony Fisher OP, gave evidence that he considered a 'self-protectiveness on the part of the institution' to have been a factor in the inadequate response to child sexual abuse in the Catholic Church in Australia:

> you didn't want scandal, you didn't want causes for people to think less of the clergy or the bishops or religious, of the institution. And so you might say things were staring us in the face, but it seemed to me people wouldn't see it because they just wanted to protect the name or the institution very often.[288]

Dr O'Hanlon gave evidence that within the Catholic Church there was a general tendency to handle child sexual abuse 'in house', because clergy sexual abuse threatened the Church's moral authority in relation to sexuality:

> It was as if the Church, wishing to be seen as that beacon of holiness so central to its aspirational identity and so insistently absolute on matters of sexuality, could not quite face up to the grievous failure precisely in this area of sexuality by precisely its own clerical elite, and, in shame, tried to handle the matter as best it could on its own.[289]

Dr Doyle's evidence was that 'enveloping secrecy' around allegations of child sexual abuse made against priests was 'justified by the absolute need to avoid scandal', and was 'deemed necessary to protect the image of the institution, and the reputation of the clergy'.[290] He told us that this was 'based on a number of factors … that aren't too complicated to understand'.[291]

According to Dr Doyle, the first reason has to do with the Catholic Church's teaching about itself: that it was founded by Christ and is hierarchical by design. Dr Doyle gave evidence that the Catholic Church's 'structure itself, over the years, has become sacrosanct',[292] and that one of the main causal factors in the child sexual abuse scandals has been 'the prioritising of the image, the power, the authority of the institutional Church and the bishops over the welfare of the victims'.[293] He told us that, for these reasons, when the sexual abuse of children in Catholic Church institutions was reported, it was kept secret to avoid embarrassment to the institutional Catholic Church.[294]

Dr Doyle also told us that the bishops' concern to protect the Catholic Church's image was why victims in many instances had been 'turned into the enemy',[295] and that it 'has also prevented them from offering adequate pastoral care to the victims and their families, or from even realizing the extreme depth of the damage that sexual abuse can cause'.[296]

Dr Doyle told us that, when he worked as a canon lawyer at the office of the papal nuncio in Washington DC in the 1980s, he was told several times, 'We don't air our dirty laundry. We take care of our problems in-house'.[297]

In a pastoral letter that Archbishop Coleridge wrote in 2010 when he was Archbishop of Canberra and Goulburn, he gave his opinion about potential contributing factors to child sexual abuse in the Catholic Church. He identified that:

> A certain triumphalism in the Catholic Church, a kind of institutional pride, was a further factor … which leads to a determination to protect the reputation of the Church at all costs ... What mattered was to present well in public in order to affirm ourselves and to others that we were 'the great Church'. Such hubris will always have its consequences.[298]

Asked why it was that the Catholic Church's clerical arm has been reticent about accepting and applying the principle of transparency in its governance practices, Archbishop Coleridge told us this was 'the lingering effect of what was a deeply rooted culture: we do our own thing; we are, as it were, a law and a world unto ourselves'.[299] Archbishop Coleridge told us that 'the kind of defensiveness that leads to a culture of concealment and the fear that underlies that is one of the things that we have to put behind us'.[300]

Similarly, Archbishop Costelloe gave evidence that the 'whole culture of the Church' had been permeated with a view that the Catholic Church was a law unto itself and did not have to answer to anybody else. He told us this would have influenced the way bishops and priests made decisions, without feeling they needed to consult: 'I would see that as one of the major causes of this inability to deal with this terrible crisis, and in that sense I would see it as a fundamental cultural issue'.[301]

We note that, in the 2010 *Pastoral Letter of the Holy Father Pope Benedict XVI to the Catholics of Ireland*, Pope Benedict XVI listed a number of factors which in his opinion had contributed to child sexual abuse in the Catholic Church, including 'a tendency in society to favour the clergy and other authority figures; and a misplaced concern for the reputation of the Church and the avoidance of scandal'.[302]

Link between avoidance of scandal and culture of secrecy in the Catholic Church

It is apparent that efforts to 'avoid scandal' and protect the good name of the Catholic Church are among the factors that have generated a culture of secrecy in the Catholic Church.

The Council told us in its submission that the 2004 National Review Board report had noted 'a causal relationship between clericalism and sexual abuse on many levels, especially in the tendency of the hierarchy to protect priest-offenders, the tendency to secrecy, and massive denial of the magnitude of the problem'.[303] The Council submitted that:

> This aspect of clericalism generates a 'culture of secrecy' in which misbehaviour and immoral activities are ignored, tolerated or tacitly accepted to the point where any priest who would consider becoming a critic or informer risks alienation from the clerical culture.[304]

The Catholic reform advocacy group Catholics for Renewal told us that the 'structural secrecy within the Catholic Church, reinforced by canon law and instructions from the highest authorities, ensured cultural pressure against openness and honesty', especially in relation to clerical sexual behaviour that would damage the reputation of the Church, and that this had inevitably led to 'denial and disavowal'.[305]

This is consistent with the findings of a number of other inquiries. For example, the Attorney General of Massachusetts, Thomas F Reilly, in a letter at the front of his 2003 report, *The sexual abuse of children in the Roman Catholic Archdiocese of Boston*, observed that:

> For decades, Cardinals, Bishops and others in positions of authority within the Archdiocese chose to protect the image and reputation of their institution rather than the safety and well-being of children. They acted with a misguided devotion to secrecy and a mistaken belief that they were accountable only to themselves.[306]

The report recommended that 'The Archdiocese must end the culture of secrecy that has protected the institution at the expense of children'.[307]

The 2004 National Review Board report also stated that clericalism had contributed to a culture of secrecy. The report found that, until recently, few dioceses had relied upon independent investigators to assess the validity of allegations and that instead, in some instances, the cleric making the decision about the future of a priest had known him for many years.[308]

The 2009 report, *The Commission of Investigation report into the Catholic Archdiocese of Dublin* (Murphy report) found that:

> The Dublin Archdiocese's pre-occupations in dealing with cases of child sexual abuse, at least until the mid-1990s, were the maintenance of secrecy, the avoidance of scandal, the protection of the reputation of the Church, and the preservation of its assets. All other considerations, including the welfare of children and justice for victims, were subordinated to these priorities.[309]

In their review of the literature and previous inquiries into child sexual abuse in the Catholic Church, Desmond Cahill, professor in the School of Global, Urban and Social Studies at RMIT University, and researcher Peter Wilkinson, noted the link between the culture of secrecy in the Catholic Church and 'a strong tendency towards a public image of perfectionism on the part of the Church, because it was necessary for the Church to be seen as an all-holy institution'.[310]

Lack of understanding of external obligations to the wider community

During our public hearings, we frequently heard evidence from Catholic Church leaders that in the past they had treated child sexual abuse by clergy or religious as a moral failing which was to be forgiven rather than as a crime which they had a responsibility to report to the police.

For example, during *Case Study 44: The response of the Catholic Dioceses of Armidale and Parramatta to allegations of child sexual abuse against a priest,* the former Bishop of Parramatta, Bishop Bede Heather, who retired in 1997, was asked whether, as a bishop in the 1980s, he understood that sexual activity by an adult with a child was 'more than a moral failure'. He gave evidence that, 'I knew it was wrong, of course, but that's as far as I would have seen it at the time … it was a moral failure, could be corrected with proper guidance, and I hoped it would be'.[311]

Bishop Heather gave evidence that he entered the junior seminary at the age of 13 and remembered 'very little reference at all to civil law' in the moral theology he studied.[312] He agreed with the proposition that, as a consequence, he 'only thought in a space which involved the relationship between the priest and God but didn't see the priest's action in terms of the civil law':

> Largely I would agree, yes, that I had no formation in the civil law and didn't assess the actions of the clergy or, indeed, of others mainly in relation to the civil law or at all in relation to the civil law. I didn't see that as my role.[313]

This mindset was another aspect of the culture of clericalism.

Dr David Leary OFM, Provincial Secretary of the Order of Friars Minor (Franciscans) and Lecturer at the Yarra Theological Union, University of Divinity, Victoria, referred to the above exchange during the later *Institutional review of Catholic Church authorities* hearing. Dr Leary said that

he thinks the Catholic Church and its seminaries, priests and seminarians, 'not globally, but I suspect to a significant degree', do not fully understand how society works or 'the obligations that we have as a common community within society ... We haven't had that robust debate about how that works'.[314] Various witnesses before us confirmed that this was the case for many clergy and religious in Australia.

The relationship between Catholic Church's internal system of canon law and civil law is considered in more detail in Section 13.11.6.

Dismantling the culture of clericalism

> I think the real test of whether the Church is on board with change is whether or not it is prepared to jettison theological positions that not only don't help but may harm … and I would put the notion of ontological change in that category.[315]
>
> **Dr David Leary OFM, Provincial Secretary, Order of Friars Minor (Franciscans) and Lecturer at Yarra Theological Union, University of Divinity, Victoria**

It is apparent that there are many within the Catholic Church in Australia who are aware that clericalism is a problem and accept the need for change.

In its submission, the Council quotes Irish priest Gerry Maloney, who was writing in response to the 2009 Murphy report:

> What we need is not a rigid, defensive, secretive church but an open, transparent, inclusive one; one where power and decision-making are not the preserve of elderly celibate males but where all the baptised – men and women, single and married, in ministry and outside it – are included and have a voice.[316]

Catholics for Renewal told us that Pope Francis has clearly projected a fundamental attitudinal change with his remarks and actions that openly take on clericalism – a culture that Catholics for Renewal described as 'a disease that has held the church captive for centuries'.[317]

Sister Berneice Loch rsm, Institute Leader of the Institute of Sisters of Mercy Australia and Papua New Guinea, told us that:

> all abuse is, in my view, linked strongly with an attitude of dominance of one person over another, for whatever reason, and a dominance is an abuse of power. I think the Catholic Church has a problem, in that almost all power in the Catholic Church is highly clerical and highly genderised. I think those two factors need to shift if the culture of the Church is going to shift.[318]

The 1992 Canadian *From Pain to hope* report called on the Canadian Conference of Catholic Bishops 'to support and promote all that is being done to implement the true spirit of the Second Vatican Council'. The report recommended that the Canadian bishops should support and foster 'efforts to emphasise baptismal priesthood [that is, the shared priesthood of all the baptised] and promote an ecclesial communion in which the ministerial priesthood serves the priesthood of all the faithful'.[319]

In relation to 'shifting the model', Bishop Long gave evidence that the problem of clericalism 'can't just be addressed at a diocesan level, because the whole Church is embroiled in a certain model of being Church'. Bishop Long said that 'perfect society' ecclesiology is no longer relevant to the needs of the Catholic Church. He said the 'perfect society' model of Church 'can contribute to the abetting of the sexual abuse precisely because of the attendant issue of clericalism', which he said was integral to 'perfect society' theology:[320]

> I think we need to dismantle that model of church ... I think we really need to examine seriously that kind of model of Church where it promotes the superiority of the ordained and it facilitates that power imbalance between the ordained and the non-ordained, which in turn facilitates that attitude of clericalism.[321]

Bishop Long said that one step towards dismantling clericalism that the Catholic Church needs to consider is the abolition of honorific titles which, he said, breed clericalism and elitism:

> People still address me, especially the faithful Catholics, as 'Your Lordship', and I sort of cringe at that. Or when they come to see me, or they come to meet me, they kiss my ring. I'm not very comfortable with those sorts of practices because they encourage a certain infantilisation of the laity and that creation of the power distance between the ordained and the non-ordained, and I think we have to look at these things seriously.[322]

Bishop Long's comment about clerical titles is consistent with the view of American priest and theologian Donald Cozzens, who has argued that titles such as 'Your Eminence' for cardinals and 'Your Grace' for bishops have been carried over from 'feudal and courtly ages long past', and are 'the hallmarks of clericalism'.[323]

We note that Dr Keenan has written that the child sexual abuse in the Catholic Church has demonstrated the need for a new theology of priesthood, which she has written is 'long overdue':

> This important work needs to be engaged by theologians and social scientists with an interest in ending male sexual violence, including that perpetrated by clerical men. It is a project in which the ontological change at ordination will require honest theological and social scientific interrogation … If the sexual abuse crisis in the Catholic Church has served to surface the issues of gender, power, the theology of priesthood, and organisational culture, it can also be said that the organisational Church has failed thus far to begin to address these important structural, theological, and organisational issues.[324]

Member of the Pontifical Commission for the Protection of Minors, Professor Sheila the Baroness Hollins, told us that 'it's really, really important that there is more lay leadership, because I think that without that lay kind of levelling of the situation, it's going to be very, very difficult for the ordained Church leaders to be able to change the culture'.[325]

Archbishop Wilson gave evidence that a proposal that the Catholic Church needs to develop a program to engage with lay people about their proper role in the life of the Church is 'a very timely one for us to consider'.[326]

Retired Auxiliary Bishop of the Archdiocese of Sydney, Geoffrey Robinson has written that a 'true equality between male and female in the Church would – by itself – change the entire culture dramatically':

> It is surely reasonable to assume that, if women had been given far greater importance and a much stronger voice, the church would not have seen the same level of abuse and would have responded far better to this overwhelmingly male problem.[327]

Brother Peter Carroll, Provincial of the Marist Brothers in Australia, told us during our *Institutional review of Catholic Church authorities* hearing that, 'I believe we have to bring women much more into the power structures of the Church. It can't just afford to lie at the tokenistic level, which it generally does. It has to be real and it has to be deep seated and embedded'.[328]

We note that, similarly to Bishop Robinson, Archbishop Coleridge has written that:

> It is hard to believe that the Church's response would have been so poor had lay people been involved from the start in shaping a response. In more recent years, lay men and women – not all of them Catholic – have been much involved in shaping the Church's response, and that is one reason why we are now doing better. The task belongs not just to the bishops and priests but to the whole Church, with all working together in this fraught situation.[329]

In his evidence about how to move the Catholic Church on from a culture of clericalism, Archbishop Coleridge emphasised the importance of seminary formation and addressing questions of preordination training and also a more structured and systemic lifelong formation – 'a formation that inculcates the sense of ordained ministry as a form of service'.[330]

> MS FURNESS: What about including more laypeople and women in order to reduce the impact, if nothing else, of clericalism?
>
> ARCHBISHOP COLERIDGE: I absolutely agree with that.[331]

Archbishop Coleridge gave evidence that increasingly he has been including lay people and particularly women in his own decision-making processes and said he believed this was also true of other bishops.[332]

Screening, selection and initial formation

As indicated earlier in this section, we consider the culture of clericalism to be closely interlinked with a cluster of contributing factors which are considered in more detail in other sections.

One of these, which we now consider briefly in relation to clericalism, is the screening, selection and formation of candidates for the priesthood and religious life.

We heard that the process of initial formation plays a key role in initiating future clergy and religious into the culture of clericalism. Dr Keenan has argued that the problem of clericalism appears to be rooted in a seminary system that inculcates seminarians into a closed, secretive clerical world and in a hierarchy that is answerable only to itself.[333]

Archbishop Coleridge has attributed the problem of clericalism in the priesthood to inadequate seminary training.[334] Dr Ranson and Dr Leary both told us that clericalism emerges from over-lengthy institutionalised formation processes.[335] Brother Carroll told us that the formation processes of the Marist Brothers had instilled a sense of entitlement akin to clericalism and that 'some of the brothers would have seen themselves as set apart and special'.[336]

A number of witnesses in our *Institutional review of Catholic Church authorities* hearing told us about what they said was a resurgence of clericalism in Australia's seminaries and seminaries worldwide, and that, consequently, many younger priests who have emerged from the seminaries in recent years exhibit rigid clericalist attitudes. Dr O'Hanlon told us that this resurgence of clericalism was a 'characteristic push in a number of countries' and that he does not consider it to be 'at all desirable', because it represents a regression 'to a model of priesthood or a model of Church that may have been appropriate for its time but is no longer appropriate'.[337]

Dr Doyle told us that, following the Second Vatican Council, many clergy and Catholic laity hoped that the power of clericalism would wane, but studies indicate that the present generation of young priests see themselves as essentially different from the laity and as men set apart by God: 'It appears from this and other indicators that Catholic clericalism is alive, malignant and prospering'.[338]

The role of seminaries in inculcating the culture of clericalism in the Catholic Church, and measures in relation to formation that may help to dismantle clericalism or ameliorate its effects, are considered in more detail in Section 13.11.8, 'Selection, screening and initial formation'.

Support, supervision and ongoing formation of clergy and religious

We also heard that clericalism plays a role in shaping the attitudes of clergy in relation to the need for ongoing education and training and their participation in one-on-one professional supervision, both of which are envisaged in the National Committee for Professional Standards 2004 policy document *Integrity in ministry: A document of principles and standards for Catholic clergy and religious in Australia*.[339]

Dr Ranson told us that, because of the Catholic idealisation of priesthood, there has been little critical evaluation of ministerial integrity until recently.[340] Dr Whelan told us that members of religious congregations, and especially religious women, were much more likely than diocesan clergy to take up opportunities for ongoing formation. He suggested that clericalism is 'a major factor' in this:

> It was I think part of a cultural mindset that, having spent eight years in the seminary, you did not need any more training, you had it all. That is deeply embedded in Roman Catholic clergy, I think, and it needs to be broken.[341]

Professor Ormerod told us that some of the factors that contribute to clericalism are 'intractable' because they are intrinsic to the priest's role: 'What is needed is a program to ameliorate the worst aspects of this clericalism.'[342] In this respect, Professor Ormerod suggested three elements that are of particular relevance:

- regular pastoral supervision for all those in ministry
- ongoing professional and theological education
- seminary training in the professional ethics of ministry.[343]

The role of support, supervision and ongoing formation in helping to dismantle clericalism or ameliorate its effects is considered in more detail in Section 13.11.9, 'Oversight, support and ongoing training of people in ministry'.

Conclusions about clericalism in the Catholic Church

We are satisfied that clericalism has been a highly significant contributing factor to the occurrence of child sexual abuse in the Catholic Church and the inadequate or non-existent response by Catholic Church personnel. We agree with Dr Ranson's statement that the culture of clericalism has helped to establish a 'horizon of abuse'.[344]

We agree with Dr Keenan's thesis that the occurrence of child sexual abuse and the inadequate handling of abuse complaints were 'both part of the same institutional culture'.[345] In essence, that institutional culture is the culture of clericalism.

It is clear that clericalism sits at the centre of a tightly intertwined cluster of factors that have contributed to the occurrence of abuse and to poor institutional responses to this abuse. These factors include both individual psychosexual factors as well as structural and cultural factors. Among the structural and cultural factors, it appears to us that clericalism is the single most important one, because it combines with, and in some instances is the root or foundation of, the other contributing factors.

We agree with Sister Loch's comment that the Catholic Church has a problem with power, in that almost all power in the Church is highly clerical and highly genderised. We note that sexual abuse is always about the abuse of power and that child sexual abuse is overwhelmingly a crime committed by men.

We heard that the culture of clericalism is underpinned by particular theological ideas. In summary, we heard that:

- The notion that the priest is a sacred personage has contributed to exaggerated levels of unregulated power and trust which perpetrators were able to exploit. Non-ordained religious were regarded in a similar fashion. The notion that priests are 'ontologically changed', and that they are priests forever, has contributed to a reluctance on the part of bishops and the Holy See to dismiss perpetrators from the clerical state.
- The theological view of the Catholic Church as a two-tiered, top-down, 'perfect society' of the ordained and the non-ordained is intrinsically clericalist. It has contributed to the idealisation of the clergy and the diminution of the rights and voices of victims and their families, and children.
- Imperialist, triumphalist and exceptionalist aspects of Catholic clericalist culture contributed to the view that the Catholic Church's reputation and assets, the 'good name' of individual alleged perpetrators, and the status of the priesthood were to be protected at all costs. This also contributed to the further mistreatment of victims and their families who came seeking help and/or redress.
- The cultural mindset promoted by 'perfect society' theology – that the Catholic Church is above the State, that canon law outranks civil law and that the Church has nothing to learn from the outside world – provided the context in which Catholic Church personnel responded to child sexual abuse by clergy and religious as something to be handled internally rather than reported to the civil authorities.
- Because they were so immersed in the culture of clericalism, some bishops and some clergy who were trained according to this 'perfect society' model of the Catholic Church were able to exist inside a kind of clerical bubble. This either caused them to fail to understand their obligations under the civil law, and to the children in their care, or enabled them to morally disengage from those responsibilities. It was also due to their immersion in the celibate clericalist culture that they failed to comprehend the terrible impact of child sexual abuse on the victims and their families.

We are persuaded by Dr Keenan's explanation that the 'deadly combination' of the unregulated public power afforded to Catholic clergy on one hand and their feelings of private powerlessness on the other resulted in the sexual abuse of minors.

From the evidence provided by a range of Catholic Church leaders, including archbishops, bishops, provincials, senior clergy and theologians, it is apparent that there is strong agreement among the leadership of the Catholic Church in Australia that the culture of clericalism significantly contributed to child sexual abuse in the Catholic Church and to the inadequate response to that abuse.

There also appears to be significant agreement among those same Australian Catholic Church leaders in relation to what the Catholic Church needs to address at the level of its own theology in order to combat the problem of clericalism. In essence, they told us that the model of the Church envisioned by the Second Vatican Council needs to be implemented. As Sister Loch put it, 'we will not shift without shifting the model'.

We acknowledge that making recommendations with the intention of effecting cultural change is a very complex task. However, we note that some Catholic Church leaders have welcomed the Royal Commission's entry into this area of reform.[346] There are no recommendations that we could make which would have the effect of wholly dismantling the culture of clericalism. Instead, we propose to make a series of recommendations aimed at combating clericalism or ameliorating its effects.

The culture of clericalism is largely amorphous – the product of many centuries of shared Catholic institutional history and deeply ingrained attitudes. Other aspects of clericalism are, to use Professor Ormerod's expression, 'intractable'. These include the fact that ordination is reserved exclusively for men, the clergy's monopoly over the sacraments, and the fact that the clergy's domination of the governance of the Catholic Church is underpinned by canon law.

We make a number of recommendations relevant to clericalism:

- The evidence we have received and our review of the literature and previous inquiries indicates that clericalism is antithetical to a culture of transparency, accountability and collaboration. For this reason, in Section 13.11.4 we recommend a national review of the governance and management structures of dioceses and parishes, including in relation to issues of transparency, accountability, consultation and participatory governance structures and practices at every level (Recommendation 16.7).
- In their evidence to the Royal Commission, Catholic Church leaders expressed considerable support for greater involvement of lay people and women in decision-making. We make a recommendation to this effect in Section 13.11.4 (Recommendation 16.7).
- To the extent that the Catholic Church's system of canon law underpins the culture of clericalism, we believe it should be changed. We make recommendations in relation to canon law in Section 13.11.6 (Recommendations 16.10-16.17).

- We are satisfied that the Catholic Church's celibacy rule is a key component of the culture of clericalism. We make recommendations in relation to celibacy in Section 13.11.7 (Recommendations 16.18-16.20).
- In light of what we have learned about the role of initial formation in inculcating the culture of clericalism in seminarians and novices, and the resurgence of clericalism that we heard about in some seminaries and amongst a younger generation of clergy in Australia, we make a series of recommendations in Section 13.11.8 (Recommendations 16.21-16.24).
- We also make a recommendation in relation to professional development, professional/pastoral supervision, and performance appraisal in Section 13.11.9 (Recommendation 16.25).

13.11.4 Organisational structure and governance

> There has been a consistency in the exercise of governance in all aspects of the clergy sexual abuse phenomenon … A style of governance and a governmental structure that preserves and protects [the Catholic Church's] image, stature and power and that of its hierarchical leaders at the expense of the most vulnerable members of the People of God is clearly dysfunctional.[347]
>
> **Dr Thomas Doyle OP, American Dominican priest, canon lawyer and survivor advocate**

The Royal Commission is concerned with the structure and governance of the Catholic Church, as with other institutions that are the subject of our inquiry, insofar as structure and governance bear upon the protection of children from child sexual abuse in Catholic Church institutions.

As outlined in Volume 6, *Making institutions child safe*, governance encompasses the systems, structures and policies that control the way an institution operates, and the mechanisms by which the institution, and its people, can be held to account.[348] Governance strongly influences an institution's practices and decision-making processes. It is embedded in the good behaviour and the good judgment of those responsible for running an institution.[349] Integrity, transparency and accountability, risk management, culture and ethics are all important elements of good governance and can help an institution meet its objectives.[350]

We described the structure and governance of the Catholic Church in Section 13.1. This section addresses the evidence we heard and what we learned from previous inquiries about the contribution of the governance structure of the Catholic Church to the occurrence of child sexual abuse in Catholic Church institutions and inadequate institutional responses to this abuse.

In this section, we discuss:

- the power, role and oversight of bishops
- the governance of religious institutes
- the role of senior clergy and religious in advisory positions to bishops and provincials
- the role of the Holy See in responding to child sexual abuse
- the challenge of the autonomy of Catholic Church authorities to an adequate national response of the Catholic Church in Australia to child sexual abuse
- the involvement of lay people including women in governance
- the governance of Catholic schools
- the governance of Catholic community services.

We address issues in relation to the selection, training and education of priests for leadership in the Catholic Church in Australia in Section 13.11.5, 'Leadership'.

We address what we heard about the management and oversight of priests and religious in ministry, including the managerial structures for that oversight, in Section 13.11.9, 'Oversight, support and ongoing training of people in ministry'.

This section largely focuses on the governance structure of the ecclesiastical arm of the Catholic Church. It therefore focuses on the governance of the Catholic Church by clergy who, under canon 129 of the 1983 Code of Canon Law, have jurisdiction to exercise governance in the Catholic Church.[351] This excludes the 'laity' from governance. The 'laity' are all those who are not ordained (that is, religious brothers and sisters and lay people). However, some powers and functions of governance can be delegated by clergy to lay people.

We also address below what we heard about the governance of Catholic schools and Catholic community services. Catholic schools are increasingly managed through professionalised diocesan Catholic education offices or corporate entities separate from religious institutes. Catholic community services were historically undertaken as religious works under the authority of religious institutes. However, aspects of governance are increasingly being undertaken by lay people. Canonical structures have developed to enable them to do so.

Hierarchical and monarchical nature of Catholic Church governance

The governance of the institutional Catholic Church is hierarchical. American Dominican priest, canon lawyer and survivor advocate Dr Thomas Doyle OP provided a précis of evidence in which he stated that the Church is 'a stratified society essentially ruled by just under 3000 bishops', including archbishops, cardinals and the pope.[352]

The Catholic Church is also consistently described by commentators as having aspects that are monarchical and feudal. American priest and theologian Donald R Cozzens has written that through its history, the Catholic Church has adopted and retained monarchical and feudal governance practices from the secular world.[353]

We were told that this monarchical model of governance is a product of both the theology and history of the Church. Archbishop Mark Coleridge, Archbishop of Brisbane, gave evidence to our *Case Study 50: Institutional review of Catholic Church authorities (Institutional review of Catholic Church authorities)* public hearing, that the 'kind of monarchical understanding of episcopal governance' has 'deep historic roots'.[354] He told us, 'It has deep theological roots, too, because if you imagine God as a monarch and then Jesus as a monarch and the apostles are sent out by Jesus, and the Pope and the bishops are the successors of the apostles, the whole structure and the model becomes monarchical'.[355] In the Catholic tradition, bishops are regarded as successors to Jesus's 12 apostles.[356]

Dr Doyle's evidence was that, 'The official teaching of the Catholic Church holds that the hierarchical model was willed by God … The teaching and tradition that the hierarchical governmental system is of Divine Origin is essential for the support of the power of the hierarchical leaders'.[357]

The power, role and oversight of bishops

During our inquiry we have heard that the power, role and oversight of diocesan bishops frequently contributed to the occurrence of, and poor institutional responses to, child sexual abuse in the Catholic Church. In particular, we heard about issues relating to:

- the independence of bishops and their oversight by the Holy See and at the national level
- the concentration of power in the person of the diocesan bishop
- consultation, transparency and due process in the decision-making of the diocesan bishop
- consultative, inclusive and transparent models of diocesan governance.

In canon law, a diocesan bishop has 'all ordinary, proper and immediate power which is required for the exercise of his pastoral function', which includes legislative, executive and judicial power.[358] In his governance of his diocese, he can exercise this power personally or, where permitted by canon law, delegate as he chooses.[359] There are limited, mainly financial, matters on which the bishop is required to seek the approval of the Council of Priests, the College of Consultors and/or the Financial Council.[360] The bishop may also seek, but is not bound by, the advice of the College of Consultors (a body made up of priests) on certain matters, including the appointment and movement of priests in the diocese.[361]

Canon law also provides that each diocese is to have a Financial Council in which lay persons can participate.[362] In governing a diocese, a diocesan bishop can also make use of other consultative structures, including diocesan synods and pastoral councils. We address these further below in discussing the involvement of lay men and women in the governance of the Catholic Church.

We discuss the role of diocesan bishops in handling complaints of child sexual abuse under canon law, as well as procedures for removing diocesan bishops from office, in Section 13.11.6, 'Canon law'.

The independence and oversight of diocesan bishops

> I have actually described the Catholic Church as the largest ungoverned organisation in the world.[363]
>
> **Professor Sheila the Baroness Hollins, Member of the Pontifical Commission for the Protection of Minors**

In Section 13.1, 'Structure and governance of the Catholic Church', we note that the Catholic Church is both a global entity under the leadership of the pope (sometimes called the 'universal church') and a grouping together of many local or 'particular' churches (each local diocese constitutes a 'particular' church), each under the leadership of its own bishop appointed by the pope.[364] Each diocese is autonomous, with its own structure and governance mechanisms to assist the bishop in governing his diocese.[365] We heard that, while bishops are appointed by and accountable to the pope, bishops govern their dioceses independently from each other and have authority in their diocese upon which no other bishop, apart from the Bishop of Rome, can encroach.[366] As we also explain in Section 13.1, the Catholic Church also comprises many hundreds of mostly autonomous and self-governing religious institutes and associations of varying size.

During the *Institutional review of Catholic Church authorities* public hearing, professor of law at the University of Sydney, Professor Patrick Parkinson AM, stated that the Church's governance structure 'can best be understood as a mixture between ecclesiastical community and feudal principality. The theology of the Church particularly after Vatican II reflects the former. The governance structure of the Church reflects the latter and is rather literally medieval'.[367] Professor Parkinson told us that the core problem in the governance structure of the Catholic Church is the 'extraordinary level of decentralisation and autonomy' of Catholic dioceses and religious congregations:

> If you have however many dioceses and however many religious orders and the only accountability is to Rome, and Rome is a long way away and has not dealt with these issues well, there is the core of the problem of the governance structure in the Catholic Church as I see it. It's not about how individual archbishops and individual bishops run their shows, but it is about the wider accountability and governance structure of the Church across the country.[368]

As it relates to the handling of child sexual abuse, Dr Doyle told us that, in practice, a bishop's oversight by Rome is limited.[369] Dr Doyle said that within the Church:

> True accountability is very limited. The pope is accountable only to the Higher Power … Although canon law provides a process of accountability for the hierarchy, in practice it is and has been highly ineffective. Bishops are answerable or accountable only to the pope, not to the Papal Nuncio, the regional archbishop or anyone else … In the matter of sexual abuse this level of accountability has traditionally been significantly ineffective.[370]

This is consistent with the evidence of Professor Sheila the Baroness Hollins, a member of the Pontifical Commission for the Protection of Minors, who said the pope essentially had a unifying role around theology and doctrine, and that 'the Pope … doesn't have any responsibility for what a bishop does in terms of things which relate to civil society':[371]

> So when a bishop neglects to respond appropriately and to show the moral authority that is needed when child abuse is present, that's a really tricky thing, because it raises a lot of issues about where does responsibility lie for holding that bishop accountable?[372]

Catholics for Renewal, an Australian advocacy group for reform within the Catholic Church, submitted that, while the governance of the Catholic Church is universally controlled, the Holy See's actual intervention at a local level in relation to the 'routine exercise of administrative authority by diocesan bishops' is minimal.[373] Catholics for Renewal commented that, in practice, this results in very limited supervision of bishops by Rome, as well as limited support from the Roman Curia, in relation to their responses to child sexual abuse.[374]

In 2007, retired Sydney Auxiliary Bishop Geoffrey Robinson wrote that it became evident when revelations of sexual abuse began to appear within the Catholic Church in Australia, that there is a structural gap in the governance of the Catholic Church above the level of the bishop and below the level of the Holy See.[375] He commented that 'The pope is at the head of the universal Church and a bishop is at the head of each diocese, and in the Latin Church there is no real or effective level of government between the two'.[376]

Bishop Robinson wrote of the situation confronting the Catholic Church in Australia in responding to child sexual abuse:

> Wrong actions by an individual bishop or religious leader reflected on the entire country, and yet the national Church had no power and no mechanism to ensure that individual bishops or religious leaders acted in a proper and accountable manner. This made it quite inevitable that in those countries the entire Church would end up being judged by its worst case, and this is what happened.[377]

In Ireland, the 2005 report of Justice Francis D Murphy on the response of Catholic Church authorities in the Diocese of Ferns to allegations of clergy child sexual abuse concluded that the poor response of bishops to abuse had to be seen in the context of the management structure of the Catholic Church, in which bishops were not subject to any formal management system across dioceses or accountable to any central authority in Ireland.[378]

We address below the impact of the autonomy of dioceses and religious institutes upon the development and implementation of an adequate national response to child sexual abuse in the Catholic Church in Australia.

The concentration of personal power in the bishop

> the bishop was perhaps regarded as almost like a little monarch in his own diocese and could make whatever decisions he wanted, irrespective of what advice he might seek or not seek.[379]
>
> **Archbishop Timothy Costelloe SDB, Archbishop of Perth**

Dr Doyle told us that within the hierarchical governance structure of the Catholic Church, 'Power is vested in individual men who hold the two essential offices in the church's governmental structure: the papacy (the pope) and the episcopacy (bishop)'.[380]

In governing his diocese, significant power as well as ultimate decision-making authority are concentrated in the hands of the diocesan bishop. Checks and balances on his power are limited, except that he is subject to the pope as his immediate superior and to canon law.[381] The Truth, Justice and Healing Council (the Council) explained that, while on particular matters bishops are required by canon law to consult with certain bodies within their diocese, bishops have 'full power of governance' in their diocese and in 'the majority of instances … the bishop is free to make decisions on his own'.[382] Of particular relevance to our inquiry, a diocesan bishop's decision-making authority in relation to the priests of his diocese is largely autonomous.

Professor Parkinson described the governance of the Catholic Church as monarchical, in that the powers of the pope and bishops are largely not subject to the kinds of structural checks and balances that are characteristic of more modern models of government. Professor Parkinson attributed the mode of government of the Catholic Church, not to 'biblical ideas of leadership' or 'modern ideas of leadership', but instead to a 'pre-Renaissance idea of the monarchy'. He pointed to the key feature of this model of monarchy being a leader's 'absolute authority and power'.[383]

Dr Doyle also described the powers of governance of diocesan bishops in the Catholic Church as monarchical.[384] He told us:

> The structure itself is non-democratic and has no separation of powers. The three main governmental powers, executive, legislative and judicial, are combined in one and reside in the two essential governmental offices in the church: the papacy and the diocesan episcopacy … Since there is no separation of powers there also are no effective checks and balances.[385]

Theologian and Vicar General of the Diocese of Broken Bay, Dr David Ranson, told us that a bishop 'has extraordinary capacity' to apply the canon law and undertake his governance 'according to the strengths of his own leadership'.[386] He said that the inherent liability of this personalisation of authority in the bishop is that the bishop's accountability is limited.[387] Similarly, Dr Doyle has written that, without checks and balances, there is 'no true accountability for Church leaders'.[388]

The concentration of power in the hands of an individual diocesan bishop carries with it the obvious potential for mismanagement and abuse.

In our case studies, we found instances where certain diocesan bishops responded inadequately to complaints of sexual abuse against priests of their diocese and were not held accountable for their actions, placing children at risk of abuse.

For example, in our report on *Case Study 35: Catholic Archdiocese of Melbourne (Catholic Archdiocese of Melbourne)*, we found that, during the tenure of Archbishop Thomas Francis Little, decision-making in response to complaints of child sexual abuse against priests was highly centralised, with no effective checks and balances on the archbishop's exercise of his powers in relation to priests who were the subject of complaints.[389] In a number of instances, the archbishop allowed priests to remain in a parish after an allegation was made against them.

The evidence in that case study makes plain that a system for responding to complaints of child sexual abuse in which the exclusive authority for making decisions was vested in one person is deeply flawed.[390]

Past inquiries into child sexual abuse in the Catholic Church overseas have observed a consistent phenomenon in relation to the behaviour of diocesan bishops worldwide. In 2003, the Attorney-General of the Commonwealth of Massachusetts reported on the handling of allegations of abuse against priests by the Archdiocese of Boston, including Cardinal Bernard Law, concluding that, for decades, cardinals, bishops and others in positions of authority within the archdiocese acted with a mistaken belief that they were accountable only to themselves.[391]

The 1990 Archdiocesan Commission of Enquiry into the Sexual Abuse of Children by Members of the Clergy (Winter Commission) in St John's, Newfoundland, Canada, recommended that the governance of the archdiocese be radically changed, as the concentration of all archdiocesan initiatives in one person's hands leads to a 'loss of a sense of responsibility', which it said contributed to the problem of child sexual abuse in the archdiocese.[392]

In our *Institutional review of Catholic Church authorities* hearing, we heard evidence from the metropolitan archbishops of the Catholic Church in Australia. Archbishop Coleridge told us that 'there's a myth of omnipotence about bishops', and that a bishop's authority is circumscribed 'in all kinds of ways'.[393] By way of example, the Archbishop of Adelaide, Archbishop Philip Wilson, pointed to the fact that, for example, under canon law a bishop requires approval in relation to making some financial decisions.[394] We acknowledge that this is the case.

However, in the handling of child sexual abuse complaints and responses to allegations of child sexual abuse, it is evident that too often individual bishops in fact acted as if they were accountable to no one, least of all to the children under their authority.

Consultation, transparency and due process in the decision-making of the bishop

A diocese's College of Consultors 'assists the bishop in the governance of his diocese in accordance with requirements of canon law'.[395] However, whether or not a bishop chooses to seek advice from his College of Consultors on the appointment and transfer of priests, he retains exclusive decision-making authority.

Marist Father and Director of the Aquinas Academy in Sydney, Dr Michael Whelan SM, told us that the lack of checks and balances upon bishops' decision-making may have contributed to a lack of transparency and professionalism in their decision-making, which in turn contributed to poor responses to child sexual abuse within the Catholic Church.[396]

President of Catholics for Renewal, Mr Peter Johnstone OAM, told us that a form of secrecy that is inimical to good governance is a product of the hierarchical structure of the Catholic Church. He said that, at every level of the Catholic Church, decisions can be made autocratically and in secret.[397] Decisions are made, he said, 'without the participatory processes and the discipline of external scrutiny that inform good leadership and ensure accountability'.[398] Mr Johnstone also said that the ability of bishops to make decisions in secret and without explanation may have contributed to a sense of a lack of accountability for their decisions in responding to child sexual abuse.[399]

The Winter Commission report noted that, while the Council of Priests of the Archdiocese of St John's, Newfoundland, was meant to assist the archbishop in governing the archdiocese, the reality was that 'effective decision-making cannot occur because the archbishop has shown no effective capacity to listen to and take the advice of his brother priests on important matters'.[400]

The 2003 report of the Attorney-General of Massachusetts into child sexual abuse in the Catholic Archdiocese of Boston found that the leaders of the Archdiocese had for decades 'acted with a misguided devotion to secrecy and a mistaken belief that they were accountable only to themselves'.[401] The report noted that 'The Archdiocese's *Policies and Procedures* notably exempts bishops from their coverage'.[402]

The 2011 John Jay College report on *The causes and context of sexual abuse of minors by Catholic priests in the United States, 1950-2010* concluded that 'In responding to the sexual abuse of clergy, the lack of experience of the hierarchy in using structures of accountability and transparency' made the policy commitments of the United States bishops more difficult for bishops to understand and adopt and more likely to be implemented slowly.[403]

We consider the role of senior clergy in advising the diocesan bishop in more detail below.

Consultative, inclusive and transparent models in diocesan governance

We heard from a number of the metropolitan archbishops of the Catholic Church in Australia that there has been a significant change in the culture of governance by bishops and that, as at mid-2017, they strive not to act in the historical model of the monarchical bishop and to be consultative and open in decision-making.[404]

Nevertheless, as Dr Ranson told us, while inclusive and accountable governance frameworks exist within the Catholic Church, ultimately a diocesan bishop retains the authority to apply them as he wishes according to his own style of leadership and capacity.[405] Professor Parkinson also said that the reality remains that 'The modern bishop shares decision-making power with delegates, advisory bodies and professional staff only to the extent he does so voluntarily'.[406] Baroness Hollins gave evidence that 'it would be entirely for the bishop to decide how much they wanted to involve laypeople in working with them and advising them in either a professional capacity or just a wise counsel type of capacity'.[407]

The Second Vatican Council (1962–1965) encouraged the introduction of more inclusive, consultative and participatory governance structures in dioceses. These included synods and pastoral councils. However, their introduction is not mandatory.[408]

Professor Francis Moloney SDB AM, Senior Professorial Fellow at the Catholic Theological College, University of Divinity, Victoria, told us that, while the Second Vatican Council encouraged pastoral councils as a mechanism to introduce greater horizontal accountability and flatten structures of administration at the different levels of the Catholic Church, the governance of most dioceses and parishes remains pyramidal. Professor Moloney said that diocesan pastoral councils were introduced in the years immediately after the Second Vatican Council. However, in 2017 their use has receded in many dioceses resulting in a return to the former pyramid structure of Church governance.[409] He told us, 'We have to live and work within deeply faulty medieval structures and procedures'.[410]

Consistent with Professor Moloney's evidence, Adjunct Associate Professor of Theology at the Loyola Institute, Trinity College Dublin, Dr Gerry O'Hanlon SJ, commented that after the Second Vatican Council, 'when it all settled down in the late 1970s', the checks and balances on the power of governance in the Catholic Church envisaged by the Second Vatican Council, such as ongoing councils or synods, were not put in place.[411]

We note that Pope Francis, in his 2013 apostolic exhortation *Evangelii gaudium*, stated that:

> In his mission of fostering a dynamic, open and missionary communion, he [the diocesan bishop] will have to encourage and develop the means of participation proposed in the Code of Canon Law, and other forms of pastoral dialogue, out of a desire to listen to everyone and not simply to those who would tell him what he would like to hear …
>
> A proposal of goals without an adequate communal search for the means of achieving them will inevitably prove illusory'.[412]

The governance of religious institutes

Religious institutes are either 'of pontifical right' (meaning that they are subject exclusively to the oversight of the pope) or 'of diocesan right' (meaning that they are subject to the oversight of the local diocesan bishop).[413] Each religious institute is autonomous, has its own internal structure of governance and is led by its own superiors.[414]

We heard that, in some religious institutes, this level of oversight has been ineffective and that, in reality, most religious institutes in Australia have operated with significant levels of autonomy.

Brother Peter Carroll, Provincial of the Marist Brothers in Australia, gave evidence about the supervision that the Marist Brothers in Australia receive from the international leadership of the Marist Brothers that:

> I was appointed as provincial by the superior general, but that was after a consultation with the brothers. So I'm accountable to the superior general. But in many ways there is not a lot of supervision from the general council. We are very much sort of a federation model where each province is quite autonomous within the constitutions of the institute.[415]

The Provincial of the Salesians of Don Bosco, Australia Pacific Province, Father Gregory Chambers SDB, told us that, in the case of his religious institute, his congregation is 'beholden, of course, to the rector major of the Salesians in Rome and his general council', and that 'we're very much a top-down religious order, very hierarchical', in which the 'rector major and general council in Rome rule the whole congregation … and want various reports and accountabilities back'.[416]

Governance and management consultant Dr Maureen Cleary OAM, who has worked with religious institutes in Australia and overseas to reform their governance and management structures, told us that 'religious institutes are structurally dependent on the episcopal structure of the church but are able to exercise a degree of autonomy relative to their formal definition within that structure and their geographical location'.[417]

We heard that this degree of autonomy allowed religious institutes and the various individual communities of priests, brothers or sisters of which they are composed, to operate largely in isolation. As Dr Cleary said:

> Unfortunately, that 'degree of autonomy' enabled religious institutes to develop in [silos] with little interaction between the various groups of institutes. Prior to the Vatican Council II, most religious institutes existed in isolation from each other.[418]

Each religious institute has its own internal constitution, so it is not possible to generalise about the governance of 'religious institutes' as a whole. However, we heard that the governance of religious institutes tends to be much flatter and more democratic than that of dioceses. As outlined in Section 13.1, religious institutes are each led by a superior general at the international level and by provincial superiors at the national or regional level. Superiors general and provincials are usually elected by the members for fixed terms, usually four to six years. They operate in collaboration with central and provincial councils.

Although religious institutes tend to be significantly more democratic and participatory in the way they govern themselves, as with diocesan bishops, the constitution of a number of religious institutes were such that provincials or religious superiors had exclusive power for the appointment, movement and management of religious members of their institute.

In our report on *Case Study 28: Catholic Church authorities in Ballarat (Catholic Church authorities in Ballarat)* we found that the Christian Brothers, similar to other Catholic orders, have a structure whereby ultimate power and responsibility rests with one person, the provincial. A system without checks and balances has the obvious potential for mismanagement or abuse of that power and neglect of that responsibility. In that case study, we found a number of instances where complaints against brothers were referred to the provincial and he did not respond adequately.[419]

Marist Provincial, Brother Carroll, gave evidence about characteristics of his religious congregation that he thought might explain why responses to child sexual abuse by the Marist Brothers were inadequate. He explained that there were structural problems, including 'very poor administration' and a lack of professionalism.[420] He said:

> There was also a very hierarchical model where everything had to be taken back to the leader, and the leader had to make the decisions. So I think that's another factor that led to the reasonably poor management of these things.[421]

We also heard evidence that the degree of self-governance, the closed nature of some religious institutes, and their isolation from the outside world, may have contributed to the problem of child sexual abuse. In local religious communities that were subject to limited oversight from their provincial council, this may have created a culture in which there was a sense of a lack of accountability to those outside the immediate religious community.

Brother Carroll explained:

> I mean, going back into the 1960s or before, the province administration was one man travelling around. There were very few supports. It was a very unprofessional sort of arrangement, in one sense, in terms of what we would regard as professional operation today.[422]

Brother Ambrose Payne, Professional Standards Officer of the De La Salle Brothers, told us that he considered a structural issue that contributed to child sexual abuse in institutions run by his religious congregation was a lack of oversight of communities.[423] He said:

> we had a strong tradition in the district that when a man was put in charge of a particular area, it was up to him to make the most of it, and that became a solitary kind of exercise. It has all the shortcomings of any assumptions that are made that people can do things without supervision, and from that point of view I believe that that was another major structural issue.[424]

Brother Timothy Graham, Provincial of the Hospitaller Order of St John of God, Oceania Province, considers that a factor in the incidence of abuse in that order was that the institutions it ran, 'working with people with challenging life issues', were very closed communities that 'encouraged cultures that weren't conducive for safe places'.[425]

There are differences between the governance of dioceses and the governance of religious institutes. Provincials are elected for fixed terms, while bishops are appointed for open terms. We also heard that provincials do not have the same status as diocesan bishops and that governance of religious institutes tends to be collegial, through provincial councils, which are elected.[426] Dr Cleary gave evidence that, within religious institutes, leadership is elected by a democratic process, which creates an 'enormous feedback mechanism to those leaders'.[427]

Father Chambers told us that, within the Salesians, each community has a rector and a house council that report on a regular basis to the provincial and his council, including on change of ministry or employment. Reports have to be put to the provincial council for final acceptance.[428]

Father Chambers said that the increasing involvement of the laity in the management of Salesian schools has been a positive development, as some Salesians 'just took things for granted, perhaps, and just assumed that they were going to happen rather than making them happen with proper programs and regular and consistent approaches'.[429]

Province Leader of the Oceania Province of the Christian Brothers Congregation, Brother Peter Clinch, told us that he considers the leadership model within female religious congregations to be more 'circular' and 'more helpful than the hierarchical model for me in my situation'.[430]

The role of senior clergy and religious in advisory positions to bishops and provincials

It is evident that, in some cases, bishops and provincials did not share their knowledge of allegations of child sexual abuse against priests and religious with other senior clergy (including auxiliary bishops, vicars general, bishops' secretaries and consultors) or religious (including superiors of religious communities and members of the provincial council).

However, we also learned of instances where senior clergy and religious in dioceses and religious institutes were aware of allegations of child sexual abuse but did not take action to challenge or attempt to influence the poor decisions taken by their bishop or provincial in responding to those allegations.

For example, in the *Catholic Archdiocese of Melbourne* case study we found that a number of clerics at different times should have advised Archbishop Little to act. As Monsignor Connors said, they could have sought the support of their peers in seeking to persuade the archbishop. They could also have referred to the apostolic nuncio.[431]

The 2004 National Review Board of the United States Catholic Bishops Conference *Report on the crisis in the Catholic Church in the United States* (National Review Board report) concluded, similarly, that although it was their responsibility to do so, it was apparent that bishops and priests appeared reluctant to tell others that they were acting wrongly and this contributed to the problem of child sexual abuse in the United States Catholic Church.[432]

We also received evidence from senior clergy and religious that they felt constrained by their position in the institutional hierarchy from taking action that may have protected children from abuse.

In our *Catholic Archdiocese of Melbourne* public hearing, when asked how child sexual abuse could occur over decades in the archdiocese, the Archbishop of Melbourne and President of the Australian Catholic Bishops Conference (ACBC), Archbishop Denis Hart, told us his view was that 'There was such a respect that only the archbishop could act, that this introduced a paralysis'. We found this to be an apt observation.[433]

It is obvious to us that, in some cases, the failure of senior clergy and religious in advisory positions to challenge bishops and provincials of Catholic dioceses for their inadequate responses to abuse, and their paralysis in not taking any other action to correct those responses, allowed children to remain at risk and no doubt contributed to ongoing abuse.

We heard that the hierarchical structure of the Catholic Church contributed to a culture of deference in which it is difficult to hold superiors in the institutional hierarchy to account for their actions and decisions. Catholics for Renewal made a submission to us in which they observed that a characteristic associated with the hierarchical structure of the Catholic Church is a culture of deferential obedience to superiors. Catholics for Renewal wrote that ultimate obedience to the pope and consequential deference to authority at all levels of the hierarchy of the Catholic Church has resulted 'for some in a level of loyalty that can be seen in practice as a culture of "blind obedience"'.[434]

Professor Moloney said that 'a strong sense of hierarchy', which led to a 'strong *downward* exercise of authority, and extreme difficulty in going the other way [emphasis in original]', was a factor that contributed to child sexual abuse in the Catholic Church in Australia and also the Church's response to that abuse.[435]

Dr Whelan also commented that the 'simplistic and oppressive' understanding of obedience to the authority of superiors in the Catholic Church had contributed to a 'moral infantilism' in the Catholic Church in responding to child sexual abuse.[436]

To the extent that the hierarchical system of the Catholic Church led to a decision-making and administrative culture in which senior clergy and religious deferred to their bishop or provincial and did not challenge their poor decisions in responding to child sexual abuse, or seek to remedy them in some other way, that system was flawed. However, that is not an excuse for their abdication of their individual responsibility for failing to take action to protect children.

In Section 13.11.9 we address separately the role of senior clergy in the management and oversight of priests.

The role of the Holy See

> However great the faults of the Australian bishops have been over the last 30 years, it still remains true that the major obstacle to a better response from the Church has been the Vatican. However slow the Australian bishops may have been to respond, the Vatican has been far slower. It still has a long way to go.[437]
>
> **Bishop Geoffrey Robinson, retired Auxiliary Bishop, Archdiocese of Sydney**

We heard that, to the extent that power in the global Catholic Church is centralised in the papacy and the Holy See, this has contributed to inadequate responses to child sexual abuse within the Catholic Church in Australia during key periods.

As addressed in Section 13.1, the Catholic Church is simultaneously a universal church under leadership of the pope, supported by the Roman Curia, and a group of local churches under the leadership of diocesan bishops.[438] Within this governance structure, according to theologians and commentators, there is a tension between the centralising and top-down exercise of power by the pope on the one hand and the autonomy of local churches on the other.[439] We were told that this tension has a long historical context.

Dr O'Hanlon said of the Holy See's initial response to the problem of child sexual abuse, that 'when it suited, Rome, in monarchical mode, was insistent on its own approach and bishops were tempted to defer accordingly'.[440] He said that 'Everything that came from Rome was taken as gospel, and local bishops didn't take their own responsibility seriously enough; they looked over their shoulders all the time to Rome',[441] but that 'Rome didn't seem to quite get it. They were very reluctant, for example, to approve the proper reporting to civil authorities'.[442]

Dr O'Hanlon further said that Pope John Paul II:

> internally was very firm about the strong monarchical model of papacy and centralisation. I've understood that to be an unhealthy model and a contributing factor to the delay and the poor response of the Catholic Church to the emergence of the clerical child sexual abuse scandal.[443]

During our *Institutional review of Catholic Church authorities* hearing, Dr Doyle also criticised Pope John Paul II and the Roman Curia for their responses to child sexual abuse during his pontificate. Dr Doyle noted that Pope John Paul II 'knew in detail about the sexual abuse and its cover-up by late 1984', but took no action until making his first public statement concerning clerical child sexual abuse in 1993 in a letter to the United States bishops.[444] In relation to that letter, Dr Doyle has written that:

> a significant portion of the letter dwells on the pope's belief that the secular media sensationalizes the scandals and therefore is partially responsible for them … [The pope] essentially blamed it on American social disorganisation and moral decay, which had finally contaminated even the clergy. This view had been common among Vatican bureaucrats.[445]

Dr Doyle noted further that, for the rest of his pontificate, Pope John Paul II:

> never took any actions of any consequence to even investigate much less punish bishops who had committed abuse or bishops who had knowingly ignored canon law to protect and continue to assign known sexual predators.[446]

Similarly, Dr Whelan commented in relation to Pope John Paul II, that the evidence suggests he 'failed us [the Catholic Church] badly' in responding to the problem of child sexual abuse and that this 'allowed **a process of denial and cover up** to continue much longer than it ought to have done' [emphasis in original].[447]

In relation to the Catholic Church in Australia's response to child sexual abuse, Dr Michael Leahy, political and educational philosopher and former priest, made a submission to the Royal Commission in which he addressed the centralisation of power in the Holy See, particularly in relation to canonical processes for child sexual abuse.[448] Dr Leahy submitted to us:

> If the Vatican had applied the principle of subsidiarity it preaches to national and local churches, the Australian church would have been freed of the 'moral paralysis' that, according to Melbourne Archbishop [Denis] Hart, prevented it from responding effectively to the paedophilia crisis ... [A] governance practice which produces 'moral paralysis' in an institution is a paradigm case of dysfunctionality.[449]

Dr Leahy submitted further, that

> Given the inordinate degree of power they exercise within the church, Popes have to accept considerable responsibility for the inadequacy of its response to the paedophilia crisis … It is mildly surprising, but also clear, that neither Pope John Paul II nor Benedict XVI felt the same pressure as bishops in their own countries to give priority in their concerns to the plight of the victims of paedophilia over that of the priestly perpetrators … These Popes must bear responsibility as individuals for their failure to assess correctly the significance of the paedophilia crisis, and to prioritise correctly in their responses to it the claims of victims and offenders.[450]

We received evidence that, with time, the response of the Holy See to institutional child sexual abuse has improved. For example, Dr O'Hanlon told us that:

> The mention of Rome suggests an interesting reflection: at a certain point in this whole saga the primacy of Rome has become an important plus in addressing the situation of clerical child sexual abuse world-wide. Once Rome 'got it' – and this may have been as late as about 2010 – they have been effective in intervening in such a way that local churches have been helped.[451]

However, in our *Institutional review of Catholic Church authorities* public hearing, we also heard evidence from members of the Pontifical Commission for the Protection of Minors, established by Pope Francis in 2015, who appeared before us in their personal capacity. They agreed that the Catholic Church worldwide remains an organisation that is struggling to come to terms with its responsibilities in relation to the safety of children.[452]

Baroness Hollins told us that the international leadership of the Catholic Church as a whole is struggling:

> I think the Pope does understand the seriousness of it and I think there are many other leaders who do, but I think that the organisation, with the leadership that it has – there are some people struggling to come to terms with it.[453]

Mr Bill Kilgallon OBE, also a member of the Pontifical Commission for the Protection of Minors, gave evidence that the Commission has experienced challenges in its work with other departments of the Roman Curia:

> So our work touches many of the departments, and that's a challenge, too. I mean, anybody who has worked with government, whether it's in Church or in the state, knows how jealously government departments guard their own domain and there can be some push-back about taking advice from others.[454]

The evidence of Baroness Hollins and Mr Kilgallon is echoed in Dr Doyle's comment that:

> Even at the highest levels, Catholic Church leaders thus far have not accepted the assertion that the dysfunctional clerical system itself bears a significant share of the responsibility for the problems.[455]

We will address the particular role of the Holy See in canonical processes for child sexual abuse further in Section 13.11.6.

Developing a national response of the Catholic Church in Australia to child sexual abuse

> In some ways, we are a very centralised community – Church, worldwide. In other ways, we are extraordinarily, even alarmingly, decentralised. When I hear people talk about the monolithic Catholic Church, I think to myself, which Church are we in? It's like herding cats.[456]
>
> **Archbishop Mark Coleridge, Archbishop of Brisbane**

We have heard that the autonomy of Catholic dioceses and religious institutes has had an impact on the past and ongoing development of a formal national response to child sexual abuse by the Catholic Church in Australia.

As set out in Section 13.7, 'Development of national procedures in the Catholic Church', we heard that, as the problem of child sexual abuse was recognised within the Catholic Church in Australia as one requiring a national response, the autonomy of Catholic Church authorities contributed to the difficulty of developing and implementing a nationally binding procedure or protocol in the form of Towards Healing.

The adoption of the Towards Healing protocol in 1996 represented a significant achievement. Nevertheless, when Towards Healing was issued, two Catholic Church authorities – the Archdiocese of Melbourne and the Society of Jesus – chose not to adopt the protocol and other authorities did not implement all aspects of it. Bishop Robinson was instrumental in developing the protocol. In 2007, he wrote of the failure to achieve a national response with Towards Healing that:

> Our measure of success was that only two refused to join (one bishop and one religious superior). We still had problems with bishops and religious superiors dispensing themselves from various provisions of the agreed procedures and there was still no means of insisting that these individuals should change their ways.[457]

Twenty years after the adoption of Towards Healing, the Truth, Justice and Healing Council acknowledged that:

> the Church's professional standards in relation to child protection and dealing with allegations of child sexual abuse have not been consistently and adequately applied by all Church Authorities.[458]

Archbishop Coleridge told us that he attributed an 'appalling' inconsistency in the application of Towards Healing to the 'extraordinarily decentralised and various nature of the Catholic Church'.[459] He said that 'Individual bishops and individual Provincials were making decisions or implementing the protocol in all kinds of ways, sometimes effectively and sometimes not'.[460] Professor Parkinson, who reviewed Towards Healing, said that inconsistency in its implementation, and the implementation of other standards in relation to child sexual abuse, was a product of enormous variations in the 'willingness and capacity' within the leadership of the Australian Catholic Church to address 'the problem of clergy and religious child sexual abuse'.[461]

Other witnesses also told us that inconsistent implementation of child safety and professional standards is a problem that reflects the capacity of individual leaders of Catholic Church authorities, as well as the financial and human resources capacity of the authorities themselves.[462]

The challenge that the structural autonomy of Catholic Church authorities represents in relation to holding dioceses, religious institutes and their leadership to account for the improper and inconsistent implementation of child safety and professional standards protocols is of concern to the Royal Commission.

In relation to the future of Towards Healing, Professor Parkinson told us in a submission that, in light of the challenge represented by the autonomy of bishops and leaders of religious institutes, 'a much more effective process would require the Church to surrender decision-making power to an independent entity'.[463] He said, 'That, in the Catholic Church system, would involve major change'.[464]

In this respect, we acknowledge that the incorporation of Catholic Professional Standards Limited in 2016 is a positive initiative. We heard that Catholic Professional Standards Limited will set national standards within the Catholic Church in Australia for child safety and responding to child sexual abuse. We also heard that, as an accountability mechanism, the new company will monitor and report on the implementation of those standards by individual Catholic Church authorities.[465] We discuss Catholic Professional Standards Limited in detail in Chapter 20, 'Making religious institutions child safe'.

The involvement of lay people including women in Church governance

As outlined above, the power of governance under canon law is reserved to clergy, so it excludes lay people and, in particular, women, who cannot be ordained. Some powers of governance in the Catholic Church can be delegated to lay people.

In relation to the involvement of lay people and women in the governance of the Catholic Church, we heard about:

- the exclusion of lay people and especially women from governance and the impact this has on child sexual abuse and responses to it in the Catholic Church in Australia
- consultative governance structures that might include lay people (plenary assemblies, synods, diocesan pastoral councils and parish pastoral councils)
- the use of more inclusive governance structures by some Catholic Church authorities in Australia.

The exclusion of lay people and especially women from governance as a contributing factor to poor responses to child sexual abuse

We heard that the exclusion of lay people and, in particular, the absence of women from the governance of the Catholic Church impacted negatively on good governance and decision-making and so contributed to failings in the response of Catholic Church authorities to child sexual abuse.

Baroness Hollins gave evidence that 'it's really, really important that there is more lay leadership, because I think that without that lay kind of levelling of the situation, it's going to be very, very difficult for the ordained Church leaders to be able to change the culture of the current leadership'.[466] Baroness Hollins said she had seen most cultural change in dioceses and parishes where bishops and priests had 'really welcomed, and not felt threatened by, lay leadership, and this obviously includes women'.[467]

Mr Johnstone of Catholics for Renewal said that excluding lay people and women from decision-making 'is an unhealthy way of taking decisions' and that this influenced the Catholic Church's institutional response to child sexual abuse.[468] Mr Johnstone said that the Catholic Church's exclusion of women from decision-making positions under canon law and in practice has had negative implications for good leadership and decision-making, which he said requires gender balance.[469]

Catholics for Renewal submitted separately, that: 'It is not surprising that a world-wide organisation headed exclusively by males, all celibate and mostly elderly, would suffer from poor decision making and dysfunctional governance'.[470] Catholics for Renewal also told us that, without open consultation in decision-making, including of lay people, 'there can be little sense of accountability and that has been well demonstrated in the Church's response to clerical child sexual abuse'.[471]

Dr Leahy submitted that the exclusion of women and married people from governance structures in the Catholic Church contributes to 'conditions conducive to the flourishing of paedophilia'.[472] He said that the 'hoarding of power' by bishops in the Catholic Church in Australia contributed to poor decisions in responding to child sexual abuse.[473] He noted that the bishops who made these decisions were not experts on psychosexual matters or how best to care for the needs of traumatised children, adding that it is likely that the response within the Catholic Church to perpetrators and victims of abuse would have been different if it had involved broad consultation, including with lay men and women.[474]

Psychologist Dr Alex Nelson told us that the hierarchical and patriarchal nature of clericalism privileges the clergy while disempowering the laity. He described this as a distortion in the theory and practice of ecclesiastical power, which he submitted has contributed to both the incidence of child sexual abuse and the 'inept and obstructive responses by clerical authorities to complaints from victims'.[475]

Australian representative member of Women's Ordination Worldwide, Ms Marilyn Hatton, submitted, similarly, that a patriarchal clerical culture within the Catholic Church, in which decision-making is tied to ordination and therefore gender, was a contributing factor to poor responses to child sexual abuse in the Catholic Church.[476] Dr Whelan also said he believes that the 'insufficient involvement of women in decision-making processes' was a pertinent factor in the mishandling of sexual abuse in the Catholic Church by Catholic Church representatives.[477]

Pope Benedict XVI, in a May 2009 address to the diocesan synod of Rome, noted the way that the laity in the Catholic Church had been marginalised and assigned a mere 'collaborative' role:

> it is necessary to improve pastoral structures in such a way that the co-responsibility of all the members of the People of God in their entirety is gradually promoted … This demands a change in mindset, particularly concerning lay people. They must no longer be viewed as 'collaborators' of the clergy but truly recognized as "co-responsible", for the Church's being and action.[478]

Consultative governance structures that might include lay people in the Catholic Church

We noted in Section 13.1 that episcopal and synodal structures were of great importance in the early Christian Church. In their review of the literature on child sexual abuse in the Catholic Church, Desmond Cahill, professor in the School of Global, Urban and Social Studies at RMIT University, and researcher Peter Wilkinson described synods as 'the oldest form of collegial governance in the church', which give expression to the Catholic social principle of subsidiarity in governance, or the notion that decisions should be made locally where possible.[479]

In the early Christian Church, lay people, although predominantly the wealthy, participated in synods. We heard that, over time, the structure and governance of the Catholic Church became significantly centralised and monarchical. Along with this process, the non-ordained were increasingly excluded from the administration of the Catholic Church.[480] In Section 13.11.3, 'Clericalism', we discussed the contribution of the exclusion of lay people and women from the governance of the Catholic Church to a culture of clericalism and its relationship with child sexual abuse.

As noted above, the Second Vatican Council (1962–1965) sought to return to an earlier model of Church governance by emphasising an understanding of the Church as a community whose members are fundamentally equal by virtue of their shared baptism.[481] It also encouraged the use of more localised and collaborative structures.[482]

As outlined above, canon law also stipulates that the jurisdiction to exercise the power of governance in the Catholic Church is reserved to clergy, and so excludes lay people unless power is voluntarily delegated by clergy. However, canon law also provides for plenary assemblies, diocesan synods and diocesan and parish pastoral councils. These are fundamental to the ability of lay men and women to play a co-responsible role in Catholic Church governance.

The Second Vatican Council stated that it 'greatly desired' that every diocesan bishop should establish a diocesan pastoral council, over which he would preside.[483] Diocesan pastoral councils are consultative bodies whose purpose is to assist the bishop with pastoral planning for the diocese.[484] They are constituted for a fixed term. Their membership is to include clergy, religious and lay people (men and women) who are to be selected in such a way that it truly reflects the make-up of the diocese.[485] Unlike diocesan financial councils, diocesan pastoral councils are not mandatory.[486] Both Archbishop Wilson and Archbishop Coleridge told us that the provisions of the 1983 Code of Canon Law in relation to pastoral councils have not been taken up fully in some dioceses.[487]

Archbishop Coleridge gave evidence that the effectiveness of those structures has been diminished to an extent, as they can only be 'as good as the people you put in it', and that these structures had been populated in a way that was 'ineffectual'.[488]

Archbishop Coleridge continued:

> The other thing is that the dioceses of this country, and the parishes therefore, vary enormously. Whereas the Archdiocese of Brisbane can have councils and all these wonderful structures that were authorised by the Second Vatican Council, it's a bit harder for Wilcannia-Forbes, for quite obvious reasons.[489]

As noted above, the Second Vatican Council also envisaged the involvement of lay men and women in governance through diocesan synods and diocesan and parish pastoral councils.

Cahill and Wilkinson stated that Australia's bishops have overwhelmingly refused to hold synods, even in the face of the child sexual abuse crisis.[490] They add:

> Synods in the post-Vatican II period, where a significant presence of male and female laypersons had to be present, would almost certainly have been well placed to address openly and accountably the crisis of child sexual abuse.[491]

A submission to the Royal Commission by a group of Australian Catholics led by Mr John Menadue AO, a former Secretary of the Commonwealth Department of the Prime Minister and Cabinet, similarly said that the synods called for by the Second Vatican Council have 'died of misuse in Australia',[492] adding that:

> A flourishing and participatory regime of diocesan synods would enhance the accountability of bishops and improve the performance of the whole diocese. A representative synod with half of the membership from lay people would be far more knowledgeable in identifying and dealing with such issues as sexual abuse.[493]

Dr O'Hanlon told us that the failure to put ongoing councils and synods in place following the Second Vatican Council had 'left the lower ranks and the bottom of the organisation voiceless' when the scandal of child sexual abuse in the Catholic Church emerged.[494]

Ms Hatton, reflecting on her experiences as a Catholic lay woman, told us that the Second Vatican Council swept through the Catholic Church, inspiring priests, religious and laity with new possibilities. She described it as 'a blueprint for the Church of the future and generations to come'.[495] She reflected that, instead, the Catholic Church seemed to become increasingly authoritarian and clericalised, with the energy of the Second Vatican Council slipping away.[496]

The introduction of more inclusive governance structures

The Archbishop of Perth, Archbishop Timothy Costelloe SDB, said that the Catholic Church today has changed from the Church of the 1960s and 1970s, in that 'we have boards and we have boards of management, boards of governance, nearly always comprising laypeople – laywomen and laymen'.[497]

We heard about changes in the Archdiocese of Adelaide. Professor of Theology at the Australian Catholic University, Professor Neil Ormerod, gave evidence that in the Archdiocese of Adelaide, for a number of decades, Archbishop Leonard Faulkner had governed his archdiocese with the advice of a pastoral team that included both lay women and religious sisters in senior leadership roles.[498] Professor Moloney told us that women were appointed as episcopal vicars in the Archdiocese of Adelaide, with responsibility for sectors of ministry in the archdiocese.[499] The present Archbishop of Adelaide, Archbishop Wilson, told us that the Archdiocese of Adelaide currently has a diocesan pastoral council and women in its leadership team, who have delegated authority from the bishop.[500] He told us that he has appointed both men and women to the position of chancellor in the diocese, which is a non-gender-specific canonical position.[501]

Archbishop Coleridge told us that his archdiocese was moving down a synodal path, with more lay people and women involved in decision-making processes.[502] He told us that women occupy high-level positions – for example, chairing two archdiocesan councils.[503]

Dr Cleary responded to Archbishop Coleridge's evidence. She said that all but one of the high-level positions held by women that Archbishop Coleridge had detailed were in management roles, which she differentiated from governance roles. Dr Cleary said that, while lay people and women may occupy management positions in dioceses, they were employees of the diocese and so did not have equality in governance and decision-making.[504]

Brother Graham said that the involvement of lay men and women in the management and governance of service delivery within his order has resulted in positive cultural change in respect of child safety. When asked by the Chair of the Royal Commission what the laity brought that the ordained and religious brothers failed to bring, Brother Graham responded:

> I think in the early days they probably brought better training. They probably brought with them experience beyond the one institution. They probably brought with them a sense of relationship coming out of their families. In our case, very often many of our laypeople were women who were mothers, particularly in residential settings. All of that contributed, I think to a change in culture.[505]

Father Chambers also gave evidence about the positive influence of lay people in the governance and administration of Salesian institutions. He said these lay leaders seem to have a much greater appreciation and instant conception of 'the things that need to be done', which the Salesians and other religious do not.[506] Father Chambers attributed this to the following:

> I think our lay leaders have had not only a greater life experience, especially in their own careers and studies, but also with bringing up their own children and families. They have a more instinctive concept of what children and young people require of the adults in charge of them.[507]

Brother Payne said that 'the advent of the laity' improved transparency and accountability in Catholic Church authorities, as they 'had to become more responsible to a wider group of people'.[508] Brother Clinch gave similar evidence. Referring to the relationship between previously 'closed' religious communities and the incidence of child sexual abuse, he said:

> I believe with the coming of laity, that closure, which was unhealthy, I believe, and secrecy that went with it, was broken. I think that was healthy and that's what the oncoming of laity brought – I think a greater openness.[509]

Dr Cleary told us that, through her work with religious institutes and dioceses, it had become 'very, very clear' to her that the laity have played an important role in influencing a greater degree of accountability and transparency in the governance of Catholic Church authorities.[510] Dr Cleary said:

> Religious institutes have learnt, over time, how to work in a collegial and professional manner with lay people at governance and management levels … these structural changes, particularly with regard to professional conduct should substantially reduce the potential for institutional abuse of children in the services offered by religious institutes.[511]

Looking to the future, we heard calls for the inclusion of the laity and particularly women in governance in the Catholic Church, and that their inclusion was central to creating a culture of governance and decision-making that would help to ameliorate the risk of the occurrence of child sexual abuse, as well as inadequate responses to it.

Dr O'Hanlon told us that the Catholic Church would have a 'more robust immune system' if it were a synodal church in which:

> the voice of women and men, sexually active and celibate, are heard through the development of a culture of open debate and healthy co-responsibility, altogether in keeping with the faith and theology of the Church but still fiercely resisted by so many who are fearful of change. If this new synodal culture can develop sufficiently to affect the body of the Church at all levels, then there is a much better chance that justice may be done at all levels. This is the quiet revolution which Pope Francis is attempting to bring about within the Catholic Church world-wide, a sign of hope and an invitation to local Churches at all levels (including leadership level) to respond.[512]

Dr O'Hanlon told us that he thinks the Catholic Church already has the 'theological resources to imagine a different kind of Church', coming from the ideas of the Second Vatican Council 'of a more inclusive, participative Church, with real listening to the voices of laypeople'.[513]

Baroness Hollins also told us that she believes it is 'really, really important' that there should be more lay leadership in the Catholic Church:

> I think that without that lay kind of levelling of the situation, it's going to be very, very difficult for the ordained Church leaders to be able to change the culture of the current leadership. I think the places where I've seen most change have been in parishes, for example, and in dioceses, where the priests and the bishops have really welcomed, and not felt threatened by, lay leadership, and this obviously includes women. For many priests and bishops, they may feel more comfortable having laymen advising them and supporting them. But I think until there is a sort of lay leadership which is able to stand alongside the ordained priests, then it's going to be very difficult for that perception of power and that potential misuse of power in any way to pass.[514]

Archbishop Coleridge agreed that lay people and women need to be included in decision-making processes in dioceses, with genuine responsibility.[515] Archbishop Coleridge told us that, in his view, 'if the Catholic Church says it cannot ordain women, we are correspondingly obliged to explore ways in which women can exercise genuine responsibility in the decision-making processes at the highest level'.[516]

Similarly, Dr Ranson, Mr Johnstone and Dr Whelan all called for the involvement of lay people and women in governance and decision-making.[517]

Brother Carroll told us:

> I believe we have to bring women much more into the power structures of the Church. It can't just afford to lie at the tokenistic level, which it generally does. It has to be real and it has to be deep seated and embedded.[518]

Past overseas inquiries into child sexual abuse in the Catholic Church have also concluded that the involvement of lay men and women in the governance of the Catholic Church is central to ameliorating the risk of the occurrence of child sexual abuse, as well as poor responses to it.

The 1990 Canadian Winter Commission reported that it had heard demands for more meaningful tasks in governance, and the work of diocesan priests, to be complemented by lay people.[519] The report concluded:

> the Commission is persuaded that there is need for a radical change in the way the Archdiocese is governed. Many of those who addressed this issue, however, expressed little faith that effective change was likely, given the authoritative structures which still lie at the core of Roman Catholicism. Even within the vision of Church expressed in the Code of Canon Law, committees and councils within the Church remain essentially 'advisory' … An incessant theme at all the Commission's public meetings was that the laity must begin to accept and exercise their proper role and take up their community ministries.[520]

The 2004 National Review Board report also recommended meaningful participation by the laity in the Catholic Church[521] and the use of lay diocesan consultative boards as 'a means of providing greater accountability on the part of bishops and other Church leaders'.[522]

We believe that, to the extent that lay men and women are now involved in governance within the Catholic Church in Australia, and to the limited extent that participatory structures have been employed in the governance of Catholic Church authorities and at the parish level, this is a positive development.

The governance of Catholic community services

As the numbers of religious personnel have declined, lay people are increasingly responsible for Catholic education and community services. In these areas, canonical structures have developed so that lay people can exercise some powers of governance.[523] We received evidence that these changes have had a positive impact on the professionalism of these services.

The Council told us about the establishment of new canonical structures, termed 'public juridic persons' (PJPs), 'to continue the ownership and governance of these religious works'.[524] The Council described public juridic persons as follows:

> They have personality in canon law and, just like religious institutes, are established by either the local bishop (diocesan rite) or through a Vatican dicastery (pontifical rite). Once established the PJP is bound by the relevant ordinances and statutes of its constitution.
>
> Typically the PJPs are administered by trustees who increasingly are lay people and their works are usually incorporated in civil law.[525]

The Council told us that the role of the laity in public juridic persons is 'leading to a less clerical approach' to the way these bodies are administered.[526]

Dr Cleary told us that public juridic persons have existed in Australia for about 40 years and, as such, there are decades of data and information available:

> not only about how you incorporate but how you incorporate in a way that the core meaning of the organisation is not only conserved but is developed, how you do that so it is still … within the bounds of canon law, and it is still regarded as a Catholic Church work.[527]

Dr Cleary suggested that the Catholic Church should look to this arm of the Church in Australia when considering how structure and governance in the clerical arm might be improved. She said:

> We seem to be hopping between a Church model or big corporate models. We've completely forgotten that the Church is one of the major non-profit organisations in the country and we have some very, very good, and a whole variety of, different corporate governance arrangements within the non-profit sector … we have a huge amount of knowledge within our own Catholic Church on the other side of the aisle about how this can be done, so we can't ignore that; and there are many models within the non-profit sector that could fit this without having to impose a way of doing it that may not be culturally acceptable.[528]

In our *Institutional review of Catholic Church authorities* public hearing, we heard evidence from a panel of four lay employees of not-for-profit community service organisations that are run by various Catholic Church authorities in Australia. We heard about the professionalising effect of these governance models through changes to their structure and governance including incorporation, decision-making by lay people, increased government regulation and accountability, increased transparency, and regulated hiring, training and supervision of personnel.

Incorporation

We heard that two Catholic Church organisations, Marist180 and MacKillop Family Services, are incorporated as companies limited by guarantee.[529]

Dr Cleary told us that, through her work with the Catholic Church, she has observed the 'positive effects of legal incorporation on Catholic health, welfare and education'.[530] She said that the focus of these types of bodies on their legal and fiduciary duties, 'inevitably leads to systems of compliance, placing a high value on accountability, making sure there are accurate information systems that provide transparency'.[531] Dr Cleary added that, in terms of reducing the risk of child abuse, their duty of care and fiduciary obligations means that 'child protection is a focus for the boards of these organisations in a very real way'.[532]

We heard that CatholicCare Wollongong is a division of the Catholic Diocese of Wollongong, which is incorporated under the *Roman Catholic Church Property Act 1936* (NSW).[533] Mr Michael Austin, the Director of CatholicCare Wollongong, told us that, while CatholicCare Wollongong as an organisation is not itself incorporated, there are other CatholicCares that are. He told us that the Bishop of Wollongong, and the director and the Advisory Council of CatholicCare Wollongong are considering the benefits of incorporation.[534] He said that a governance review is currently taking place in the Diocese of Wollongong more broadly.[535]

Mr Dale West, Director of Centacare Catholic Family Services, Adelaide, told us that Centacare is an agency of the Catholic Church Endowment Society Incorporated.[536] He said that the Archbishop of Adelaide is the sole trustee of that body.[537] The Archdiocese of Adelaide has delegated the responsibility of day-to-day management to the director of Centacare, who reports to the executive of the curia through the vicar general.[538] Mr West told us that there is also a governance review being undertaken for Centacare.[539]

Decision-making by the laity

We heard that Marist180 and MacKillop Family Services both have a board of directors. The board of Marist180 includes three Marist Brothers and the board of MacKillop Family Services has one representative each from the Sisters of Mercy, the Christian Brothers and the Sisters of St Joseph. We heard that both boards also comprise lay people from a number of professional backgrounds, including business, law, psychology, finance and academia.[540] Similarly, we heard that CatholicCare has an advisory council which, as at mid-2017, includes lay people from professional backgrounds, including law, accounting and academia, as well as one priest.[541]

Mr West told us that the governance structure of Centacare reflects the value of 'subsidiarity', or the belief that decisions should be made at the lowest level possible and that those affected should have an opportunity to contribute to the decision-making process.[542] As such, Mr West explained that Centacare has no board of management but has established committees that are consulted on decision-making.[543] Positions in these committees are publically advertised and include various stakeholders and members of the community, such as clients, representatives from government funding bodies and staff from other service providers.[544]

Government regulation

In our *Institutional review of Catholic Church authorities* review, Archbishop Coleridge told us that he believed the government funding provided to Catholic community services 'generates forms of accountability'.[545] He compared this to the clerical arm of the Catholic Church, 'within which secular understandings of things like transparency and accountability don't apply in quite the same way'.[546]

We heard evidence about increased accountability through government regulation from expert witnesses. Ms Ariana Kenny, Clinical Specialist with Marist180, told us that the organisation provides much of its work under government contracts, which impose various requirements, including reporting mechanisms, accreditation and compliance with set standards, policies and processes.[547] Ms Kenny explained that, as Marist180 delivers services in three state jurisdictions, this is managed by taking the highest required standard and applying it across all three states.[548]

We heard that MacKillop Family Services takes a similar approach in some areas of its work, applying the highest standard across each of the jurisdictions in which it operates.[549] Mr Nick Halfpenny, Director Policy and Research at MacKillop Family Services, gave evidence that MacKillop Family Services is subject to external monitoring and oversight in each of the jurisdictions in which it operates[550] and is required to satisfy a range of requirements and accreditations.[551] For example, in Victoria, MacKillop Family Services must be registered with the Victorian Registration and Qualifications Authority for a number of the services it provides and, as such, must be accountable to a set of standards.[552]

Mr West told us that Centacare is funded 'about 50/50' by state and Commonwealth governments.[553] He told us that each of the contracts for funding comes with conditions that Centacare must comply with.[554] He also told us that accreditation is considered to be 'very important' by Centacare.[555]

We heard that CatholicCare is also audited by government bodies and must satisfy government requirements for certain aspects of its work.[556]

Transparency

Mr West told us that the Catholic Church Endowment Society Incorporated, of which Centacare is an agency, is a unique body in the Catholic Church structure in Australia, in that its financial accounts are visible to the public. He noted that Centacare's financial accounts are also published in its annual report.[557] Centacare's annual reports from 2009 to the present can be accessed on its website, along with Centacare's Strategic Plan 2016–2019.[558] CatholicCare also publishes annual reports containing details of its financials, along with its strategic plan, online.[559]

Ms Kenny told us that Marist180 ensures transparency through the publishing of committee and board papers.[560] Marist180 also publishes recent annual reports and financial reports on its public website.[561] MacKillop Family Services publishes annual reports, financial reports and its strategic plan online.[562]

Hiring, training and oversight

All four panellists told us that their staff and volunteers are required to undergo screening in their hiring processes. We heard that Marist180 and MacKillop Family Services require all staff and volunteers to undergo a national criminal record check, a Working With Children Check and referee checks.[563]

We heard that CatholicCare also requires all staff and volunteers to satisfy a National Police Check and referee checks and that all applicants for child-related work must satisfy a Working With Children Check.[564] CatholicCare requires all Catholic priests and religious to be 'checked in exactly the same manner as anyone else'.[565] Dr Halfpenny told us that MacKillop Family Services requires any Catholic priests or religious wishing to fill a role at MacKillop Family Services to undergo screening.[566] Mr West told us that Centacare maintains 'rigorous recruiting policies' and requires all staff and volunteers to satisfy and maintain Working With Children Checks.[567]

We also heard that all four organisations provide relevant training to staff. Ms Kenny told us that all staff at Marist180 are required to complete a child protection online training module within two weeks of commencing employment and further child protection training within six weeks of commencing employment.[568] Further, all staff are required to complete mandatory trauma-informed practice training and are strongly encouraged to continue their professional development in this area.[569]

We heard that all CatholicCare staff also undergo mandatory training, including compulsory child protection training, and that ongoing child protection training is provided regularly.[570] Dr Halfpenny told us that learning and development of staff and volunteers at MacKillop Family Services also includes relevant training such as responding to sexualised behaviours in children and adolescents and trauma-informed care.[571] In written evidence, Mr West told us that all staff at Centacare receive training in relation to child abuse and child protection.[572]

We heard that all four organisations provide staff with professional guidance or supervision.[573]

When asked during our *Institutional review of Catholic Church authorities* hearing for his view on 'the role of the corporation in the structure and management of the Church going forward', Archbishop Coleridge said that he was 'very interested in it',[574] adding:

> we do need structures and strategies that, as it were, not only lead to but produce cultural change.
>
> This may be one of them, but I have to say I'm not terribly au fait – I'm not au fait at all – with the legal ins and outs. I have followed the development of these public juridic persons, and they are a very interesting and creative canonical structure. It's a way in which canon law can evolve in very helpful and creative ways. Now, if that could help us in the life of the diocese, I would be all for it.[575]

Archbishop Coleridge told us that he was considering 'what elements from the left side of the aisle, government-funded and so on, we can transpose to the other side of the aisle. Because I think it can be done'.[576]

We note that the good practices evident in the management and oversight of staff in Catholic community services are in contrast to the management of clergy and religious in ministry.

The governance of Catholic schools

In our *Institutional review of Catholic Church authorities* public hearing, we heard evidence from a panel of four lay representatives from the Catholic education sector, including representatives from three Catholic education offices and the principal of a regional Catholic high school. We heard about the delegation of authority in relation to Catholic education from bishops to Catholic education offices, the government regulation of Catholic schools, and models of complaint handling, including processes for responding to any allegations made against priests associated with Catholic schools. All of these issues are discussed below. We also discuss a particular issue that arose during our inquiry in relation to the governance of Catholic schools in Victoria, where parish priests are the employer of school principals and staff.

As part of the *Institutional review of Catholic Church authorities* hearing we received statements from 26 Catholic Church authorities with respect to Catholic education, which are referred to below.

In its submission to our *Institutional review of Catholic Church authorities*, the Council provided information about current governance arrangements and child safety measures in Catholic schools, as well as ongoing initiatives to improve compliance and quality assurance.[577]

During the *Institutional review of Catholic Church authorities* hearing, the leaders of Catholic Church authorities told us about significant improvements to the response to allegations of child sexual abuse in Catholic schools.[578]

Models of governance in Catholic schools

We heard that bishops generally delegate the vast majority of their responsibilities regarding administration and management of diocesan schools to the director of a Catholic education office.[579] Catholic education offices are responsible for the operation, administration and oversight of diocesan schools. They may also provide advice and support to religious institute schools in the diocese.[580] In most states and dioceses, the director of a Catholic education office recruits and appoints principals.[581] Principals, in these instances, are usually responsible for recruiting, appointing and managing other staff of the school.[582]

In 1974, the ACBC established the National Catholic Education Commission, which advocates with the Commonwealth government and other federal education bodies regarding funding for Catholic education, and facilitates the Church's response to emerging issues in education.[583] Around the same time, state and territory-based Catholic education commissions were also established.[584] They promote and advocate for Catholic education in their states and distribute funding amongst schools.[585]

Dr Tim McDonald, Executive Director of Catholic Education Western Australia, told us that all Catholic schools across the four Western Australian dioceses fall within the remit of the Catholic Education Commission of Western Australia and are administered by his office.[586] Dr McDonald told us that the bishops of all four dioceses have delegated 'a whole range of responsibilities for policy development and Catholic identity and the running of good schools across the state' to the Catholic Education Commission of Western Australia.[587]

Mr Peter Hill, Director of Employee Services for the Catholic education office in the Archdiocese of Brisbane, told us that Brisbane Catholic Education:

> belongs to the Corporation of the Trustees of the Roman Catholic Archdiocese of Brisbane, and the delegated authority from the archbishop to the executive director binds Brisbane Catholic Education. That delegated authority then enables the executive director to employ staff and make decisions pertaining to Catholic Education.[588]

Some Catholic schools in Australia continue to be administered by religious institutes.[589] Religious institute schools are increasingly operated through education authorities that have higher levels of independence from the religious institute. For example, in mid-2017 most Christian Brothers schools[590] were operated by Edmund Rice Education Australia,[591] which is a separate canonical authority, or 'public juridic person', that can act in the name of the Catholic Church.[592]

Marist Schools Australia (MSA) governs and manages Marist Schools.[593] The Marist Brothers provincial has no direct governance role in Marist schools.[594] One Marist Brother is a member of the MSA leadership team.[595] The Institute of the Sisters of Mercy of Australia and Papua New Guinea retains a limited governance role in Sisters of Mercy schools but has delegated authority to operate many of its schools to Mercy Education Ltd (MEL), which is a company limited by guarantee.[596] Most members of the Board of MEL are lay people.[597]

De La Salle Brothers schools are all separately incorporated companies, and membership of the companies is restricted to the provincial council.[598] Three brothers are also active members of school boards. The remaining school board members are lay people.[599]

We heard that an ongoing restructure of Jesuit school governance is expected to result in a new body, Jesuit Education Australia, which will have responsibility for values and professional standards across the Jesuit school system, and that school councils and boards will have responsibility for the life of incorporated schools.[600]

Principals of religious institute schools are generally appointed by the school's governing body or their delegate. For example, in Marist schools the national director of MSA appoints principals and deputy principals. Before appointing a principal, the national director consults with the local diocesan bishop.[601] The principal has the authority to select and employ all other teaching staff.[602]

Government regulation

The Catholic education sector, like any education sector, is responsible for ensuring that children are safe at school. Increasingly, government regulation drives approaches to child safety in all schools.

As set out in Volume 13, *Schools*, a number of mechanisms support or require education authorities to ensure that schools are safe for children. These include the National Safe Schools Framework; processes for school registration with state or territory school registration authorities; processes for teacher registration; child safe standards that operate in Victoria, Queensland and South Australia; requirements to obtain background checks for people who work or volunteer in schools (commonly known as Working With Children Checks); and obligatory reporting to child protection authorities.

Catholic education offices, or those bodies that operate religious institute schools, are responsible for ensuring that all schools have effective child safety policies and procedures in place.[603]

As part of our *Institutional review of Catholic Church authorities* public hearing we heard about forms of government regulation of Catholic schools. Dr McDonald told us that, in relation to Western Australia, the Catholic education office has a 'system agreement' with the government. He said that as part of this agreement, 'there are standards that we have to meet. Standard number 12 is around child protection, and part of that is reporting any critical incidents that happen in our schools'.[604]

In the Archdiocese of Brisbane, Brisbane Catholic Education is responsible for ensuring that schools comply with state legislative requirements for reporting complaints of child sexual abuse under the *Education (General Provisions) Act 2006* (Qld), the *Child Protection Act 1999* (Qld), and the Education (Non-State Schools) Regulation 2001 (Qld).[605] Two further regulatory mechanisms for safe non-government schools are accreditation requirements prescribed by the *Education (Accreditation of Non-State Schools) Act 2001* (Qld), and the child and youth risk management strategy requirements prescribed by the *Working With Children (Risk Management and Screening) Act 2000* (Qld).[606] Mr Hill told us during our *Institutional review of Catholic Church authorities* public hearing that a number of pieces of legislation require that the archdiocese has policies and procedures in relation to handling complaints of child sexual abuse.[607]

In the Archdiocese of Melbourne, the Catholic education office, Catholic Education Melbourne, assists schools to comply with Victorian government reporting requirements, including the cross-sectoral joint protocol *Protect: Identifying and responding to all forms of abuse in Victorian schools and Ministerial Order No 870 – managing the risk of child abuse in schools*, that 'sets out the specific actions that all Victorian schools must take to meet the requirements in the Child Safe Standards'.[608] During our *Institutional review of Catholic Church authorities* public hearing, Mr Stephen Elder OAM, Executive Director of Catholic Education Melbourne, described

the 'accountability framework'[609] that applies to schools in Victoria, which includes teachers being licensed though the Victorian Institute of Teaching and schools being licensed through the Victorian Registration and Qualifications Authority (VRQA).[610] Mr Elder also told us that the VRQA conducts random audits of whether schools are meeting the accountability framework, and that Catholic Education Melbourne also undertakes audits.[611]

Mr Elder described the operation of various forms of government regulation relevant to child safety in schools:

> We now have mandatory reporting. We have changes to the Crimes Act … we have joint protocols about child-safe standards. We have school licensing by the state. We have teacher registration.[612]

He also said:

> The real thing that holds people to account is the standards, and the strongest standards are the standards that are imposed by an external authority, such as state governments, who then actually hold you accountable against those standards.[613]

We heard about requirements for all staff and volunteers working within schools to have a Working With Children Check.[614] We also heard about efforts to train staff in their child protection responsibilities – for example, in schools administered by Catholic Education Melbourne where staff have annual training that 'goes through the requirements and their obligations under the law'.[615]

Mr John Crowley, Principal of St Patrick's College Ballarat, a secondary boys' school operated by Edmund Rice Education Australia, told us about a school-level approach to child safety and meeting government regulation and relevant policies and processes:

> Our goal is to be the safest possible school we can be, and I think part of that is to consistently, with staff, re-inform them of the processes that are in place, making sure that we are ever mindful of consistently setting aside regular time to make sure processes are clear and followed; having open conversations with teachers in terms of how they're finding those processes … making child safety related matters something that is part of the fabric of the school.[616]

In Volume 13, *Schools*, we discuss the responsibilities for child safety in schools in further detail and make recommendations relevant to child safety in all schools, including Catholic schools. In Chapter 20 we consider particular issues relevant to child safety in schools managed by or affiliated with religious institutions.

Responsibility for responding to complaints of child sexual abuse in Catholic schools

In 2017, diocesan Catholic education offices are usually responsible for managing the response to allegations of child sexual abuse against employees in the diocese's schools. Principals are required to report allegations to the Catholic education office, in addition to any requirements to report to external authorities, including the police.[617] During the *Institutional review of Catholic Church authorities* public hearing, representatives from several Catholic education offices told us about the operation of mandatory reporting requirements in their jurisdictions, and that school principals or the Catholic education offices would immediately report any allegations of child sexual abuse to the police.[618]

Catholic education offices coordinate the response, which may include conducting an investigation[619] or arranging for an external investigator,[620] once any police involvement is completed. Some diocesan bishops are notified by the director of their diocesan Catholic education office of any allegation of child sexual abuse against a lay staff member of a school.[621] Some diocesan bishops receive regular updates on allegations of child sexual abuse through Catholic education office executive meetings.[622]

Mr Elder told us that he had set up in Melbourne an 'office of investigation, ethics and professional standards', staffed by former police officers with relevant expertise, to investigate allegations related to schools.[623] Dr McDonald told us about improvements to Catholic Education Western Australia's information management systems, including the creation of a central repository of files that enable a 'far more agile'[624] response to allegations. A new child safety framework for Catholic Care Western Australia and a code of conduct also assist teachers to identify and report child safety issues.[625]

Mr Hill of Brisbane Catholic Education told us that the nature of an investigation would depend on the severity of the complaint. A less severe complaint might be investigated by Brisbane Catholic Education.[626] However, he said a matter that required more expertise would generally be investigated by an external investigator with appropriate qualifications.[627]

Allegations of child sexual abuse made against people in religious ministry, including those related to schools, are subject to different processes. Complaints about priests are generally managed by the diocesan bishop's office or, more recently, by a diocesan Professional Standards Office or Safeguarding and Ministerial Integrity Office.[628] Some dioceses may engage external investigators to investigate allegations against their own priests and provide a report to the diocesan bishop for his determination.[629] Complaints about members of religious institutes are usually dealt with using the procedures of the relevant religious institute.[630]

During our *Institutional review of Catholic Church authorities* public hearing, Dr McDonald told us that, in relation to Western Australia, a complaint about a priest associated with a school would be referred to the diocesan Professional Standards Office.[631] He told us that Catholic Education Western Australia works with the diocese under a '[Memorandum of Understanding] … [for] sharing information'.[632] He told us that if a complaint impacted on a school, Catholic

Education Western Australia would do its own risk assessment. He said, in relation to a recent complaint relating to a religious order priest, 'we advised strongly that the parish priest be shifted, until an investigation is completed, from their residence, because they were so close to students'.[633] He said that 'the religious order of priests complied with that and the person was moved, on our advice'.[634]

In religious institute schools, either governing authorities[635] or principals[636] have primary responsibility for handling complaints about child sexual abuse, including reporting to police. They may notify and receive advice from an internal professional standards officer or a diocesan Catholic education office or professional standards office.[637] They may also engage external specialists to conduct investigations.[638]

A small number of dioceses have more recently established central units that investigate any allegations of child sexual abuse made against diocesan lay staff or priests, including any that relate to schools.[639] They investigate and advise the relevant school, diocesan bishop, Catholic education office, or other diocesan authority about the outcome of the investigation and any recommended actions.[640]

In New South Wales and the Australian Capital Territory, Catholic Church authorities are not required by reportable conduct schemes to notify an oversight body of certain allegations, conduct or convictions involving employees, including child abuse allegations, except where they fall into specific categories of institution – for example, because they provide educational or accommodation and residential services. In Victoria, the reportable conduct scheme specifically includes entities that are a 'religious body'.[641] An 'employee' of a religious body is defined as 'a minister of religion, a religious leader or an employee … or officer of the religious body'.[642] We discuss these schemes in detail in Chapter 21, 'Improving responding and reporting by religious institutions', and Volume 7, *Improving institutional responding and reporting*.

Parish priests as employers of principals and staff in diocesan Catholic schools

A particular issue that arose during our inquiry was the governance of diocesan Catholic schools in the Catholic Archdiocese of Melbourne and the dioceses of Sale, Ballarat and Sandhurst, where the parish priest, as the canonical administrator, is in most cases the official employer of the parish school principal and other school staff.[643] These employment responsibilities are in addition to the priest's general pastoral responsibilities in parish schools.

This system of governance in these Catholic diocesan schools is different from those in other states, where the diocesan bishop usually delegates his authority to employ school staff to the director of the diocesan Catholic education office (or equivalent).[644]

During the *Catholic Archdiocese of Melbourne* public hearing, a former teacher from the parish school in Doveton told us she was afraid she could be 'fired' if it were known that she had reported a complaint against the parish priest, Father Peter Searson, who was her employer.[645] We also heard that another teacher feared losing her job after allegations of Father Searson's mistreatment of students arose.[646]

During the *Institutional review of Catholic Church authorities* public hearing. Mr Crowley, Principal of St Patricks College, Ballarat, told us:

> Where I have the concern is that there's a very human element, I think, when you're the principal and your boss is the parish priest.[647]

Mr Crowley said that as a school principal he was delegated to make decisions, and that on a 'whole range of issues' he would consult experts such as police, lawyers, and professional standards at the Catholic education office in Melbourne. He said that when it came to the complex issues involved in running a school, he was concerned that there could be conflict between the parish priest and a principal:

> So I guess the concern is also around the pressures that that might put on priests to be those experts … for example, that the students in a primary school are going off to an excursion, and there's a certain ratio that needs to be in place there for that to happen safely and those are very clearly documented. Well, could there be the potential for the principal to say we're doing one thing, and the parish priest, maybe without that expertise, might not have the same insight.[648]

We also received a submission from Mr Paul Tobias, Principal of St Joseph's College Geelong, another school operated by Edmund Rice Education Australia,[649] that:

> In the case of primary schools, the local Catholic Priest is often the Canonical Administrator. This is a role unsuited to many Parish Priests, due to their other work commitments, lack of interest or expertise in education, lack of understanding in relation to modern work place practices etc. It can also mean that Principals are pressured into positions and situations which they know to be inappropriate, but since they are often relying on this Canonical Administrator for their current and potentially future employment, they are hopelessly compromised.[650]

Mr Elder gave evidence that he supported the retention of the current role of the parish priest in relation to Catholic schools in Victoria. Referring to the case of Father Searson in the Holy Family Primary School in Doveton parish, Mr Elder told us that he supported the current governance structure on the following basis:

- The Archdiocese of Melbourne Catholic education office has been restructured since Father Searson was the subject of complaint, and professional investigators, rather than teachers, now undertake investigations.[651]
- There has been 'a major cultural shift' since the case of Father Searson, when 'father was held on a pedestal. The understanding today, because of everything that has happened, is that father has the same failings as any other human being and so there is more accountability around the way they go in governing their schools'.[652]

- 'priests are supported in their role in governance of their school by the education professionals who are employed' and they receive advice from the 'principal, vice-principal and the leadership team within the school'.[653]
- There are now additional protections for teachers who complain, through Fair Work Australia.[654]

Mr Elder told us that:

> there are multiple governance models. Whatever they are, the thing that, at the end of the day, makes sense is the governance standards against which they must report and where the authority and power rests. In the case of Victoria, it is with the state government, in particular around child-safe standards and a whole lot of other things.[655]

Mr Elder also told us that, in Victoria, amendments to the *Crimes Act 1958* (Vic) change the considerations for teachers who might be considering reporting a concern about a parish priest who is also their employer. He said:

> The changes to the Crimes Act 1958 say failure to protect, failure to disclose and grooming now come into play. There is no ambiguity around this. No ambiguity. And that teacher is held personally responsible for their failure to comply with the law of Victoria.[656]

In the *Catholic Archdiocese of Melbourne* case study, we found that the position of the parish priest as the employer of staff of diocesan schools has the potential to adversely impact on the open and effective reporting of complaints against priests. We concluded that teachers and other staff are placed in an invidious position of reporting complaints against their employer to a body with no authority to act on those complaints or to protect them from adverse action by their employer. We further concluded that it is understandable that a staff member seeking to report complaints diligently and openly would fear they could be unfairly treated as a result and that this could affect reporting.[657]

We note that Mr Crowley took a view that was different from that of Mr Elder. Mr Crowley gave evidence in our *Institutional review of Catholic Church authorities* public hearing in early 2017 that there were ongoing concerns with the model of having a priest as an employer of a principal.[658]

Despite Mr Elder's evidence that the context in which schools operate has changed, there remains a risk that having a priest as an employer of the principal and staff in a diocesan parish school could be a barrier to staff members of the school reporting concerns. In our view this approach to governance should be amended.

Recommendation 16.6

The bishop of each Catholic Church diocese in Australia should ensure that parish priests are not the employers of principals and teachers in Catholic schools.

Conclusions about organisational structure and governance of the Catholic Church

> Essential requirements of good governance are usually seen as being … about accountability, transparency, leadership, listening, and, more than anything, it's about the use of culture in aligning that culture and the leadership of the Church, through accountability and transparency, to its mission. [659]
>
> **Mr Peter Johnstone OAM, President, Catholics for Renewal**

It is apparent from our case studies and research that where institutions have embedded principles of good governance, including transparent and consultative processes for making and implementing decisions, it is more likely that they will respond effectively and appropriately to allegations of child sexual abuse.

The governance structure of the Catholic Church is hierarchical. We heard that throughout its history, the Church has adopted and retained monarchical and feudal governance practices from the secular world. In their governance of Catholic Church authorities at the local level, diocesan bishops are largely autonomous, including in their management of their priests. Provincials of religious institutes have somewhat less autonomy in that they are elected for fixed terms and govern with the assistance of a provincial council.

The powers of governance held by individual diocesan bishops and provincials are not subject to adequate checks and balances. There is no separation of powers, and the executive, legislative and judicial aspects of governance are combined in the person of the pope and diocesan bishops. Diocesan bishops have not been sufficiently accountable to any other body for their decision-making in their handling of allegations of child sexual abuse or alleged perpetrators. There has been no requirement for their decisions to be made transparent or subject to due process. The tragic consequences of this lack of accountability have been seen in the failures of those in authority in the Catholic Church to respond adequately to allegations and occurrences of child sexual abuse.

The hierarchical structure of the Catholic Church created a culture of deferential obedience in which poor responses to child sexual abuse went unchallenged. Where senior clergy and religious with advisory roles to diocesan bishops or provincials of religious institutes were aware of allegations of child sexual abuse, often they did not challenge or attempt to remedy the inadequate responses of their bishop or provincial, or believed that they could not do so.

The exclusion of lay people and women from leadership positions in the Catholic Church may have contributed to inadequate responses to child sexual abuse. In accordance with contemporary standards of good governance, we encourage the Catholic Church in Australia to explore and develop ways in which its structures and practices of governance may be made more accountable, more transparent, more meaningfully consultative and more participatory, including at the diocesan and parish level. We recommend that the ACBC should conduct a national review of the governance and management structures of dioceses and parishes, including in relation to issues of transparency, accountability, consultation and participation by lay people.

Frameworks for diocesan bishops to engage in meaningful and direct consultation with lay men and women in relation to the governance of the Catholic Church also exist in the canon law of the Church. It is clear that, where it has occurred, the involvement of lay men and women in governance has had a positive impact on the governance of the Church. This consultation and co-responsible participation and involvement in governance should be encouraged.

Where mechanisms for consultation and inclusion in governance are already available in canon law (for example, particular – provincial and plenary – councils, diocesan synods, and diocesan and parish pastoral councils), we encourage the bishops of the Catholic Church in Australia to fully integrate and regularise the use of these mechanisms at every level of the Church.

We accept that diocesan bishops and provincials of religious institutes are increasingly making use of professional expertise in the management of their various institutions, including in the administration of their responses to child sexual abuse. This is a development that the Royal Commission encourages.

We accept that the Catholic education and Catholic community services sectors increasingly involve lay people in their governance, operate professionally and are subject to significant government regulation. We consider that these features of the Catholic education sector and Catholic community services contribute to the safety of children. However, we also consider that the arrangement whereby parish priests are the employers of school principals and staff in diocesan Catholic schools, where it exists, should be abolished.

Recommendation 16.7

The Australian Catholic Bishops Conference should conduct a national review of the governance and management structures of dioceses and parishes, including in relation to issues of transparency, accountability, consultation and the participation of lay men and women. This review should draw from the approaches to governance of Catholic health, community services and education agencies.

13.11.5 Leadership

> It certainly is a catastrophic failure of leadership, yes. I think it's a catastrophic failure in many respects, but primarily in leadership.[660]
>
> **Archbishop Timothy Costelloe SDB, Catholic Archbishop of Perth**

During *Case Study 50: Institutional review of Catholic Church authorities (Institutional review of Catholic Church authorities)*, we heard evidence from a panel of the five metropolitan archbishops of the Catholic Church in Australia: Archbishop Mark Coleridge of Brisbane, Archbishop Timothy Costelloe SDB of Perth, Archbishop Anthony Fisher OP of Sydney, Archbishop Denis Hart of Melbourne, and Archbishop Philip Wilson of Adelaide. They each gave evidence that the high incidence of child sexual abuse in Catholic Church institutions in Australia represented a catastrophic failure of leadership.[661] Archbishop Fisher gave evidence that, in some cases, he considered that this failure 'was a kind of criminal negligence to deal with some of the problems that were staring us in the face'.[662]

While leadership exists at various levels and in various forms in the Catholic Church, we have heard particular concern about failures in the leadership of bishops, both diocesan and auxiliary. In our case studies, we heard instances of diocesan bishops who remained in office for decades and repeatedly failed to respond adequately, or at all, to instances of clergy child sexual abuse.[663]

Case Study 28: Catholic Church authorities in Ballarat exposed a catastrophic failure in the leadership of the Diocese of Ballarat, and ultimately in the structure and culture of the Church over decades, to effectively respond to the sexual abuse of children by its priests. That failure led to the suffering of and often irreparable harm to children, their families and the wider community. That harm was avoidable had Church leaders acted in the interests of children rather than in their own or the Church's interests.[664]

In *Case Study 35: Catholic Archdiocese of Melbourne*, the repeated and devastating personal failures of Archbishop Francis Little were laid bare by the evidence. Despite those matters, it would be inaccurate to judge the response of the Archdiocese of Melbourne to complaints of child sexual abuse solely by the action (or inaction) of one man. We were satisfied that the evidence in the case study showed a prevailing culture of secrecy within the archdiocese, led by Archbishop Little, in relation to complaints. Complaints were dealt with in a way that sought to protect the archdiocese from scandal and liability and prioritised the interests of the Church over those of the victims.[665]

Further, in the *Institutional review of Catholic Church authorities* hearing we received evidence about how particular issues in the leadership of Catholic Church authorities in Australia may have contributed to the failure of leadership to respond adequately to the problem of child sexual abuse. These issues included:

- selection of bishops for leadership
- training and education for leadership
- the impact of the selection, training and education for leadership within the Catholic Church in Australia on the response of those in leadership to child sexual abuse.

When we refer here to the 'leadership' of Catholic Church authorities in Australia, we refer to metropolitan archbishops, diocesan bishops, auxiliary bishops and vicars general, as well as provincials, superiors, and others in leadership positions in male and female religious institutes. However, this section largely focuses on the leadership of bishops.

Selection of bishops for leadership

According to Desmond Cahill, professor in the School of Global, Urban and Social Studies at RMIT University and researcher Peter Wilkinson, in the early Christian Church all members of the Church community participated in the selection of bishops:

> St Hippolytus of Rome (215) writes: 'Let the bishop be ordained … having been elected by all the people' (*Apostolic Tradition*, 2-3). St Cyprian of Carthage (c.200-248) insisted that all the faithful, ordained and non-ordained, in obedience to divine authority, should take part in the election of bishops (*Epistolae*, 59.6).[666]

During the 19th century, as power within the Catholic Church was centralised in the Holy See, the papacy increasingly claimed the right to appoint bishops.[667] Dr Gerry O'Hanlon, Adjunct Associate Professor of Theology at the Loyola Institute, Trinity College Dublin, has written that 'It's instructive to note that as recently as 1829, of 646 diocesan bishops in the Latin Church, only 24 had been appointed by the pope: often we forget how new many of our "traditions" are!'[668]

The procedure for the selection of Latin rite Catholic bishops is now prescribed by the 1983 Code of Canon Law. In summary, canon 377 provides that:[669]

- Every three years, the bishops of an ecclesiastical province, or conference of bishops, compose a list of candidates suitable to be bishops, including members of consecrated religious institutes, which is sent to the Holy See (by the apostolic nuncio) for consideration. An individual bishop can also make known to the Holy See the names of worthy candidates.

- The apostolic nuncio sends the Holy See the names of the candidates for bishop provided by the bishops, together with his own opinions of them. In doing so, the apostolic nuncio is to hear from some members of the college of consultors and cathedral chapter and, if he considers it expedient, to 'seek individually and in secret the opinion of others from both the secular and non-secular clergy and from laity outstanding in wisdom'.
- The pope appoints bishops.

The apostolic nuncio, or papal nuncio, represents the pope to the Catholic Church in Australia.[670] The apostolic or papal nuncio is also the Holy See's ambassador to Australia at civil law.[671]

Cahill and Wilkinson wrote of the procedure for nominating and selecting bishops, that:

> The process was, and still is, extremely restricted and overwhelmingly and secretively controlled by papal diplomats and bishops with just minor input from other clerics. Essentially it is a 'closed' and secretive system, with the final determination being made by the pope on advice from his episcopal curia officials.[672]

They argue that the input of the laity in the process for selecting candidates for bishop is 'all but token'.[673]

Catholics for Renewal, an Australian advocacy group for reform within the Catholic Church, made a similar submission. They said, 'Secrecy is … applied to the process of selecting bishops which generally minimises participation by priests and laity'.[674]

During our *Institutional review of Catholic Church authorities* public hearing, American Dominican priest, canon lawyer and survivor advocate, Dr Thomas P Doyle OP, told us about his experience of the process of selecting candidates for the office of bishop. Dr Doyle worked in the office of the papal nuncio to the United States in Washington DC in the 1980s. In that role, Dr Doyle assisted in the local investigation of candidates for the office of bishop in the United States,[675] prior to their names being sent by the papal nuncio to the Congregation for Bishops for the ultimate determination of their candidacy by the pope.[676]

Dr Doyle told us that for candidates to proceed, during the pontificate of Pope John Paul II, some questions had to be answered affirmatively.[677] For example, 'One was complete adherence to the Church's doctrine on sexual morality; complete adherence to the Church's doctrine on marriage of priests, women priests and homosexuality. If you didn't pass that, you didn't get any further'.[678]

In relation to this, Dr Doyle wrote in 2003 that:

> The bishops see their primary responsibility as preserving the visible institutional structures of the Roman Catholic Church. They are selected and named as bishops not because of their potential for revolutionary change but because of the assurance that they will preserve the institutional church as it is known. They are 'organizational men' whose identity is dependent on this institutional church.[679]

Training and education for leadership

We received evidence about concerns regarding the adequacy of the training and education of those selected for leadership in the Catholic Church in Australia.

Professor Patrick Parkinson AM, professor of law at the University of Sydney, has conducted reviews of the Catholic Church's Towards Healing protocol. In his experience, some bishops and leaders of religious institutes within the Catholic Church 'are excellent, others indifferent and others worse than that. There is also a lack of general preparation for leadership and – in some cases – a lack of capacity among bishops and religious order leaders'.[680]

Catholics for Renewal submitted that, 'current ongoing formation of bishops and priests is very limited and the formation that is available reinforces the prevailing culture of clericalism'.[681] Mr Peter Johnstone AM, President of Catholics for Renewal, gave evidence that bishops, priests and clergy in the Catholic Church are not adequately prepared for what is required of them in leadership.[682] He said there is little recognition in the Catholic Church – in comparison to civil society – of the need for those in leadership to know how to manage an organisation, lead the people in it and bring resources together in a way that builds culture.[683]

According to Cahill and Wilkinson, the educational preparation of Australian Catholic bishops has historically largely been limited to seminary studies. They found that the Catholic Directory in 1990 showed that:

> of the 28 bishops in charge of dioceses, only eight had degrees beyond their basic seminary training and of these, only four had secular degrees. By 2014, the situation had improved somewhat, so that of the 28, 11 had degrees, including six who had secular degrees.[684]

The impact of leadership on the response to child sexual abuse

In our case studies, submissions and review of the literature, we considered whether the processes of selection and the characteristics of those selected for leadership in the Catholic Church in Australia, as well as their training and education for leadership, played a role in the inadequate responses to child sexual abuse.

We heard that the selection of individuals for leadership based upon their adherence to official Catholic Church doctrine and commitment to the preservation of the institutional Church, may have contributed to a culture in which protecting the reputation of the Catholic Church was prioritised at the expense of the welfare of children. Archbishop Coleridge told us that 'The thing that has struck me and perplexed me is that it seems to me that all bishops made the same kinds of mistakes in another time, in this country and elsewhere'.[685] He continued:

> If I could put it in these terms, they were invariably company men, and that had both good and bad aspects about it, I suspect, but they were more interested in the institution than in the individual. The sense of individuality generally, certainly in the culture of the Church but more broadly in the culture, and still very strikingly in other cultures around the world – the sense of the individual is very subdued. It's the body corporate that really prevails, and I think that was the sense. So they had this passionate, lifelong commitment to the defence and promotion of the institution, and it made them blind to individuals.[686]

Archbishop Coleridge's comments echo the June 2014 statement of Bishop Michael Malone, former Bishop of Maitland-Newcastle, on the release of the report of the Special Commission of Inquiry into the police investigation of child sexual abuse allegations in that diocese. Bishop Malone stated that:

> At the outset I was an inexperienced bishop who revealed his lack of experience in sometimes hesitant and indecisive ways. I felt torn between wanting to support the unfortunate victims of abuse and protecting the reputation of the Catholic Church. I eventually learned that it was not possible to do both … The Report sheds light on a toxic period in the Diocese of Maitland-Newcastle where, for some, secrecy and self-protection took precedence over protecting the vulnerable.[687]

Senior Professorial Fellow at the Catholic Theological College, University of Divinity, Victoria, Professor Francis Moloney SDB AM, gave evidence during our *Institutional review of Catholic Church authorities* hearing about the interaction between hierarchical structures of governance within the Catholic Church and the types of individuals appointed to leadership positions in the Catholic Church in Australia. He told us that 'we're basically dealing with a structure that is a pyramid … leading also to the appointment of fragile leadership, people who won't bite the bullet, who wait for advice from upstairs'.[688]

Professor Moloney's evidence was consistent with observations made in the 2004 report of the National Review Board for the Protection of Children and Young People (National Review Board) established by the United States Conference of Catholic Bishops. The report noted that a 'don't rock the boat' culture existed in the Catholic Church in the United States and that it had 'prevailed among the bishops for too long'.[689]

Dr O'Hanlon has drawn similar conclusions to those of the National Review Board. Dr O'Hanlon has written that the limitation of open debate within the Catholic Church on fundamental issues has:

> resulted in an intellectual mediocrity and a culture in which often very good people (lay, religious and clerical) keep quiet, even become unaware of why they believe what they believe, instead of submitting beliefs to intelligent scrutiny. And it is out of this mistaken culture of loyalty that the pool of Bishops is replenished, thus perpetuating the institutional blind-spot.[690]

Dr O'Hanlon links the poor responses to the issue of clericalism. He has written that 'Faced with the dominance of a clerical culture, who knows how any of us might have coped, had we been in positions of leadership?'[691] His evidence was that 'in the later phase of the development of the crisis' there was:

> some genuine soul-searching among bishops and religious leaders about how the values of reputation and confidentiality could be reconciled with disclosure and reporting, a soul-searching unfortunately complicated by the clericalist culture already described, in which too often the focus on good name and reputation trumped other important values.[692]

Professor Moloney also expressed the view to us that the promotion of individuals for their orthodoxy rather than their leadership or intellectual capacity may impact upon their ability to respond adequately to the problem of child sexual abuse. Professor Moloney told the Royal Commission that 'We have some outstanding bishops in Australia who are doing their best to face these issues and to adopt courageous, forward-looking lines that will change our culture'.[693] However, he continued that 'We also have a number of very poor bishops, who really are bad appointments and it's beyond them'.[694]

Professor Neil Ormerod, Professor of Theology at the Australian Catholic University, was also critical of the Australian bishops, saying that 'they feel overstretched, under-resourced, inadequate', and have 'no training in management, no training in how to move from A to B in a decision chain. So it all gets put in the too-hard basket'.[695] Professor Ormerod told us that, outside of financial matters, the clerical arm of the Catholic Church typically does not engage outside expertise in its governance, and 'it's still very amateurish'.[696]

The 2005 report of Justice Francis D Murphy into the response of Catholic Church authorities in the Diocese of Ferns, Ireland, to allegations of clergy child sexual abuse between 1962 and 2002, recommended that, in light of the key 'role of the Bishop in the Diocese as the manager and leader of the priests within that diocese', 'Bishops should be supported by management training in order to fulfil that role'.[697]

In relation to the implementation of decisions and oversight of their implementation, Professor Ormerod described a 'culture of impotence' in the leadership of the Catholic Church, 'right throughout the Church from the top to the bottom'.[698] This includes the Holy See failing to follow up whether its directives have been implemented in Australia, as well as the implementation of collective decisions made by the Australian bishops.[699] Professor Ormerod commented that, 'it's exactly in that area of follow-up that the Church is at its weakest, of implementing recommendations that have been made and following through and coming to a conclusion'.[700]

Reform of selection processes for bishops

We have been told that greater consultation with and participation by the laity in the process of selecting candidates for bishops, and in the process of their appointment, as well as greater transparency of the selection process, would make bishops more accountable to the people of the Catholic Church and may have a positive impact upon the institutional response to child sexual abuse.

When discussing the necessity of ameliorating the 'don't rock the boat' governance culture among the United States bishops in order to improve responses to child sexual abuse, the National Review Board of the United States Conference of Catholic Bishops also recommended that the 'process for selecting bishops should include meaningful lay consultation'.[701] It observed that the appointment process 'needs greater lay involvement, both in putting forth the names of priests who might be considered for the episcopacy and in vetting those who have been put forward, to ensure that a wide net is cast when selecting bishops'.[702] Similar views have been expressed in Ireland.[703]

Marist Father and Director of the Aquinas Academy, Sydney Dr Michael Whelan SM, Professor Moloney and Mr Johnstone spoke to us in similar terms.[704]

The Bishop of Parramatta, Bishop Vincent Long Van Nguyen OFM Conv, was of a similar view. He said:

> The laity have no meaningful or direct participation in the appointment, supervision and even removal of the parish priest. I think that needs to change. Or even at the episcopal level, the appointment, supervision and removal of a bishop is virtually excluded from the faithful … There's no accountability to the faithful there. So that needs to be examined if we are serious about creating a culture of accountability in the Church today.[705]

Conclusions about leadership in the Catholic Church in Australia

We have concluded that the leadership of the Catholic Church in Australia frequently failed to appropriately respond to allegations of child sexual abuse. The results of that failure have been catastrophic.

It is apparent that, too often, Catholic Church leaders in Australia have been selected on the basis of their adherence to specific aspects of Church doctrine and their commitment to the defence and promotion of the institutional Catholic Church, rather than their capacity for leadership. This, along with other structural and cultural factors, contributed to a Church leadership that was ill-equipped to respond decisively to child sexual abuse. It also has made Catholic Church leaders in Australia, when responding to the problem of child sexual abuse, susceptible to prioritising the protection of the Church's reputation at the expense of the welfare of children and their families.

It is obvious that more meaningful and direct consultation with, and participation of, lay men and women in the appointment of bishops, as well as greater transparency in the process of selection, would make bishops more accountable and responsive to the lay members of the Catholic Church, including in responding to the problem of child sexual abuse in Catholic Church institutions. For that reason, we recommend that the Australian Catholic Bishops Conference (ACBC) request that the Holy See amend the process for the selection of bishops. We recommend the publication of criteria for the selection of bishops, including in relation to the promotion of child safety, and the establishment of a transparent process for appointing bishops that includes the direct participation of lay people. The ACBC could consult with the Australian Catholic community regarding the selection criteria for bishops.

Recommendation 16.8

In the interests of child safety and improved institutional responses to child sexual abuse, the Australian Catholic Bishops Conference should request the Holy See to:

a. publish criteria for the selection of bishops, including relating to the promotion of child safety

b. establish a transparent process for appointing bishops that includes the direct participation of lay people.

We are persuaded that the limited training and education for leadership in the Catholic Church in Australia may have contributed to poor responses by Catholic Church leaders to child sexual abuse. We acknowledge that Catholic Church leaders increasingly have had access to formal education and ongoing professional development. Further, it is evident that Catholic Church authorities in Australia are increasingly making use of lay professional expertise in the management of their responses to child sexual abuse and in management more broadly. This is a positive development.

In Chapter 20, 'Making religious institutions child safe', we consider and make recommendations about improving leadership in religious institutions in Australia. We recommend in that chapter that each religious institution in Australia should ensure that its religious leaders are provided with leadership training both pre- and post-appointment, including in relation to the promotion of child safety (Recommendation 16.36). This recommendation applies to Catholic Church institutions.

13.11.6 Canon law

> The Church has for centuries presumed that it can police its own borders, that it is an independent empire, not answerable to any secular power. It has had its own language, its own administration and training programs, its own schools and universities, its own system of laws and regulations … a developed list of penalties and its own courts and processes. A law unto itself – an organisation founded by God and answerable only to God.[706]
>
> **Dr Christopher Geraghty, retired judge of District Court of New South Wales, former priest and seminary lecturer**

In this section, we consider whether and to what extent the Catholic Church's system of canon law may have contributed to the Church's inadequate responses to child sexual abuse by clergy and religious.

As set out in this chapter, the sources of canon law include the Code of Canon Law and other canonical documents issued by popes and Vatican Congregations and, at the national and diocesan level, legislation promulgated by bishops' conferences, plenary and provincial councils, and diocesan bishops.[707]

The provisions in canon law that are relevant to responding to child sexual abuse have changed over time. The canons and other documents that have been in force during the period under review by this Royal Commission are detailed in Section 13.2, 'Canon law provisions relevant to

responding to child sexual abuse'. As that section shows, there was a marked change in 2010 in relation to the Holy See's approach to reporting allegations of child sexual abuse to the civil authorities. Much of what is discussed in this section concerns Church law before that time.

We heard a range of views about whether and how canon law may have influenced the response of Catholic bishops and religious superiors to child sexual abuse allegations. For example, we have been told that:

- canon law has been 'deliberately misused to excuse inexcusable behaviour, and to cover up known wrongdoing'[708]
- the 1983 Code of Canon Law (1983 Code) 'has been ill equipped to deal with cases of child abuse'[709]
- in recent years the penal system in canon law has been called into question and used 'too sparingly' for two key reasons – a misunderstanding of the role of penal sanctions, as if they were 'opposed to the prevailing needs of charity', and 'because of some defects in the current canonical penal system' itself[710]
- canon law has been 'used as an excuse in some instances by ecclesiastical authorities for not proceeding in taking direct action against reports of sexual abuse. It has been used as an excuse for not reporting to civil authorities, and it has been used as an excuse for allowing accused clerics to continue in ministry'[711]
- 'in reality the canon law system has been a failure in responding to sexual abuse in an effective manner. The bishops' complaints about the complexity and confusing nature of processes to remove priests and their complaints about the absence of support from the Holy See are true'[712]
- before changes introduced in the early 2000s, 'It was in fact extremely difficult to move against a priest who had abandoned the ministry, without his consent'.[713]

American Dominican priest, canon lawyer and survivor advocate, Dr Thomas P Doyle OP, told us that 'bishops have consistently ignored or by-passed provisions of canon law that could possibly have been instrumental [in] either bringing justice and pastoral care to victims or preventing clerics from abusing'.[714]

Dr Doyle's evidence was that a number of canon lawyers have publicly stated that the problem of the Catholic Church's poor response to child sexual abuse could have been avoided if only canon law had been used properly:

> Some of the strongest advocates of this position were Cardinals from the administrative offices of the Holy See in the Vatican. They were quick to criticize local bishops for not properly using canon law or not using it at all. Yet none of them offered any suggestions as to why it had been ignored for so long nor did they offer any concrete answers to the requests for assistance sent by bishops to the Holy See.[715]

We note that in his 2010 pastoral letter to the Catholics of Ireland, Pope Benedict XVI criticised the Irish bishops for their failure 'to apply the long-established norms of canon law to the crime of child abuse'.[716]

There may have been a deliberate misuse of the law by bishops or there may be deficiencies in those advising on it or applying it, which influenced the response of the Church. However, it seems accepted that the canon law system was rarely used in Australia in response to child sexual abuse. We heard that canon law as it applied to child sexual abuse was 'cumbersome',[717] complex and confusing.[718]

We heard that canon law reinforced cultural attitudes that facilitated abuse. For example, canon law underpins the exalted role and status of clerics, which some clergy used in order to groom, sexually abuse, and effectively silence their child victims. The links between canon law and the Catholic Church's culture of clericalism are considered in more detail in Section 13.11.3, 'Clericalism'.

We have identified a number of issues concerning canon law which we believe have been and remain a hindrance to the Church providing an effective and timely response to priests who have committed, or are suspected of committing, sexual offences against children. These issues are:

- framing of child sexual abuse-related offences in canon law
- reporting to civil authorities
- inadequacies in the disciplinary processes including
    - a confronting array of codes, documents and instruments
    - the use of the 'pastoral approach'
    - dismissal and removal from ministry
    - the statute of limitations
    - the 'imputability' defence
    - standards of proof
    - timeliness
    - publication of decisions

As set out in Chapter 1 of this volume, 'The Royal Commission's work on religious institutions', we have made a range of recommendations in relation to faith-based institutions, including the Catholic Church, in accordance with our Terms of Reference.

We acknowledge that only the Holy See can change canon law for the universal church. The Australian Catholic Bishops Conference (ACBC) has the authority to legislate its own laws for the Church in Australia and to seek Vatican approval, or *recognitio*, for that legislation to become 'particular' law for the Catholic Church in Australia. However, experience suggests that 'particular' laws are not approved by the Vatican unless they are consistent with canon law for the universal church. This means that to the extent that there are problems at the level of canon law for the universal church, the local church does not have the authority to change the law.

For this reason, while our recommendations made in relation to canon law are directed to the ACBC, in each case we recommend that the ACBC should request the Holy See to amend canon law.

In Section 13.7, 'Development of national procedures in the Catholic Church', we set out what we learned about the Australian bishops' engagement with the Holy See regarding their concerns about canon law.

Framing of child sexual abuse-related offences in canon law

Sexual abuse of a minor as a delict in canon law

Under the 1983 Code, child sexual abuse is not framed as a distinct category of 'delict' or canonical offence, but falls in the category of 'Delicts against special obligations'.[719] The delict of sexual abuse of a minor by a cleric is set out in canon 1395 §2 of the 1983 Code:

> A cleric who in another way has committed an offence against the sixth commandment of the Decalogue, if the delict was committed by force or threats or publicly or with a minor below the age of sixteen years, is to be punished with just penalties, not excluding dismissal from the clerical state if the case so warrants.[720]

In the current procedures for responding to child sexual abuse by clerics, which are contained in the 2010 norms attached to Pope John Paul II's 2001 motu propro *Sacramentorum sanctitatis tutela*, child sexual abuse is categorised under the heading of 'more grave delicts against morals':

> the delict against the sixth commandment of the Decalogue committed by a cleric with a minor below the age of eighteen years.[721]

Professor Patrick Parkinson AM, professor of law at the University of Sydney, told us in his submission that canon law 'is woefully deficient as a means of addressing child sexual abuse … Canon law still characterises the rape of children as a moral problem, an offence against the sixth commandment' regarding adultery.[722]

Elizabeth Delaney, a Good Samaritan Sister who served as Chancellor of the Diocese of Wollongong from 1997 to 2000, observed in her 2004 doctoral thesis entitled 'Canonical implications of the response of the Catholic Church in Australia to child sexual abuse' that the placement of canon 1395 under 'Delicts against special obligations' 'suggests that the offence lies primarily in not observing celibacy'.[723] Delaney argued that the canon should be placed instead under 'Offences against Human Life and Liberty' (or 'Delicts against human life and freedom'), to 'direct the focus to the harm that is caused to a victim of sexual misconduct'.[724] Other delicts in that category include homicide, kidnapping, detaining, mutilating or gravely wounding a person by force or fraud.[725]

On 26 July 2011, the Pontifical Council for Legislative Texts circulated a draft schema outlining a set of proposed amendments to Book VI of the 1983 Code, concerning 'Sanctions in the Church' (the 2011 draft schema), to national bishops' conferences around the world for comment.[726] The draft amendments included changes to canon 1395, but not to where the canon is placed in the code.[727] At the time of writing this report, the draft amendments had not been implemented.

On 16 May 2012, Archbishop Denis Hart, the Archbishop of Melbourne and President of the ACBC, provided the ACBC's response to the 2011 draft schema to the Pontifical Council for Legislative Texts.[728] The response noted that the alignment of delicts relating to sexual abuse with delicts of faith and doctrine 'can result in harm to the Church'.[729] We agree with Archbishop Hart.

In 2014, the United Nations Committee on the Rights of the Child recommended that the Holy See amend canon law so that child sexual abuse is considered as a crime rather than a 'delict against the moral'.[730]

Who is the subject of child sexual abuse–related delicts under canon law?

The 1983 Code is not clear as to who can commit the canonical offence of child sexual abuse and whether the offence is limited to clerics or includes non-ordained religious. Australian canon lawyer, Dr Rodger Austin, in a submission on canon law prepared on behalf of The Truth, Justice and Healing Council (the Council), told us that in the 1917 and 1983 codes 'in keeping with canonical tradition' only clerics commit the canonical offence of the sexual abuse of minors.[731] However, Dr Austin stated that while canon 1395 §2 does not on its face apply to members of religious institutes, canon 695 §1 of the 1983 Code, by referring to canon 1395, effectively:

> provides that if a religious sister or brother has sexually abused a minor, s/he 'must be dismissed unless the superior judges that dismissal is not absolutely necessary, and that sufficient provision has been made in some other way for the amendment of the member, the restoration of justice and the reparation of scandal'.[732]

Delaney, writing in her 2004 doctoral thesis, described the question of who can commit the canonical offence of child sexual abuse as an unresolved issue in canon law.[733] Delaney stated that, in her opinion, a canon encompassing child sexual abuse offences that covered all Catholic Church personnel (clerics, non-ordained religious, and lay personnel) would be 'more consistent with the present reality in which the number of lay persons who are engaged in the Church's pastoral care, including health and education, far outweighs the number of clerics or religious'.[734]

The 2011 draft schema proposed an amendment to canon 1395 that would extend its reach to 'any other person holding a dignity, office or responsibility in the Church', which would include lay people.[735] Any such person who commits any of the listed offences with a minor under the age of 18 or a vulnerable adult, 'is to be deprived of any dignity, or office or other responsibility whatsoever'.[736] In our view, that amendment should be made.

Possession or distribution of child pornography offence

In 2010, the norms attached to Pope John Paul II's 2001 motu proprio *Sacramentorum sanctitatis tutela* were revised to introduce the new offence of 'acquisition, possession, or distribution by a cleric of pornographic images of minors under the age of 14, for purposes of sexual gratification, by whatever means using whatever technology'.[737] As with other offences listed in the norms, the child pornography offence only applies to clerics and cases are reserved to the Congregation for the Doctrine of the Faith.

However, canon law otherwise considers the age of a minor to be 18 years for the purposes of delicts related to child sexual abuse. The 2010 norms extended the age of a minor to 18 years for the purposes of canon 1395 §2.[738] We note that the text of the 1983 Code has never been revised to reflect this change.

Consistent with the 2010 norms, the 2011 draft schema contains a proposed new subsection (canon 1395 §3):

> A cleric who acquires or holds or distributes pornographic images of minors below the age of fourteen years is to be punished with the penalties mentioned in §2 in whatever way or by whatever instrument the shameful act has been committed.[739]

Commenting in 2012 on this proposed amendment, New Zealand canon lawyer Brendan Daly said:

> It seems illogical that there is a different age for the pornography penalty than for the sexual abuse of a minor in canon 1395. This would not satisfy many legal systems ... Clearly those who buy and distribute pornography are accomplices in the crime of the original sexual abuse with filming or photographs of the acts.[740]

Sanctions against bishops in relation to negligence or concealment of child sexual abuse

In our case studies, we heard about instances where some Australian Catholic bishops failed to respond adequately or at all to allegations of child sexual abuse.[741] We consider the issue of leadership as a contributing factor to child sexual abuse in Section 13.11.5.

The 1983 Code provides for circumstances in which a bishop may be removed from office. Canon 193 §1 states that:

> A person cannot be removed from an office conferred for an indefinite period of time except for grave causes and according to the manner of proceeding by law.[742]

In 2016, Pope Francis issued the motu proprio *As a loving mother* in relation to canon 193 §1. In it he stated that his intention was 'to underline that among the aforesaid "grave reasons" is the negligence of a bishop in the exercise of his office, and in particular in relation to cases of sexual abuse inflicted on minors and vulnerable adults'.[743]

The 2009 Dublin Archdiocese Commission of Investigation's report, *The Commission of Investigation report into the Catholic Archdiocese of Dublin* (the Murphy report), observed that during the period of its remit, it was not aware of any bishop who had been subjected to penal sanctions by the Holy See.[744] More recently, Dr Doyle told us that this has been done by Pope Francis: 'He has actually laicised three or four bishops and made them go through the canonical process'.[745]

Professor Sheila the Baroness Hollins, who is a member of the Pontifical Commission for the Protection of Minors, gave evidence that the responsibility for holding bishops to account remains a difficult issue in the Catholic Church.[746] She said that while the 2016 motu proprio is now in effect, 'we have to wait and see what that leads to', and that 'I'm not aware of any bishop having been removed as yet under this edict'.[747] Baroness Hollins told us that the original intention was to set up a tribunal to hear such cases, 'But I think further research suggested that it wasn't necessary. We don't know exactly what happened'.[748]

Conclusions about framing of child sexual abuse-related offences

We are satisfied that it is likely that the way child sexual abuse-related offences are framed in canon law contributed to the view held by many Catholic Church leaders that child sexual abuse is a moral failing or a breach of the obligation of clergy and religious to observe celibacy, rather than a crime to be reported to the police.

Creating a specific delict, or series of delicts, relating to child sexual abuse, and repositioning these in the 1983 Code under the category of 'Delicts against human life and freedom', would more appropriately focus attention on the harm done to the child. This would also position the offence of child sexual abuse alongside other delicts that are crimes in civil law as well as canon law, and which may be committed by lay people as well as by clergy and religious.

We agree with Delaney that a canon (or series of canons) encompassing child sexual abuse offences that covered all Catholic Church personnel (clerics, non-ordained religious, and lay personnel) would be 'more consistent with the present reality in which the number of lay persons who are engaged in the Church's pastoral care, including health and education, far outweighs the number of clerics or religious'.[749]

It is clearly not satisfactory that the use of a pornographic image of a child aged between 14 and 18 years is not a crime in canon law. As the ACBC's Commission for Canon Law stated in its response to the draft schema of proposed amendments to Book VI of the 1983 Code: 'It would be most unfortunate if the Church's standard of protection of minors were seen to be lower than that of the civil law'.[750]

Recommendation 16.9

The Australian Catholic Bishops Conference should request the Holy See to amend the 1983 Code of Canon Law to create a new canon or series of canons specifically relating to child sexual abuse, as follows:

a. All delicts relating to child sexual abuse should be articulated as canonical crimes against the child, not as moral failings or as breaches of the 'special obligation' of clerics and religious to observe celibacy.

b. All delicts relating to child sexual abuse should apply to any person holding a 'dignity, office or responsibility in the Church' regardless of whether they are ordained or not ordained.

c. In relation to the acquisition, possession, or distribution of pornographic images, the delict (currently contained in Article 6 §2 1° of the revised 2010 norms attached to the motu proprio *Sacramentorum sanctitatis tutela*) should be amended to refer to minors under the age of 18, not minors under the age of 14.

Canon law and reporting to civil authorities

> Could I also just say, I'm shamed, deeply shamed, to read and hear various Church leaders coming out and saying, 'Only report if you have to'. I believe that to be incredibly wrong.[751]
>
> **Sister Moya Hanlen FDNSC, canon lawyer and Provincial Councillor, Our Lady of the Sacred Heart Provincialate**

> Until these *secrecy laws in Canon Law* are repealed, current and future children will continue to be at risk and may not be protected.[752]
>
> **Concerned Queensland Catholics, submission to the Royal Commission**

As addressed in Section 13.5 and Section 13.8, which set out what we heard about the Catholic Church's response to perpetrators before and after the development of national procedures, at least until 2010, bishops and religious superiors in Australia have rarely, if ever, reported allegations of child sexual abuse against clergy and religious to civil authorities. From 2010, Towards Healing mandated the reporting of allegations to police.

Whether this universal failure to report is founded in canon law was the subject of much evidence and controversy before us. It is not our task to resolve that controversy. However, it is important to set out the events that occurred, the decisions made and the commentary from the senior Vatican officials about reporting to civil authorities. Ultimately, in our view, these matters reveal the approach of the Catholic Church to this issue rather than a close examination of particular canons.

Relationship between civil law and canon law

We heard conflicting evidence about the relationship between canon law and civil law, and that there are differing interpretations among canon lawyers of the meaning of canon 22 of the 1983 Code, which states that:

> Civil laws to which the law of the Church yields are to be observed in canon law with the same effects, insofar as they are not contrary to divine law and unless canon law provides otherwise.[753]

In canon law, 'civil law' refers to all laws enacted by secular authorities such as nations or states.[754] In its submission to the Royal Commission, the Truth, Justice and Healing Council (the Council) argued that:[755]

> i. There were no Church laws or other legal requirements that either prohibited or encumbered bishops from complying with civil laws in regard to reporting priest offenders of child sexual abuse to civil authorities …
>
> iii. There are no Church laws that prescribe the concealment of details of priest offenders from the investigative or legal requirements of civil authorities …
>
> vii. A victim of child sexual abuse by a priest offender was free to go to the police at any stage of an ecclesiastical process, either before, during, or after that process had concluded.

Dr Austin and Sister Moya Hanlen FDNSC, canon lawyer and Provincial Councillor of Our Lady of the Sacred Heart Provincialate, gave evidence to the same effect. Their opinion was that the 1983 Code contains a general obligation to obey Church teaching (canon 754) and the Church teaches that all members of the Church are to obey the civil law, 'provided it doesn't conflict with the moral order'.[756]

Mr Kieran Tapsell, a civil lawyer who has published in the area of canon law, told us that other leading canon lawyers interpreted canon 22 more broadly as expressing 'a more general principle whereby canon law has priority over civil law wherever there is a conflict'.[757]

Professor Parkinson told us in his submission that 'the Catholic Church is to some extent a law unto itself':

> There remains an attitude that the Church, with its long heritage of being self-governing before the emergence of the modern nation-state, still has primary authority over its priests and religious through the Church's own legal system. That attitude means that it may not defer to the nation-states of the countries in which its priests or religious reside except to the extent that it has to do so.[758]

As addressed in Chapter 3, 'Child sexual abuse in the global Catholic Church: early history and previous inquiries', we heard that, for most of its history, the Church regarded the sexual abuse of children as such a serious crime that priest and religious perpetrators were not just to be dismissed from the priesthood or religious life, but also to be punished by imprisonment at a minimum, and in some centuries by much harsher penalties, including the death penalty. From the 12th century priests were 'degraded', or dismissed from the clerical state, and handed over to the civil authorities for punishment according to the civil law at the time.

However, Mr Tapsell has written that a succession of documents from the Holy See in the 19th century indicates that there was a gradual shift away from dismissing priests who were found guilty of soliciting in the confessional and other serious sexual demeanours, and also a growing reluctance to hand over priests accused of sexual crimes to the secular authorities.[759] This culminated in the promulgation of the 1917 Code, which abrogated earlier papal and Church council decrees that had required clergy and religious guilty of serious crimes to be handed over to the civil authorities.[760]

Secrecy

We heard that both the 1917 and 1983 codes contain provisions relating to the secrecy of penal processes in general. Dr Austin told us that the 1917 Code placed the victims and witnesses in a penal trial under confidentiality while the matter was under consideration, although the 1917 Code also gave judges the right to impose permanent confidentiality in particular circumstances.[761] Canon 1455 §1 of the 1983 Code provides that 'Judges and tribunal personnel are always bound to observe secrecy of office in a penal trial, as well as in a contentious trial if the revelation of some procedural act could bring disadvantage to the parties'.[762]

As discussed in Section 13.2, in 1922 the Holy Office (now known as the Congregation for the Doctrine of the Faith) issued the instruction *Crimen sollicitationis.* This instruction placed the investigation and trial of clergy accused of sexual abuse of preadolescent children under the oversight of the Holy Office and under the 'secret of the Holy Office'.[763] The secret of the Holy Office was a permanent silence that bound the bishop and those involved in the canonical investigation and trial. The penalty for breaching the secret of the Holy Office was automatic excommunication from the Church, a penalty which could only be lifted by the pope.[764]

The Council told us in a submission that:[765]

> v. The provisions of *Crimen sollicitationis* had no practical effect on Australian bishops in their obligations under civil law to report priest offenders to the police.
>
> vi. The provisions of *Crimen sollicitationis* that obliged confidentiality of those involved in an ecclesiastical process regarding child sexual abuse did not preclude the passing of information to civil authorities either before or after the process.

Dr Doyle's evidence about secrecy in relation to the Catholic Church's handling of child sexual abuse cases historically was that 'I don't think it was a result, consciously as a result, of anything found in Crimen or anywhere else. The issue was, keep this under control, under wraps, and don't let it become known'.[766] Dr Doyle commented further:

> It was the culture. When Crimen first became publicly known in 2003, several attorneys at home [in the United States] felt that this was a smoking gun and evidence of a conspiracy on the part of the Holy See to keep sexual abuse of children secret and under wraps. When I was questioned about that, my response was, no, it is not a conspiracy; it's part of the ecclesiastical law, but the secrecy is more a part of the culture, that Crimen responded in many ways or supported an overall culture of secrecy.[767]

As referred to in Section 13.2, in 1974 the Vatican Secretariat of State, with the approval of Pope Paul VI, issued the instruction *Secreta continere*.[768] Mr Tapsell told us that *Secreta continere* changed the name of the secret of the Holy Office to the 'pontifical secret', and that as with the secret of the Holy Office, the pontifical secret is a permanent silence.[769] *Secreta continere* remains in force today and is referenced in the current procedures for dealing with cases of child sexual abuse by clergy, outlined in the 2010 norms attached to Pope John Paul II's motu proprio *Sacramentorum sanctitatis tutela*.[770] We heard that *Secreta continere* goes further than *Crimen sollicitationis* in that the pontifical secret applies not only to the canonical investigation and trial, but to all allegations and information about child sexual abuse by clergy from when an allegation is received by the accused's hierarchical superior.[771]

The Council told us in its submission that 'The obligation of pontifical secret/confidentiality applicable to the matters dealt with by the departments of the Roman Curia did not, and does not, amount to a concealment of information from civil authorities when providing such information is required by civil laws'.[772]

The Catholic reform association, Catholics for Renewal, expressed a contrary view in a submission to our *Institutional review of Catholic Church authorities* hearing. It said that the pontifical secret:

> implicitly directed non-compliance with any requirement of civil law, or urge of personal conscience, to report cases of child sexual abuse to civil authorities … There is increasing support by some Church authorities for reporting criminal sexual abuse of children by religious personnel to civil authorities … However, that attitude has not emerged until recently and is still contested; the application of the pontifical secret has not been repealed.[773]

In an article published on the Vatican website, American canon lawyer and Professor of Canon Law at the Catholic University of America, John P Beal, has written in relation to the secret of the Holy Office in *Crimen sollicitationis* and the pontifical secret in *Secreta continere* that:

> it is hard to avoid the conclusion that the overriding motivation was to protect the reputation and public image of the Church itself. It is ironic, therefore, that concerted efforts of ecclesiastical authorities to keep the Church's public image unsullied by maintaining secrecy about its 'dirty laundry' has tarred the Church's reputation more badly than timely revelations of clergy misconduct ever could have. After all that has come to light in recent years, restoring justice and restoring trust will require a much greater transparency in Church officials' dealings with clergy misconduct than the 'pontifical secret' allows.[774]

Some witnesses gave evidence that failure to report allegations to the civil authorities had less to do with canon law than with cultural norms in the Catholic Church, including the culture of clericalism and a broader culture of secrecy.

Dr Doyle gave evidence that the secrecy which had surrounded cases of sexual abuse before the change in direction that came after 2001 and 2002 was both 'the product of canon law and the clerical culture':

> Based on my experience with the many civil cases I was involved with in the United States, Canada, Ireland and the United Kingdom, I believe the strongest motivation for secrecy was the cultural imperative to protect the Church's image.[775]

Sister Hanlen noted views that a culture of secrecy in the Catholic Church predated *Crimen sollicitationis* and the pontifical secret. Sister Hanlen gave evidence that 'it is the culture of the secrecy, I believe, which is the protection of the clergy, that is the problem … it is the culture that "we must protect" – that is where it is wrong'.[776]

Avoidance of scandal

As set out in Section 13.5, 'Catholic Church responses to alleged perpetrators before the development of national procedures' and Section 13.11.3, we have heard evidence that Catholic bishops and religious superiors in Australia, in responding to allegations of child sexual abuse by clergy and religious, were often preoccupied with the avoidance of scandal and a desire to protect the reputation of the Catholic Church.

The avoidance of scandal or causing scandal is mentioned in 24 different canons of the 1983 Code.[777] In particular, the canon law provisions relating to the imposition of penalties reflect an explicit concern with avoiding or remedying scandal. Canon 1341 of the 1983 Code requires ordinaries to consider whether a pastoral approach could 'repair the scandal, restore justice, reform the offender', before initiating a penal process.[778] Other canons provide for lighter penalties if the perpetrator has 'repaired the scandal', or suspension of penalties if 'the need to repair scandal is not pressing'.[779]

As to whether these provisions contributed to the Church's inadequate response to allegations of child sexual abuse, or even required such a response, Baroness Hollins told us in her submission, that:

> In no canon does it require a member of the Church to 'cover-up' a canonical offence in order to protect the reputation of the Church. Such cover-ups completely misunderstand the purposes of the Church's canon law in this area, which are the reparation of scandal, the restoration of justice and the reform of the offender (canon 1341).[780]

Whether or not the canons have that effect, their frequent references to scandal and its avoidance are likely to strongly influence a bishop in the actions he takes on receipt of a complaint against one of his priests.

Concerns of Australian bishops

We received evidence that in the late 1990s and early 2000s some Australian bishops were concerned about the tension between the requirements of canon law and those of civil law in relation to responding to child sexual abuse.

We heard that the conflict between canon law and civil law was one of the themes of a report that the ACBC provided to a meeting of bishops from English-speaking countries with Holy See officials in April 2000. Bishop Geoffrey Robinson, retired Auxiliary Bishop, Archdiocese of Sydney, gave evidence that 'I felt there could be conflicts between our obligations under church law and our obligations under civil law', and that this was a key area of discussion he wanted to have with Holy See officials in Rome.[781]

One of these differences between canon law and civil law was in relation to state mandatory reporting laws, which set 'unacceptable risk' of a child being sexually abused as a threshold for reporting. The ACBC report stated that:

> This law is an attempt to protect innocent children from sexual abuse in cases where no conviction or admission exists, but there are good reasons to fear the risk of abuse. In Australia these cases are matters of law, but throughout the world they can easily be matters of conscience. The laws and procedures of the Church must not prevent a bishop from obeying the reasonable laws of the State and they must not prevent a bishop from following his conscience.[782]

In June 2001, over a year after the meeting in Rome, the President of the ACBC wrote to the Prefect of the Congregation for the Clergy.[783] That letter stressed that it was important that 'any proposals from the Holy See should not be seen to be at variance with the civil requirements of the countries in which we live', noting that 'In that situation, the Bishops would be placed in an intolerable position and great harm would be done to the Church'.[784]

The concept of 'unacceptable risk' is discussed below.

Concerns of other bishops

Elsewhere in the world, a number of national bishops' conferences sought to persuade the Holy See to remove any actual or perceived barriers to reporting to civil authorities. In 1996, the Irish Catholic Bishops Conference released its framework document for responding to child sexual abuse, which provided for mandatory reporting of all child sexual abuse allegations to the police, and requested Holy See approval (*recognitio*) to make the protocol 'particular' canon law for the Church in Ireland.[785]

On 31 January 1997, almost a year after the introduction of the Irish framework, the Holy See refused the Irish bishops' request. In a letter signed by the papal nuncio to Ireland, Archbishop Luciano Storero, the Congregation for the Clergy emphasised 'the need for the document to conform to the canonical norms presently in force'. In particular, the Congregation for the Clergy noted that 'the situation of "mandatory reporting" gives rise to serious reservations of both a moral and canonical nature'. The letter directed the Irish bishops to 'meticulously' follow the procedures laid out in the Code of Canon Law and said that if procedures contrary to canon law were applied, they could 'invalidate' the actions of bishops.[786]

At meetings in 1998 and 1999 between the Irish bishops and then Prefect of the Congregation for the Clergy, Cardinal Darío Castrillón Hoyos, Cardinal Castrillón told the bishops that they should be 'fathers and not policemen' to their priests.[787] In September 2001, Cardinal Castrillón wrote to a French bishop, Pierre Pican, congratulating him after he had received a suspended prison sentence from a French court for failing to report one of his priests to the civil authorities. Cardinal Castrillón said that he was delighted 'to have a fellow member of the episcopate who … would prefer to go to prison rather than denounce his priest-son'.[788] The cardinal reported that this letter had been approved by Pope John Paul II.[789]

In 2002, a number of senior Holy See officials made statements emphasising the 'special nature' of the relationship between bishop and priest, and opposing the proposition that bishops should be prepared to report allegations of child sexual abuse by their clergy to the civil authorities. These included Archbishop Tarcisio Bertone, (later Cardinal), then Secretary of the Congregation for the Doctrine of the Faith, who was reported as saying that civil society must 'respect the "professional secrecy" of priests … If a priest cannot confide in his bishop for fear of being denounced, then it would mean that there is no more liberty of conscience'.[790]

Also in 2002, Archbishop Julián Herranz (later Cardinal), then president of the Pontifical Council for the Interpretation of Legislative Texts, the pope's delegate for the interpretation of canon law, rejected the idea that there was 'an obligation on the part of ecclesiastical authority to denounce to civil judges all the cases that come to their attention', and said that 'The rapport of trust and secrecy of the office inherent to the relationship between the bishop and his priest collaborators … must be respected'.[791] Professor Gianfranco Ghirlanda SJ, Dean of the Faculty of Canon Law at the Gregorian University in Rome and judge of the Apostolic Signatura, the Holy See's most senior court, was reported as making a similar statement.[792]

It appears to us that regardless of the interpretation of canon law by canonists, the Holy See considered that bishops were not free to report allegations of child sexual abuse by clergy to civil authorities before and during the 1990s and early 2000s.

The approach of the Holy See began to shift in 2002, at the height of the clergy sexual abuse scandal in the United States, as illustrated by its response to the United States Conference of Catholic Bishops (USCCB). In 2002, the USCCB approved a *Charter for the protection of children and young people* (known as the Dallas Charter) and Essential Norms for responding to child sexual abuse by clergy, which required mandatory reporting of all allegations. The USCCB sought a *recognitio* from the Holy See so they could become 'particular law' for the Catholic Church in the United States. The Holy See rejected the request on the grounds that 'the "Norms" and "Charter" contain provisions which in some aspects are difficult to reconcile with the universal law of the Church',[793] but agreed to a compromise allowing reporting in those states where the civil law required it. This dispensation received a *recognitio* from the Holy See in December 2002, but its operation was limited to the United States.[794]

2010 developments

Ultimately, in 2010, the Holy See extended that dispensation to all countries. It remained limited to countries that had enacted mandatory reporting laws. This was conveyed by the *Guide to understanding basic CDF procedures concerning sexual abuse allegations,* issued by the Congregation for the Doctrine of the Faith (CDF) on 12 April 2010, which provides a dispensation from the pontifical secret to enable bishops to report child sexual abuse by clergy to the civil authorities in states where there are mandatory reporting laws.[795]

The 1983 Code and the 2010 norms attached to the motu proprio *Sacramentorum sanctitatis tutela* have not been amended to reflect this approach. Article 30 of the 2010 norms imposes the pontifical secret on all allegations obtained by bishops in relation to clergy sexual abuse of children.[796]

Other recent developments

In 2010, the Catholic Church in Australia amended its Towards Healing protocol to require all Church personnel to report allegations of child sexual abuse, even where there is no civil law requirement to do so. The ACBC knew that requirement was in conflict with canon law but chose to do so regardless.

In January 2014, the United Nations Committee on the Rights of the Child published its Concluding Observations on the second periodic report of the Holy See submitted under article 44 of the United Nations Convention on the Rights of the Child (UNCRC), observing that:

> Due to a code of silence imposed on all members of the clergy under penalty of excommunication, cases of child sexual abuse have hardly ever been reported to the law enforcement authorities in the countries where the crimes were committed. On the contrary, cases of nuns and priests who were ostracized, demoted and defrocked for not respecting the obligation of silence have been reported to the Committee, as well as cases of priests who were congratulated for refusing to denounce child abusers, as stated in the letter by Cardinal Castrillon Hojos to Bishop Pierre Pican in 2001.[797]

The Committee 'strongly' urged the Holy See to:

> (b) Immediately remove all known and suspected child sexual abusers from service and refer the matter to the relevant law enforcement authorities
>
> (c) Ensure transparent sharing of all archives which can be used to hold accountable child sexual abusers and all those who concealed their crimes and knowingly placed offenders in contact with children …
>
> (e) Establish clear rules, mechanisms and procedures for the mandatory reporting of all suspected cases of child sexual abuse and exploitation to law enforcement authorities
>
> (f) Ensure that all priests, religious personnel and individuals working under the authority of the Holy See are made aware of their reporting obligations and of the fact that, in cases of conflict, these obligations prevail over canon law provisions.[798]

In a formal response, the Holy See noted that it did not have the capacity or legal obligation to impose the principles of the UNCRC upon 'local Catholic churches and institutions present on the territory of other States and whose activities abide with national laws'. It also questioned the Committee's mandate to make recommendations about canon law.[799] Mr Tapsell submitted that, 'Had bishops or religious superiors been free under canon law to report clergy sex crimes against children in those countries that had no or inadequate reporting laws, one would have expected Pope Francis's response to have said so'.[800]

In May 2014, the United Nations Committee against Torture, in its *Concluding observations on the initial report of the Holy See*, noted that:

> The Committee is concerned by reports it has received of cases in which the State party has declined to provide information to civil authorities in connection with proceedings relating to allegations that clergy members committed violations of the Convention, despite the fact that since 2001 the Congregation for the Doctrine of the Faith in the Vatican City State has had responsibility for receiving and investigating all allegations of sexual abuse of minors by Catholic clergy.[801]

This committee also recommended that the Holy See:

> Take effective measures to ensure that allegations received by its officials concerning violations of the Convention are communicated to the proper civil authorities to facilitate their investigation and prosecution of alleged perpetrators.[802]

On 15 February 2016, the President of the Pontifical Commission for the Protection of Minors, Cardinal Seán O'Malley, said that the Catholic Church had a 'moral and ethical responsibility' to report child sexual abuse to the civil authorities:

> As Pope Francis has so clearly stated: 'The crimes and sins of the sexual abuse of children must not be kept secret any longer. I pledge the zealous vigilance of the Church to protect children and the promise of accountability for all'. We, the President and the members of the Commission, wish to affirm that our obligations under the civil law must certainly be followed, but even beyond these civil requirements we all have a moral and ethical responsibility to report suspected abuse to the civil authorities who are charged with protecting our society.[803]

This comment appears to be in tension both with Article 30 of the 2010 norms, which imposes the pontifical secret on all allegations obtained by bishops in relation to sexual abuse of children by clergy,[804] and with the *Guide to understanding basic CDF procedures concerning sexual abuse allegations* (2010), which provides a dispensation from the pontifical secret to enable bishops to report child sexual abuse by clergy to the civil authorities in states where there are mandatory reporting laws.

On 27 May 2016, the Pontifical Commission for the Protection of Minors issued guidelines to episcopal conferences and religious congregations to assist them in developing and implementing policies and procedures on the protection of minors. Those guidelines state that:

> There should be a clear statement about compliance with the requirements of civil authorities and Church authorities. Where episcopal conferences include more than one country or a country with a federal structure – it should be clearly stated that the Church will comply with the relevant authority. This should include any civil requirements on mandatory reporting.[805]

We note that there is no such clear statement about compliance with the requirements of civil law in the 1983 Code or the 2010 norms attached to the motu proprio *Sacramentorum sanctitatis tutela*.

Mr Bill Kilgallon OBE, a member of the Pontifical Commission with responsibility for developing the guidelines, gave evidence that the Pontifical Commission discussed Cardinal O'Malley's statement about there being a 'moral obligation to report, notwithstanding a legal requirement'. Mr Kilgallon told us that this was the subject of continuing discussion, because the Pontifical Commission had been told that in some countries, 'particularly in countries where there are particular versions of sharia law', reporting abuse could endanger the victim.[806]

In relation to the pontifical secret, we note the observation by the ACBC in its response sent to the Holy See in relation to the 2011 draft scheme of proposed amendments to the 1983 Code, that 'Defining a breach of pontifical secrecy as a delict presents a very negative image of the church'.[807]

Conclusions about canon law and reporting to authorities

It is not for us to resolve any conflict that may exist between canon law and civil law or to make findings as to the proper interpretation of any canon or instrument in relation to mandatory reporting to civil authorities.

Our primary concern is the safety of children from sexual abuse in an institutional context. We are very clear that there should be no provision in canon law that attempts to prevent, hinder or discourage compliance with mandatory reporting laws by Australian bishops and others or to impede those who choose to report to the civil authorities.

We recommend in our *Criminal justice* report that failure to report child sexual abuse to police be an offence. With those provisions in place, any person, including Church officials who contravene those laws, may be prosecuted.

We understand that, aside from the exception for reporting to civil authorities in jurisdictions where there are reporting laws, the pontifical secret currently applies to allegations of child sexual abuse made against clergy, as well as canonical proceedings relating to those allegations.

We acknowledge that some aspects of canonical processes relating to child sexual abuse – such as the identity of the alleged victim – may legitimately be the subject of confidentiality requirements. However, the pontifical secret goes significantly beyond this purpose. We can see no good reason for imposing the pontifical secret over all aspects of matters relating to child sexual abuse.

We are satisfied that the Holy See's approach to reporting allegations of child sexual abuse by clergy has changed over time. As addressed in Chapter 3, it appears that in earlier centuries it was Catholic Church practice to 'depose' clergy who sexually abused children and hand them over to the civil authorities for punishment according to the prevailing civil law, but that this began to change during the 19th century. The Church apparently became less willing to report clergy who sexually abused children to the civil authorities than it had been in earlier centuries, and less willing to dismiss them from the priesthood. As set out earlier in this section, we have heard evidence that scandal was a significant concern for the Church.

We are persuaded that *Crimen sollicitationis* and the secret of the Holy Office reflected and reinforced a cultural mindset that regarded child sexual abuse by clergy and religious as a matter to be dealt with internally, and in secret, rather than be reported to the civil authorities. We agree with Beal's argument, published on the Vatican's website, that in relation to child sexual abuse it is hard to avoid the conclusion that the overriding motivation underlying the imposition of the secret of the Holy Office, and later the pontifical secret, was to protect the reputation of the Church.[808]

It is clear that the view that bishops and religious superiors should not report allegations of child sexual abuse by clergy and religious was still operative in the Holy See during the 1990s and early 2000s. However, this began to change from 2002 when, at the height of the clergy sexual abuse scandal in the United States, the American bishops persuaded the Holy See to grant them an exemption to the pontifical secret, initially restricted to those American jurisdictions which had mandatory reporting laws. In 2010 this exemption was extended to become a worldwide exemption, but also only in jurisdictions with mandatory reporting laws.

The text of canon law itself has not yet been amended to explicitly reflect these changes. Rather, it appears that the Holy See preferred to alter its interpretation of the law. The position in the text of canon law with respect to reporting to the civil authorities in jurisdictions that do not have comprehensive mandatory reporting laws also remains unclear.

For these reasons, we recommend that the ACBC request that the Holy See amend canon law so that the pontifical secret, as outlined in *Secreta continere* and currently imposed through *Sacramentorum sanctitatis tutela*, no longer applies to allegations relating to child sexual abuse.

Recommendation 16.10

The Australian Catholic Bishops Conference should request the Holy See to amend canon law so that the pontifical secret does not apply to any aspect of allegations or canonical disciplinary processes relating to child sexual abuse.

Adequacy of the canon law disciplinary system

> [Canon law] remains grossly inadequate for investigating and dealing with child sexual abuse by priests and religious in circumstances where, for whatever reason, there is either no criminal prosecution at all or, if there is, it does not result in a conviction.[809]
>
> **Professor Patrick Parkinson AM, professor of law, University of Sydney**

> A law is bad law if you have to 'get around' it in all cases.[810]
>
> **Bishop Geoffrey Robinson, retired Auxiliary Bishop, Archdiocese of Sydney**

> In fact, with this tsunami of sexual abuse, the canons as they existed were judged to be, rightly, in my view, inadequate, so there has been canonical change, and there will be more.[811]
>
> **Archbishop Mark Coleridge, Archbishop of Brisbane**

A confusing array of codes, documents and instruments

A number of witnesses told us that canon law is complex because its requirements are found in a confusing array of codes, documents and instruments.

Noting that 'It is a basic feature of every coherent legal system that there is a firm, simple and unmistakeable procedure for the promulgation of a law',[812] the 2009 Murphy report observed that 'the lack of precision and the difficulties of finding the exact content of canon law' were 'very difficult to understand'.[813] The Murphy report observed that canon law appears to be in a state of flux and confusion:

> Even the best attempts of competent people to discover the norms which, according to canon law, should be applied to cases of sexual abuse were in vain ... There seems to have been a total absence of any straightforward, easily verifiable system for ascertaining which decrees or statements had the force of canon law and which had not, and what the effects of new canonical instruments, such as the code of 1983, or the 2001 procedural rules, had on previous instruments which had been treated as having the force of law.[814]

Evidence before us is that the Church promulgated procedural rules in early 2001; however, by December that year, the Australian bishops had not seen the document and were wondering when or if it was going to be published.[815]

As addressed in Section 13.2, the norms attached to Pope John Paul II's 2001 motu proprio, *Sacramentorum sanctitatis tutela,* extended the age of a minor to 18 years for the purposes of canon 1395 §2.[816] The 2010 norms, which currently apply, extended the statute of limitations from five years to 20 years after the victim's 18th birthday. However, the text of the 1983 Code has never been revised to reflect this change.

Archbishop Mark Coleridge, Archbishop of Brisbane, gave evidence during our *Case Study 4: The experiences of four survivors with the Towards Healing process (The Towards Healing process)* that the Holy See is 'neuralgic' about changing the wording of the canons and prefers to change their 'interpretation'. Archbishop Coleridge said that the Holy See can 'suffer from a lack of coordination' in such matters.[817]

The 'pastoral approach'

As discussed in Section 13.2, the 'pastoral approach' is provided for in canon 1341 of the 1983 Code:

> An ordinary is to take care to initiate a judicial or administrative process to impose or declare penalties only after he has ascertained that fraternal correction or rebuke or other means of pastoral solicitude cannot sufficiently repair the scandal, restore justice, reform the offender.[818]

Religious superiors have more discretion than bishops about whether they adopt a pastoral approach. Canon 695 §1 of the 1983 Code provides that:

> A member must be dismissed for the delicts mentioned in cann. 1397, 1398, and 1395, unless in the delicts mentioned in can. 1395 §2, the superior decides that dismissal is not completely necessary and that correction of the member, restitution of justice, and reparation of scandal can be resolved sufficiently in another way.[819]

The 2010 'Historical introduction' to *Sacramentorum sanctitatis tutela*, prepared by the CDF, criticised the 'pastoral attitude', whereby 'the bishop was expected to "heal" rather than "punish" clergy who sexually abused children'. It stated that:

> The period between 1965 and 1983 (the year when the new Latin Code of Canon Law appeared) was marked by differing trends in canonical scholarship as to the scope of canonical penal law and the need for a de-centralized approach to cases with emphasis on the authority and discretion of the local bishops. A 'pastoral attitude' to misconduct was preferred and canonical processes were thought by some to be anachronistic. A 'therapeutic model' often prevailed in dealing with clerical misconduct. The bishop

> was expected to 'heal' rather than 'punish'. An over-optimistic idea of the benefits of psychological therapy guided many decisions concerning diocesan or religious personnel, sometimes without adequate regard for the possibility of recidivism.[820]

However, we heard that it was an explicit requirement of canon law, long before the 1960s, that bishops and provincials should adopt a 'pastoral approach' in disciplining clergy and religious, including in relation to allegations of child sexual abuse.[821] Dr Austin gave evidence that the position in canon law that the imposition of a penal approach should be a last resort 'actually finds its origin in the teaching of the Council of Trent in the 16th century. The 1917 Code picked up that, and the 1983 Code, in Canon 1341, reflects it'.[822]

Crimen sollicitationis also required the 'pastoral approach' to be taken into account in imposing penalties on clerics in relation to four serious delicts (solicitation in confession, homosexual sex, bestiality, and sexual abuse of a minor). Article 63 of *Crimen sollicitationis* stated that 'Resort is to be had to the extreme penalty of reduction to the lay state', only when:

> it appears evident that the Defendant, in the depth of his malice, has, in his abuse of the sacred ministry, with grave scandal to the faithful and harm to souls, attained such a degree of temerity and habitude, that there seems to be no hope, humanly speaking, or almost no hope, of his amendment.[823]

Article 64 (d) of *Crimen sollicitationis* allowed the ordinary to order an accused priest to live in a certain place or prohibit him from living in a particular place, 'As often as … seems necessary either for the amendment of the delinquent, the removal of a near occasion [of sin], or the prevention or repair of scandal'.[824] Article 68 provided that if a priest who had been convicted in a canonical trial, 'or even merely admonished', was transferred, the ordinary of the territory he was moving into should be warned about his record and legal status.[825] We have found that the transfer of priests was frequently the first response of bishops to a complaint and that transfers continued to be made after repeated complaints. Our *Case Study 28: Catholic Church authorities in Ballarat* demonstrated the practice of removing priest perpetrators from one parish to another. In that case study we found there was a catastrophic institutional failure which resulted in many children being sexually abused.[826]

Mr Tapsell told us that another example of the 'pastoral approach' appears in the 2010 *Guide to understanding basic CDF procedures concerning sexual abuse allegations*, which represents the Holy See's current approach. It stated that if the priest 'has admitted to his crimes and has accepted to live a life of prayer and penance', the bishop can issue a decree prohibiting or restricting the priest's public ministry. It is only if he violates those conditions that he can then be dismissed. This remedy has been used in cases of diocesan priests because of 'age or infirmity'.[827]

There are two key ways in which the 'pastoral approach', as outlined in canon law, has had a negative impact on the Catholic Church's response to child sexual abuse by clergy and religious. First, it contributed to the mistaken view on the part of some bishops and religious superiors that child sexual abuse was a forgivable moral failing, rather than a crime that should be reported to the police.

For example, in *Case Study 43: The response of Catholic Church authorities in the Maitland–Newcastle region to allegations of child sexual abuse by clergy and religious*, Bishop Michael Malone gave evidence that:

> In the past, as in years ago, I think if a priest offended with regard to anybody, it was regarded as a moral problem, and if he went to confession he'd be forgiven of his sins, he'd do his penance and he would be able to continue on. That's how the moral problem was understood.[828]

We also heard from Bishop Robinson about a meeting of bishops from English-speaking countries with Holy See officials that he attended in Rome in April 2000. Bishop Robinson observed that the Roman authorities' understanding of the problem of child sexual abuse at that time was 'a long way behind', and that most of the Roman officials still saw the problem as a moral one.[829]

The second way in which the 'pastoral approach' has had a negative impact on the response to child sexual abuse is that, for those bishops and religious superiors who wanted to initiate a canonical disciplinary process against an alleged perpetrator, the 'pastoral approach' has been a significant obstacle to securing a successful outcome, because it was understood to be a precondition to disciplinary action.

American canon lawyer Nicholas Cafardi, a professor of law and a former chair of the USCCB's National Review Board for the Protection of Children and Young People, has written that as a result of canon 1341, in the 1980s and 1990s there was 'nearly unanimous' agreement among canon lawyers in the United States as to the 'impropriety' of using the canon law penal process in cases of child sexual abuse by clergy, 'except as a last resort'.[830] Cafardi has stated that it is:

> perhaps a blind spot in the Code of Canon Law, especially given modern sensibilities to the great harm perpetrated by the sexual abuse of the child, solicitude for the victim is not mentioned in the penal process. In the penal equation, the pastoral solicitude of Canon 1341 is solely for the perpetrator.[831]

We acknowledge that canon 1341 applies to a range of delicts other than child sexual abuse, and that 'pastoral solicitation' or attempting to 'reform the offender' may be appropriate responses before starting a canonical action in relation to some of these other delicts. However, in our view, this canon needs to be amended to make clear that the 'pastoral approach' is not an appropriate precondition to the commencement of canonical action relating to child sexual abuse.

Recommendation 16.11

The Australian Catholic Bishops Conference should request the Holy See to amend canon law to ensure that the 'pastoral approach' is not an essential precondition to the commencement of canonical action relating to child sexual abuse.

Statute of limitations (prescription)

'Prescription' is the canon law term for what would be called the statute of limitations in civil law.[832] It is apparent that there is wide agreement among bishops and canon lawyers, in Australia and internationally, that the prescription period on bringing canonical actions in relation to child sexual abuse has been a major obstacle to achieving the dismissal of alleged perpetrators. We agree.

Before 1983, when *Crimen sollicitationis* was still in force, there was no time limit on bringing cases of child sexual abuse. The 1983 Code introduced a limitation of five years from the time of the offence.[833] Bishop Robinson gave evidence that the five-year limitation period was 'totally unrealistic'.[834]

In 1994, following negotiations by the American bishops that had lasted six years,[835] the Holy See granted the Church in the United States an indult (a licence granting an exception), extending the time limit in child sexual abuse cases to the victim's 28th birthday, but this exception only applied in the United States.[836] A similar extension was granted to the Church in Ireland in 1996.[837]

In June 1998, the President of the ACBC, Cardinal Edward Clancy, wrote to Pope John Paul II seeking a review of 'canon 1362 regarding prescription'.[838]

As noted in Section 13.7, in July 2000, the President of the ACBC, Archbishop Francis Carroll, wrote to the Prefect of the Supreme Tribunal of the Apostolic Signatura, Archbishop Mario Pompedda, noting a number of important questions that remained to be resolved following an earlier meeting in Rome.[839] Archbishop Carroll stated that the major unresolved question was that of '"prescription" or the statute of limitations'.[840] The letter noted that of 402 cases of sexual abuse of children in the Catholic Church in Australia, there had been:

- 13 (3.23 per cent) cases in which the complaint was lodged within five years of the abuse
- 49 (12.18 per cent) cases in which the complaint was lodged before the complainant reached the age of 23
- 77 (19.15 per cent) cases in which the complaint was lodged before the complainant reached the age of 28.[841]

Archbishop Carroll stated that 'these facts place the bishops in an impossible situation', as 'almost all offenders are protected by the law of prescription'.[842]

In 2001, the motu proprio *Sacramentorum sanctitatis tutela* extended the limitation period for initiating canonical proceedings in relation to cases of child sexual abuse by clerics to the victim's 28th birthday for the whole Church. However, it is understood that this extension did not operate retrospectively, so that if the abuse had occurred before 18 May 2001 and five years had expired, the canonical crime was still extinguished.[843]

The former Bishop of Lismore, Bishop Geoffrey Jarrett, gave evidence during our *Towards Healing process* public hearing that the limitation period of 10 years (from the victim's 18th birthday) was still unsatisfactory, because the overwhelming majority of cases would not have been reported in this period.[844] We note that, in a paper given to the Canon Law Society of Australia and New Zealand in 2006, the then Promoter of Justice for the CDF, Monsignor Charles Scicluna, commented that:

> Experience has shown that a term of ten years is inadequate for these types of cases and that it would be desirable to return to the former system in which these delicts were not subject to prescription at all.[845]

In November 2002, the pope made a further concession, granting the CDF the authority to waive the limitation period altogether on a case-by-case basis at the request of the local bishop. Sister Hanlen gave evidence that in several cases she had dealt with as Chancellor of the Diocese of Wollongong where the statute of limitations had 'long expired', the diocese had applied to the CDF to disregard the statute of limitations, 'and in each case they did'.[846]

The 2010 revision of the norms attached to *Sacramentorum sanctitatis tutela* increased the limitation period in relation to cases of child sexual abuse by clerics to the victim's 38th birthday for the whole Church.[847]

Mr Kilgallon also gave evidence that the current statute of limitations, of 20 years from the victim's 18th birthday, 'can be dispensed with on a case-by-case basis and usually is'.[848] Mr Kilgallon told us that he had asked a working group of the Pontifical Commission to look at 'a number of issues in canon law' including prescription. He said:

> I'm recommending that they request a change to canon law so that there is no statute of limitations because the statute of limitations, in my experience, is a great disservice to those who have been abused. It does nothing for them. It only serves to protect the organisation and sometimes the abuser.[849]

Both Sister Hanlen and Dr Austin gave evidence that they did not believe there should be a limitation period at all.[850] Dr Austin told us that such a recommendation 'should go from the Royal Commission very clearly to Church authorities'.[851]

We note that in cases where a civil law investigation and trial precedes the initiation of a canon law process, this may affect prescription. This problem was raised by the Australian bishops in 2012 in their response to the 2011 draft schema of proposed amendments to Book VI of the 1983 Code. In relation to prescription, the Australian bishops commented that: 'The conduct of civil law investigations, trials and imprisonment may delay an investigation by the church authority. Does the legislator propose that such enforced delays will affect prescription?'[852]

There appears to be strong support among canon lawyers and bishops in Australia for removing the limitation period altogether. We agree. In our view, such an amendment should apply to clerics and non-clerics and should operate retrospectively, meaning that any case that could not previously be opened because of the time limitation could be reactivated.

Given that the 2001 and revised 2010 norms appear to apply only to child sexual abuse offences committed by clerics, it would appear that for non-ordained religious, the limitation period on commencing canonical proceedings is still five years from the date of the offence, as set out in the 1983 Code.[853] This is inadequate.

Recommendation 16.12

The Australian Catholic Bishops Conference should request the Holy See to amend canon law to remove the time limit (prescription) for commencement of canonical actions relating to child sexual abuse. This amendment should apply retrospectively.

'Imputability' defence

We heard that, in relation to clergy, where a canonical judicial process is started, a 'diminished imputability' or 'diminished responsibility' defence is available. Canon 1321 of the 1983 Code states that:

> No one is punished unless the external violation of a law or precept, committed by the person, is gravely imputable, by reason of malice or negligence.[854]

Similarly, in relation to members of religious institutes, canon 695 requires the major superior to collect 'the proofs regarding the facts and imputability'.[855]

Dr Doyle explained that under canon law, imputability, or responsibility, for a delict:

> could be reduced if the individual acted under the force of some form of mental illness or in the heat of passion. That has been used as an excuse, because paedophilia is considered to be a psychosexual disorder.[856]

Dr Doyle told us that where a priest has been diagnosed with paedophilia, he could be tried, but the 'ultimate penalty' of dismissal from the clerical state cannot be imposed.[857] In such cases, Dr Doyle told us, it would be up to the judges: 'if they found that it was not imputable, they could acquit him, or, rather than acquit, in canon law they would say there was not enough

evidence to convict'.[858] Dr Doyle told us that if a priest is exonerated on the grounds that the charge is not imputable, this means 'there are no consequences'.[859] Dr Doyle's evidence in relation to canon 1321, was that:

> A skilled canon lawyer could use this canon to make sure the penalty for a convicted priest did not go so far as dismissal which is the most severe penalty available. This would be especially true for cases that were appealed to the Holy See. The prejudice there has traditionally been in favor of priests so the benefit of the doubt would be given for such cases.[860]

In Ireland, the Murphy Commission, having considered the cases of two priests who were serial abusers who had their dismissals by a Dublin canonical court overturned on appeal by a Vatican tribunal because they had been diagnosed as paedophiles, observed that it was 'a matter of grave concern that, under canon law, a serial child sexual abuser might receive more favourable treatment from the Archdiocese or from Rome by reason of the fact that he was diagnosed as a paedophile'.[861] We agree.

The 2004 report of the USCCB's National Review Board for the Protection of Children and Young People observed that as a result of imputability, 'the worst predators … paradoxically were the most difficult to laicize under canon law'.[862] It listed imputability as a reason why canon law has proven to be inadequate in dealing with cases of sexual abuse of children.[863]

We note that the 2011 draft schema proposing amendments to Book VI of the 1983 Code did not propose any change to the requirement for imputability.[864]

Recommendation 16.13

The Australian Catholic Bishops Conference should request the Holy See to amend the 'imputability' test in canon law so that a diagnosis of paedophilia is not relevant to the prosecution of or penalty for a canonical offence relating to child sexual abuse.

Standard of proof

Under canon law, the standard of proof required for imposing a penalty against a priest or religious is 'moral certainty',[865] which is a standard similar to beyond reasonable doubt.[866]

This standard is higher than that applied in the Anglican and Uniting churches, and also for disciplining practitioners in professions, such as doctors and teachers. They apply the balance of probabilities having regard to the principles in *Briginshaw v Briginshaw*.[867] (See Chapter 21 'Improving responding and reporting by religious institutions' for further information.)

Towards Healing provides for a different standard from canon law. It requires findings based on the 'balance of probabilities'.[868] However, Towards Healing also imposes the test of 'unacceptable risk', which was adopted by the High Court in the case *M v M* in 1988 (concerning whether a father should be denied contact with his child).[869] The Council told us in a submission that this requires the Australian Church authority to consider the degree of likelihood that the person may abuse a child in the future, which is 'a different question from whether the particular allegation has been legally proved "beyond reasonable doubt", or even "on the balance of probabilities"'.[870]

The President of the ACBC, Archbishop Carroll, noted in his July 2000 letter to Cardinal Pompedda, the Prefect of the Supreme Tribunal of the Apostolic Signatura, that 'in a criminal case the accusation must be proved "beyond reasonable doubt", while the principle of "unacceptable risk" is based on "the preponderance of evidence"'.[871] He continued:

> The law is, of course, based on the importance of protecting children from the serious harm of sexual abuse. The law is prepared to tolerate the risk that an innocent person might be denied the right to be a teacher because of the founded suspicion that children might be put at risk of sexual abuse. There are dangers in this law, but the protection of innocent children against the founded danger of abuse must be a very high priority for any society … It is surely important also to the Church that children not be placed at risk of sexual abuse, so what is the standing of this concept of 'unacceptable risk' in canon law?[872]

The importance of 'unacceptable risk' was highlighted in *Case Study 14: The response of the Catholic Diocese of Wollongong to allegations of child sexual abuse, and related criminal proceedings, against John Gerard Nestor, a priest of the Diocese (Catholic Diocese of Wollongong)*, which also illustrated the potential for the Holy See to overturn a bishop's decision to permanently remove a priest from ministry under canon law.

In this case study, Father Nestor, a priest of the Diocese of Wollongong, appealed to the Congregation for the Clergy against a decree by his bishop, Bishop Philip Wilson, that he was required to undergo an appraisal by Encompass Australasia as a prerequisite to any further ministerial appointment. In 2000, the Congregation for the Clergy upheld Father Nestor's appeal and ordered that he be restored immediately to full ministry.[873] The Congregation ruled that the concept of 'unacceptable risk' was 'foreign to Canon Law and its processes'.[874]

In a letter dated 1 March 2001, Archbishop Carroll wrote to Cardinal Pompedda in relation to this decision, 'we are perturbed by the statement in the decree of the S. Congregation that the criterion of "unacceptable risk" is foreign to canon law and cannot be taken into consideration':

> Australian law has the concept of 'unacceptable risk', meaning that a person cannot be appointed to an office if this appointment carries with it an unacceptable risk of abuse of minors. Granted the effects of abuse on the young, this seems to be a reasonable law based on the very first principle of morality, *'bonum est faciendum et malum vitandum'* ['the good is to be pursued, and evil avoided']. It is not a penalty, but a balancing of the

> rights of the priest against the rights of minors (cf. Canon 223, 1° & 2°). If the rights of the priest are important, the protection of minors against abuse must also be given a very high value. If the idea of unacceptable risk is 'foreign to canon law', then should the idea be rejected or should the law be changed?[875]

Archbishop Carroll concluded that: 'In matters affecting the spiritual, moral and physical safety and wellbeing of minors, the bishop must not be placed in a situation where the State is ordering him to do one thing while the Church is ordering him to do the opposite'.[876]

Bishop Robinson noted at about this time that the implication of making no allowance for the concept of 'unacceptable risk' was that 'Unless there is a tribunal conviction for an offence, a priest would have to be given an appointment. This will inevitably raise conscience decisions for bishops'.[877]

The Diocese of Wollongong appealed the decision of the Congregation for the Clergy in the Nestor case to the Apostolic Signatura. The Apostolic Signatura, based in Rome, is the highest appeal court in the Catholic Church. In 2006, the Apostolic Signatura upheld this appeal and found that Bishop Wilson's decree was not a penalty, but, a 'non-penal disciplinary decision'. It found that the bishop was entitled to make this decision on the basis of a 'positive and probable doubt' about Father Nestor's suitability for ministry. The Apostolic Signatura noted that:

> the decision by which, eg, the conferring of an ecclesiastical office by a competent authority is impugned because of the lack of the suitability of the candidate or the faculty either to preach or to hear confessions is revoked, respectively with canons 764 and 974 #1, is in no way the inflicting of a penalty, for which is required moral certainty concerning a gravely imputable crime committed, but a non-penal disciplinary decision, which may be imposed because of a positive and probable doubt concerning the suitability of the cleric in the matter concerned.[878]

The Apostolic Signatura's decision in Father Nestor's case indicates that there is scope for a bishop to remove a priest from ministry on the basis of considerations about suitability to exercise that ministry, without that being a penal measure.[879]

As addressed in Chapter 21, 'Improving responding and reporting by religious institutions', we consider that the purpose of institutional investigations of complaints of child sexual abuse is different from that of a criminal investigation. Accordingly, we conclude that the appropriate standard of proof to be applied by religious institutions conducting investigations of complaints of child sexual abuse is the balance of probabilities, having regard to the principles in *Briginshaw v Briginshaw*. This is a lower standard of proof than 'beyond reasonable doubt', which is the standard of proof required by a court of law in criminal proceedings.

Removal from ministry

To exercise ministry, a priest must have faculties from his bishop. A 'faculty' is the ecclesiastical power or authorisation necessary for lawfully performing an act of ministry.[880] Faculties are required for a priest to say mass, preach, hear confessions and celebrate marriages, among other things.

As addressed in Section 13.2, the bishop has the power to withdraw a priest's faculties.

What is less clear is whether bishops are authorised to permanently remove a priest from ministry who has either been convicted of a child sexual abuse-related offence or had a complaint of child sexual abuse substantiated against them on the balance of probabilities, or who the bishop otherwise judges to be an unacceptable risk to children, without recourse to the Holy See.

Towards Healing undertakes that 'Serious offenders, in particular those who have been found responsible for sexually abusing a child or young person … will not be given back the power they have abused',[881] and that 'No person shall be permitted to work in a position if the Church Authority believes, on the basis of all the information available, that there is an unacceptable risk that children or young people may be abused'.[882]

In Section 13.7, we discuss the relationship between Towards Healing and canon law. In particular, we note Bishop Robinson's evidence that when the Australian bishops made the decision to implement Towards Healing, they were aware that they were outside Church law.[883] Further, in 2013 the CDF wrote to the ACBC through the papal nuncio, stating that the CDF has 'exclusive competence in matters of sexual abuse of minors perpetrated by clerics', and that the investigation processes outlined in Towards Healing do not apply to clerics.[884] In January 2016, two new paragraphs were added to Towards Healing, the purpose of which was 'to acknowledge canon law requirements not indicated in the previous edition'.[885]

Almost all the Australian Catholic bishops who gave evidence on the issue during our *Institutional review of Catholic Church authorities* hearing said that if a priest in their diocese is convicted of child sexual abuse, the bishop will, as a matter of practice, 'withdraw' 'revoke' or 'remove' his faculties for ministry, or otherwise not permit him to exercise ministry.[886] Most of them also said they would take this step if the complaint of child sexual abuse was substantiated (even if it was not the subject of a conviction).[887]

However, the bishops' evidence was somewhat conflicting as to whether, under canon law, they are authorised to do so without involving the CDF.

The Bishop of Maitland–Newcastle, Bishop William Wright, stated that he has the power under canon law to withdraw the faculties of a priest, which has the effect of revoking 'the priest's ability to perform ministry, with the exception of absolving someone in danger of death'.[888] He stated that he exercised this power in relation to Father David O'Hearn when he issued a decree on 18 June 2012 (after O'Hearn's conviction) to withdraw his faculties.[889] We note that on 7 June 2016, Bishop Wright took the further step of submitting 'my votum to the CDF for [O'Hearn's] involuntary dismissal from the clerical state. That votum is currently progressing through the appropriate channels in Rome'.[890]

The Archbishop of Perth, Archbishop Timothy Costelloe SDB, gave similar evidence during our *Institutional review of Catholic Church authorities* hearing:

> It is my understanding of Canon Law that I do not need the permission of the Vatican to remove a person (priest or deacon) temporarily from the exercise of public ministry or to revoke his priestly faculties. I also believe that I can refuse to restore faculties to a priest or deacon I believe to be a danger to children or young people. Effectively I can permanently remove a priest or deacon from the public exercise of ministry. At this time I operate under that presumption.[891]

Archbishop Coleridge, stated that 'The process outlined in paragraph 42.3 [of Towards Healing] is at odds with the requirements of the Canon Law in some respects, but I do ensure that the provisions of Towards Healing 42.3 are complied with'.[892] Archbishop Coleridge's practice in relation to priests who have had findings of child sexual abuse made against them (including through the Towards Healing assessment process), is that he has 'invariably cancelled the faculties of the cleric and removed them from active ministry'.[893] He stated that, 'Where there is a finding that the cleric is responsible for child sexual abuse then he will be excluded from further ministry'.[894]

However, Archbishop Coleridge also told us of an example where the previous Archbishop of Brisbane was challenged about a decision to restrict the ministry of a priest, made following a Towards Healing assessment when there 'had not been a clear result or finding'. Archbishop Coleridge told us that:

> the previous Archbishop sought to restrict the pastoral ministry of a Parish Priest by restricting him by requiring that he not hear the sacramental confessions of boys. Canon lawyers and civil lawyers on behalf of the priest objected to this restriction and the Apostolic Administrator [of the Archdiocese of Brisbane] removed the restriction (after the retirement of the former Archbishop).[895]

The 2009 Murphy report expressed great concern about 'the lack of precision in canon law about the power of bishops to exercise control over offending priests'.[896] The report stated that 'clear and precise rules are required to ensure that priests suspected of abusing children are not allowed to use their status to give them privileged access to children', and that 'this requires that they be removed from ministry'.[897] The report also observed that precepts to remove a priest's faculties issued by a bishop 'cannot be perpetual and must be renewed if they are to remain in place'.[898]

In Chapter 21, we recommend that if a complaint of child sexual is substantiated against a person in religious ministry on the balance of probabilities, having regard to the principles of *Briginshaw v Briginshaw*, that the person should be permanently removed from ministry. This should also occur if the person is convicted of a child sexual abuse-related offence. We also recommend that as part of permanent removal from ministry, the person should be prohibited from holding themselves in any way as being a person in religious ministry, for example, through using religious titles, such as 'priest' or 'father', or wearing religious apparel or insignia that would identify them as a person in religious ministry (Recommendation 16.55).

We recommend here that the Australian Catholic Bishop Conference should request the Holy See to amend canon law to give effect to our recommendation with respect to permanent removal from ministry (Recommendation 16.55), and our recommendation with respect to dismissal from the priesthood and religious life (Recommendation 16.56), which we discuss below.

Recommendation 16.14

The Australian Catholic Bishops Conference should request the Holy See to amend canon law to give effect to Recommendations 16.55 and 16.56.

Dismissal from the priesthood and religious life

As addressed in Section 13.2, under canon law, a priest who has been permanently removed from ministry nevertheless remains a member of the clergy.[899] That removal may be with the consent of the priest or following a penal process. However, only the Holy See has the authority to dismiss a cleric from the clerical state, and to do so without a penal or administrative process.

As addressed in Section 13.8, 'Catholic Church responses to alleged perpetrators during and after the development of national procedures', leaders of the Catholic Church in Australia saw the canonical processes for removing clergy and religious as difficult for a number of reasons, including a perception that the authorities in the Vatican exhibited a preference in canonical cases in favour of the rights and interests of accused clergy.

In this section we have addressed a number of issues that operate as impediments to the dismissal of clergy and religious from the priesthood or religious life. These include prescription, the 'imputability' defence, and the use of 'moral certainty' as a standard of proof. The significant delays in canon law processes involving the dismissal of clergy have also impeded their timely dismissal. We set out the impact of delay in the canon law process on Australian cases taken to the CDF in Section 13.8. Essentially, as a result of such delays, some perpetrators of child sexual abuse remained as members of the clerical state for an extended period while applications for their dismissal were being considered by the authorities in the Vatican.

Archbishop Coleridge gave evidence during *The Towards Healing process* case study that it was 'extraordinarily difficult within the canon law of the church' to secure the dismissal of a priest from the clerical state against his will before the early 2000s, when the Holy See changed its canon law provisions.[900]

Dr Doyle told us that, historically, a lack of cooperation on the part of the Holy See had been a 'major, major stumbling block' for bishops who were seeking to remove priests who sexually abused children:

> In most instances in the past, their primary and almost sole concern was the priest and the mythology that if we take his priesthood away, we're taking his identity away, which dictated whether or not any kind of severe or serious penalties were applied.[901]

Dr Doyle's evidence was that 'For centuries the Holy See was staunchly opposed to dismissing a priest against his will'.[902] He stated that the United States bishops had 'strongly urged the Holy See to allow individual bishops to use an administrative process to laicize priests confirmed as sexual abusers. This request was denied'.[903]

Political and educational philosopher Dr Michael Leahy, a former priest, told us in a submission that canon law made it difficult enough to suspend offending priests, and even to place precautionary limitations on their faculties or their access to young people, but almost impossible for bishops to remove offending priests from priesthood permanently.[904]

Similarly, Irish psychologist and researcher Dr Marie Keenan has written that before the CDF took charge of oversight of clerical child sexual abuse cases in 2001:

> it was never clear who in Rome dealt with cases involving sexual abuse by clergy. Canonical trials were extremely slow and cumbersome, and in some cases bishops had cases returned from Rome with their decisions overturned, as in some cases where priests had successfully appealed the bishop's decisions on canonical grounds.[905]

In Section 13.7, we note Bishop Robinson's view that some accused priests claimed their rights under the Code of Canon Law, which 'would have seen nearly all cases rejected at the outset and provided an environment hostile to victims'.[906]

In 2003, the pope granted the CDF the faculty to permit dismissal of clergy from the priesthood by the simpler means of administrative dismissal, obviating the need for a judicial trial.

We understand that petition to the CDF for administrative dismissal is now the approach regularly adopted by bishops in Australia in cases of child sexual abuse by clergy. We heard that in the years since these reforms were introduced, the canon law system has become more conducive to achieving the permanent removal of priest perpetrators of child sexual abuse from ministry, and their dismissal from the clerical state. For example, Sister Hanlen gave evidence that in her 'very limited' experience, canon law had not been an impediment to achieving an outcome in the child sexual abuse cases she had to deal with. Sister Hanlen told us that if procedures were applied well and the case had substance, she had been successful in obtaining 'the result that was required'.[907]

However, as noted in Section 13.8, Archbishop Coleridge told us that since the start of the Royal Commission he had petitioned the Holy See to have all 'living offender priests dismissed from the clerical state'.[908] This involved the cases of eight priests who had been convicted of child sex offences. He told us that the CDF had declined his request for extrajudicial dismissal in five matters, requiring instead that these priests be directed to 'live a life of prayer and penance'.[909]

As we outline in Chapter 21, given that we have heard that the status of people in religious ministry played a role in enabling the perpetration of child sexual abuse, we consider that there is a need for religious organisations to ensure that this status is removed when a person is convicted of child sexual abuse.

We recommend in Chapter 21, that Catholic priests or religious who are convicted of an offence relating to child sexual abuse should be dismissed from the priesthood (laicised) and/or dispensed from his or her vows as a religious (Recommendation 16.56).

As noted above, we recommend that the Australian Catholic Bishop Conference should request the Holy See to amend canon law to give effect to our recommendation with respect to dismissal from the priesthood and religious life.

Timeliness

As discussed in Section 13.8, we heard that canon law processes involving the dismissal of priest and religious perpetrators of child sexual abuse often involved significant delays.

For example, in our *Catholic Diocese of Wollongong* case study, we heard that in Father Nestor's case, the appeal by the Diocese of Wollongong to the Apostolic Signatura against a decree of the Congregation of the Clergy directing that Father Nestor be restored to ministry took nearly five-and-a-half years.[910] Sister Hanlen gave evidence that she found the delay 'quite inexcusable and indefensible'.[911]

Ms Teresa Devlin, Chief Executive Officer of the National Board for Safeguarding Children in the Catholic Church in Ireland, gave evidence that the Irish bishops were keen for the process of oversight of child sexual abuse cases by the CDF to be made 'much quicker',[912] and that the CDF 'needs to review' the current arrangements.[913]

Mr Kilgallon told us he had had dealings with the CDF, and that 'The process I've found to be slow and I think there are systems that could be improved considerably'.[914]

We heard views on how the timeliness of canon law processes of investigation and decision making might be improved. Mr Kilgallon gave evidence that canon law penal processes 'could be dealt with regionally instead of everything being sent to Rome'. Ms Devlin said that she considered that the hierarchy could engage with the CDF and seek for a satellite or branch of the CDF to be established to hear cases, particularly where there is a backlog.[915]

Lack of local disciplinary tribunals/trained personnel

Bishop Robinson gave evidence that before 2001, when the Holy See introduced new procedures for responding to allegations of child sexual abuse against clergy, he could not remember there ever having been a single canonical trial in the history of the Catholic Church in Australia.[916] Writing in 2009, Daly stated that 'No penal trials have yet been held in Australia or New Zealand, but hundreds are being processed in North America'.[917]

Dr Austin's evidence was that, in Australia, 'a lack of qualified and experienced personnel in the area of penal law' contributed to this outcome.[918] The 2009 Murphy report observed that in the decades after Vatican II, the Church's penal law 'fell into disuse; and the modern generation of canonists lacked any experience of it'.[919]

Similarly, the 2004 report of the USCCB's National Review Board for the Protection of Children and Young People commented that diocesan canonical tribunals in the United States 'simply did not have the expertise to handle involuntary laicisation cases'. The report stated that 'in hindsight, the Church would have been better served if a national canonical tribunal or regional tribunals had been established to hear and decide cases', and that in the wake of the Essential Norms (adopted by the American bishops and approved by the Holy See in December 2002), such regional tribunals had been proposed.[920]

Professor Francis Moloney SDB AM, Senior Professorial Fellow at the Catholic Theological College, University of Divinity, Victoria, gave evidence that there needed to be:

> a greater democratization of all canonical matters. Especially important: these processes be taken away from the Vatican, and be situated *locally* (e.g. acceptance of complaints, care of the victims, immediate laicization, ongoing security and care of the perpetrators, etc.).[921]

The Archbishop of Adelaide, Archbishop Philip Wilson, told us that, on the face of it, he could not see a problem with there being regional offices of a Vatican dicastery such as the CDF.[922] He told us that:

> already the Congregation for the Doctrine of the Faith, some years ago, made it possible for courts around the world to be constituted as courts of the congregation, so that these cases involving major delicta cases, sexual abuse cases, don't need to go to Rome to be judged, that they make it possible for them to be judged in the local Church, because they constitute the court here … So it's a question of utilising the arrangements that have already been made.[923]

Archbishop Wilson told us that no sexual abuse cases had been judged in Australia.[924] Neither Archbishop Wilson nor the Archbishop of Sydney, Archbishop Anthony Fisher OP, who is a member of the CDF,[925] knew why this had not happened.[926]

Recommendation 16.15

The Australian Catholic Bishops Conference and Catholic Religious Australia, in consultation with the Holy See, should consider establishing an Australian tribunal for trying canonical disciplinary cases against clergy, whose decisions could be appealed to the Apostolic Signatura in the usual way.

Transparency of canon law disciplinary processes

We heard that the lack of transparency of canon law disciplinary processes is a significant barrier to fairness and effectiveness.

The 2009 Murphy report was scathing in its comments about the secrecy of the Catholic Church's canonical disciplinary processes, which it described as being in stark contrast to the civil law principle that justice should be publicly administered, and that this could undoubtedly inhibit reporting child sexual abuse to the civil authorities or others.[927]

In relation to the role of the CDF, since 2001, of determining all cases relating to child sexual abuse by priests, Dr Doyle's evidence was that:

> In many of these cases the end result is the laicization of the accused. The problem is that the Congregation's work is buried in secrecy. Often it takes months or even years for a decision which is then announced only to the accused priests' bishop and no one else including the priest's victims.[928]

Dr Doyle stated that canonical trials 'can and often do drag on for years and not merely months. They are conducted in complete secrecy and the victims, who are often the star witnesses, are never informed as to the progress of the case or even the outcome'.[929]

We note that during the Royal Commission's consultations with canon lawyers in Australia, the problem of lack of transparency and poor communication on the part of the CDF in relation to the progress of cases was raised as a significant issue and a matter of particular ongoing frustration to canon lawyers.[930]

In the *Catholic Diocese of Wollongong* hearing, we heard evidence from Sister Hanlen that, as at June 2014 when she gave evidence, there was not yet any jurisprudence available from child sexual abuse cases that have gone before Holy See tribunals and the CDF.[931] She told us that there 'seems to be policy' that such judgments are not published as official jurisprudence for 10 years, although people who wanted to rely on them in the meantime 'could certainly apply'.[932]

We note that, in her 2004 doctoral thesis, Delaney observed that unlike the procedures outlined in the 2010 norms, various countries have embodied the greatest possible transparency in their legal systems:

> In the first place the procedures themselves are available as public documents. Secondly, complainants are kept informed of the progress and the accused is given details of the complaint. Then the accused and the complainant are able to request a review of the process.[933]

Delaney concluded that 'A serious need exists for the publication of jurisprudence concerning cases reserved to the Congregation of the Doctrine of the Faith'.[934] In their book *The clergy sex abuse crisis and the legal responses*, James O'Reilly and Margaret Chalmers also identify the lack of jurisprudence arising from reported cases as being one of the weaknesses in the canonical system.[935]

The ACBC, in its response to the 2011 draft schema, expressed concern that:

> the processes for the application of the church's penal system are lacking in clarity. The unavailability of jurisprudence on non-matrimonial cases compounds the problem. We believe that by making jurisprudence and precedence known to bishops and judges, the bishops would be in a better position to apply the church's penal legislation.[936]

Recommendation 16.16

The Australian Catholic Bishops Conference should request the Holy See to introduce measures to ensure that Vatican Congregations and canonical appeal courts always publish decisions in disciplinary matters relating to child sexual abuse, and provide written reasons for their decisions. Publication should occur in a timely manner. In some cases it may be appropriate to suppress information that might lead to the identification of a victim.

Diocesan secret archives

Canon law contains provisions relating to diocesan archives, including requiring the retention and destruction of certain documents held in a secure 'secret archive' to which only the bishop has the key.[937] This includes all documentary evidence created during the preliminary investigation into an alleged canonical offence, including the sexual abuse of children, 'and everything which preceded the investigation'.[938]

Canon 489 §2 of the 1983 Code states that:

> Each year documents of criminal cases in matters of morals, in which the accused parties have died or ten years have elapsed from the condemnatory sentence, are to be destroyed.[939]

In relation to the destruction of documents in the secret archives, Dr Austin told us that the only documents in the secret archive to which canon 489 §2 applies are 'those pertaining to an ecclesiastical criminal trial concerning a moral matter that reached definitive judgement, and this includes trials with regard to an offence of sexual abuse of a minor'.[940] Dr Austin said that:

> the documentation received by the bishop about the sexual abuse of a minor, that was considered, after the preliminary investigation, not to have provided sufficient information for the matter to progress further, must be retained permanently in the secret archive. Such documentation is not to be destroyed.[941]

However, the report of the ACBC that Bishop Robinson and Archbishop Wilson took with them to a meeting in Rome in April 2000 between the representatives of nine bishops' conferences and the heads of several dicasteries, noted that:

> It is impossible to obtain accurate statistics concerning sexual abuse by priests and religious in Australia. Until 1997 every diocese and every religious institute handled its own cases. With very few exceptions they were unwilling to reveal this information to anyone outside their own diocese or institute. In many cases the bishop or provincial superior kept no written records and left no information for his successor, so that even the present bishop or religious leader does not know what happened before his own time.[942]

We note that the 2001 report of the Nolan Review Committee in the United Kingdom recommended to the Catholic bishops of England and Wales that they should retain records relating to child sexual abuse allegations for 100 years.[943]

In Volume 8, *Recordkeeping and information sharing,* and Chapter 23, 'Recordkeeping and information sharing in religious institutions', we outline the ways in which the issue of record retention is critical to responding to delayed disclosure of child sexual abuse. A number of studies have demonstrated that delayed disclosures of child sexual abuse are common.[944] The survivors who attended private sessions took, on average, 23.9 years to disclose their experience of abuse.[945]

In Volume 8, we recommend that, in order to allow for delayed disclosure of abuse by victims and take account of limitation period for civil actions for child sexual abuse, institutions that engage in child-related work should retain, for at least 45 years, records relating to child sexual abuse which has occurred or is alleged to have occurred (Recommendation 8.1, set out in Appendix A to this volume). As set out in Chapter 23, this minimum period of retention takes into account the fact that retaining large volume of records for extended periods may be difficult for some institutions.

The Council, in its submission to our consultation paper on records and recordkeeping, told us that 'records relevant to child sexual assault, as with other elements of a record, should be held for a period of not less than 100 years'. The Council also stated that if records are destroyed, organisations should keep a detailed record of the nature of the information contained in the record that was destroyed.[946] We note that the document retention policies that we have received from some Catholic Church authorities suggest that records of complaints in relation to child sexual abuse will be retained indefinitely.[947] We welcome this commitment. In our view, many religious institutions, including many Catholic Church authorities, have the capacity to retain records for periods greater than 45 years.

Recommendation 16.17

The Australian Catholic Bishops Conference should request the Holy See to amend canon law to remove the requirement to destroy documents relating to canonical criminal cases in matters of morals, where the accused cleric has died or ten years have elapsed from the condemnatory sentence. In order to allow for delayed disclosure of abuse by victims and to take account of the limitation periods for civil actions for child sexual abuse, the minimum requirement for retention of records in the secret archives should be at least 45 years.

Conclusions about the adequacy of the canon law disciplinary system

It is clear to us that the disciplinary system imposed by canon law has contributed to the failure of the Catholic Church to effectively take proper action against alleged perpetrators and perpetrators.

First, the emphasis on a 'pastoral approach' as a precondition to disciplinary action meant that the withdrawal of faculties and dismissal from the priesthood and religious life became a last resort. Regardless of how canon 1341 is now being interpreted, it is clear that in the past canon law was widely interpreted as effectively requiring bishops and religious superiors to preference the healing, correction and rebuke of a priest or religious who had sexually abused a child, or was accused or suspected of doing so. For bishops and religious superiors who wanted to initiate a canonical disciplinary process against an alleged perpetrator, the 'pastoral approach' has been a significant obstacle to securing a successful and timely outcome.

Further, the 'pastoral approach' has contributed to the mistaken view on the part of some bishops and religious superiors that child sexual abuse was a forgivable moral failing, rather than a crime that should be reported to police.

Second, in relation to 'prescription', between 1983 and 2001, canon law imposed a five-year limitation period on child sexual abuse cases which had the effect of preventing all but a very few victims taking a complaint forward and protecting almost all perpetrators from dismissal. In more recent times, that period has been extended, however, there remains a limitation period that will still prevent some victims from taking action and consequently protect some perpetrators.

Third, in relation to 'imputability', responsibility for a delict may be reduced if the individual has a psychosexual disorder. As paedophilia is considered to be such a disorder, the perpetrator may receive a reduced sentence.[948]

Fourth, the standard of proof required before a priest or religious can be disciplined is 'moral certainty',[949] which is a higher standard than that imposed in similar circumstances by other churches and professional bodies.

Fifth, decisions are not made or published in a timely fashion, with the effect that the process is not open and little is known of the reasoning process.

Finally, and most importantly, before 2003, when the pope granted the CDF the faculty to permit dismissal of clergy from the priesthood by the simpler means of administrative dismissal, obviating the need for a judicial trial, the requirement for a judicial penal process made it almost impossible for bishops to permanently remove priest perpetrators of child sexual abuse from the priesthood.[950]

Our recommendations are set out above.

13.11.7 Celibacy

The Royal Commission has considered whether the requirement of celibacy for Catholic clergy and religious may have contributed to the incidence of child sexual abuse in the Catholic Church and, if so, how and to what extent.

Celibacy in the Catholic tradition refers to the state of being unmarried and not having any sexual contact with another human being, in imitation of Jesus Christ who is traditionally believed to have been celibate. Celibacy is mandatory for Latin-rite Catholic clergy. American Dominican priest, canon lawyer and survivor advocate Dr Thomas Doyle OP has written that the rule of celibacy 'proscribes not only marriage, but also any kind of romantic or sexual relationship or sexual contact with any other person in any degree'.[951] American priest and theologian Donald Cozzens stated that in the Catholic tradition celibacy is 'much more than not being married. It is the decision to live out one's life without spouse for the greater good of the gospel'.[952]

In relation to celibacy for Catholic clergy, canon 277 of the 1983 Code of Canon Law states that:

> §1. Clerics are obliged to observe perfect and perpetual continence for the sake of the kingdom of heaven and therefore are bound to celibacy which is a special gift of God by which sacred ministers can adhere more easily to Christ with an undivided heart and are able to dedicate themselves more freely to the service of God and humanity.[953]

Although the practice of celibacy is often associated with Catholic clergy and religious, it is also practised in a number of other religious traditions, including Buddhism and Hinduism, as part of an ascetic tradition of spirituality.[954] For example, in *Case Study 21: The response of the Satyananda Yoga Ashram at Mangrove Mountain to allegations of child sexual abuse by the ashram's former spiritual leader in the 1970s and 1980s (Satyananda Yoga Ashram)*, we found that, at least in the 1970s and 1980s, there was an expectation among the practitioners of Satyananda yoga in Australia that celibacy was one of the obligations of the 'sannyasins' who follow the Hindu-inspired teachings of Satyananda yoga.[955] In the *Satyananda Yoga Ashram* case study, we heard evidence that the requirement of celibacy was regularly breached by the spiritual leader of the Mangrove Mountain ashram, Akhandananda, and by Satyananda, the Indian founder of the movement.[956]

During *Case Study 50: Institutional review of Catholic Church authorities (Institutional review of Catholic Church authorities)* Dr Doyle explained that, although priests are commonly described as making a 'vow' of celibacy, there is a technical distinction in canon law between a 'vow' and a 'promise': 'Celibacy for diocesan priests is a promise … But essentially, the end result is the same: the diocesan priest assumes mandatory celibacy when he is ordained a deacon'.[957]

Members of most Catholic religious orders and congregations take vows of chastity, poverty and obedience when they enter religious life.[958]

Chastity (from the Latin *castitatis*, meaning 'purity') is described as a moral virtue associated with the 'cardinal virtue' of temperance (meaning restraint, self-control, moderation).[959] In the Catholic tradition, chastity is not just the domain of celibate clergy and religious; it is also a moral virtue which is to be upheld by all baptised Christians, each according to their state of life. Married spouses are to live chastely with sexual intimacy (continence); non-married persons (including widows) are to live chastely with abstinence from sexual intimacy; and clerics and religious live their chastity by vowing or promising to remain sexually abstinent (or 'continence') and not to marry (celibacy).[960] In other words, according to Catholic moral teaching, all Catholics are meant to be either married or sexually abstinent.

Not all members of the Catholic clergy are required to observe the rule of celibacy. Exceptions include priests of most Eastern Catholic Churches, who have always been allowed to marry as long as they do so prior to being ordained to the priesthood.[961] The Bishop of the Maronite Diocese of Australia, Bishop Antoine-Charbel Tarabay, told us during the *Institutional review of Catholic Church authorities* hearing that:

> Since the beginning of the Church, if we go back to the tradition of St Peter, he was a married man. Following the tradition of St Peter, in the Eastern Churches, it was developed to have this tradition of married priests to serve in the parishes.[962]

Bishop Tarabay told us that married clergy had been part of the tradition of the Maronite Church throughout its history and that until the 20th century almost 90 per cent of clergy serving in the parishes were married. However, the Maronite Church also has a monastic tradition, 'which is that if anyone would like to opt for celibate life, he will go to the monastery and will live in the monastery with a community of monks'.[963] Eastern Church bishops are chosen from among clergy who are celibate.[964]

In the Latin Church, there are two other exceptions to the clergy celibacy rule. These are a small number of Anglican priests and Protestant ministers, most of whom are married, who have converted and have been re-ordained as married Catholic Latin Church priests. Also, there are permanent deacons – mature-aged men, usually married, who are ordained as deacons but without the possibility of becoming priests.[965]

Purpose and value of celibacy

From our case studies, submissions and review of the literature, we are aware that celibacy in the Catholic priesthood and religious life is, and always has been, a subject of controversy as to its purpose and value.

Pope Paul VI (1963–1978), in his 1967 encyclical on priestly celibacy, *Sacerdotalis caelibatus*, described celibacy as a 'brilliant jewel' which had been guarded by the Catholic Church for centuries.[966] Cozzens argued that not even the clergy sexual abuse crisis has extinguished respect for the celibate lives of Catholic clergy and religious:

> Especially in the Catholic imagination, the regard and reverence for vowed religious and celibate clergy can be traced to the long history of heroic service and self-sacrificing pastoral care that is typical of Catholic priests, nuns, and brothers. Celibates are perceived as men and women for others.[967]

During the *Institutional review of Catholic Church authorities* hearing, Marist Father and Director of the Aquinas Academy, Sydney, Dr Michael Whelan SM, while questioning mandatory celibacy, told us that 'I think of celibacy as a gift to love all but none exclusively. I have no doubt that celibacy as such is a good thing'.[968]

The Archbishop of Brisbane, Archbishop Mark Coleridge, gave evidence that in his own life he understood celibacy as a 'call to totality'. He said that 'if it is a call to totality and in that sense a gift that comes from God, and if it is lived totally, then I think it can be wonderfully creative'.[969]

During *Case Study 28: Catholic Church authorities in Ballarat (Catholic Church authorities in Ballarat)*, the Province Leader of the Oceania Province of the Christian Brothers Congregation, Brother Peter Clinch, told us that chastity and celibacy had their origins in the monastic commitment to an ideal way of life:

> going back to the early stages of religious life that I belong to, the monastic life, the hermits [removed] themselves and lived in the desert on their own, and they were chaste, and that's evolved into the monastic style … I still see it as relevant if you're living in community and are in good relationships with others. Priesthood is different.[970]

During the first thousand years of the Church's history, many if not most diocesan clergy were married or living with a 'concubine'. In the 11th century, clerical marriage and concubinage were widespread.[971] Celibacy did not become a universal rule for Catholic clergy of the Latin rite until the 12th century, when it was mandated by the First Lateran Council (1123) and confirmed by the Second Lateran Council (1139).[972] However, in some areas (for example, Spain), from as early as the beginning of the 4th century there were local prohibitions on married clergy having sex with their wives or living with women apart from close relatives, and various popes and Church councils mandated obligatory celibacy.[973]

There are multiple explanations for why compulsory celibacy was adopted. These include asceticism and self-sacrifice for the love of God,[974] the influence of dualistic ideas from Greek philosophy and Gnosticism which denigrated sexuality and the body,[975] the rise of Christian monasticism,[976] and concerns about ritual purity (the notion that a priest could not make a 'pure sacrifice' in the celebration of the eucharist if he had previously had sex, including sex with his wife).[977] Pope Pius XI in his 1935 encyclical on the priesthood, *Ad Catholici sacerdotii*, stated that 'since "God is a Spirit," it is only fitting that he who dedicates and consecrates himself to God's service should in some way "divest himself of the body"'.[978] Cozzens stated that financial and property concerns also played a significant role: 'When married priests died, their wives and children in many cases were reluctant to leave their home, the parish house or rectory. Land held by the Church was in some cases claimed by the priest's family with embarrassing legal battles ensuing.'[979]

Psychologist Mary Gail Frawley-O'Dea argued that, once obligatory celibacy was institutionalised as a requirement for priesthood, it was also 'idealised as spiritually superior to marriage'.[980] This view was endorsed by the Council of Trent in the 16th century, which condemned the view that marriage was a more blessed state than virginity or celibacy.[981]

Dr Doyle gave evidence during the *Institutional review of Catholic Church authorities* hearing that:

> The Church has traditionally taught that celibacy is necessary because the priest-cleric must be removed from all distractions and totally dedicated to God's service. Furthermore, since Catholic ministry is centered in the priesthood, the most important part of which is the celebration of the Eucharist, there are also historic and contemporary appeals to the concept of ritual purity. Non-revisionist historical studies reveal another, much more pragmatic support for celibacy: the retention of clerics' property by the church, the elimination of clerics' progeny as a challenge to hierarchical authority and the maintenance of power.[982]

Dr Doyle told us there are 'a lot of spiritual excuses surrounding celibacy', including that celibacy makes it possible for clerics to be unselfishly dedicated to their ministry without the distraction of having a wife and children:

> I was a military chaplain for many, many years, and I rubbed shoulders all the time with married Protestant chaplains. I never met one that I thought was in any manner, way, shape or form less dedicated, less unselfish – in fact, most of them were more unselfish than I could ever dream of being. So that argument falls flat, I think.[983]

Another reason given for celibacy is the imitation of Jesus Christ, who is traditionally believed to have been celibate.[984] Theological ideas about the priest as a mystical representation of Christ, an *alter Christus* (another Christ), developed especially following the Council of Trent (1545–1563).[985] In this view, which in recent times is strongly associated with Pope John Paul II (1978–2005), the sacrament of ordination 'configures the priest to Jesus Christ the head and spouse of the Church',[986] and celibacy is seen as an intrinsic aspect of his priestly persona.[987]

However, we also heard evidence that, while celibacy is currently a mandatory discipline of the Catholic Church, it is not intrinsic to the priesthood.

Adjunct Associate Professor of Theology at the Loyola Institute, Trinity College Dublin, Dr Gerry O'Hanlon SJ, told us during the *Institutional review of Catholic Church authorities* case study that 'celibacy for priesthood isn't what we call a doctrinal issue; it's a disciplinary issue. It's something that can be changed, in other words'.[988] Referring to Pope John Paul II's assertion that celibacy was an essential dimension of the priesthood, Dr Doyle told us that, 'Although the pope said it, the statement is without theological or historical foundation'.[989]

We note that in a media interview in 2014, Pope Francis was reported to have said that celibacy 'is not a dogma … It is a rule of life that I appreciate very much and I think it is a gift for the Church but since it is not dogma, the door is always open' to change.[990] More recently, in 2017, it has been reported that Pope Francis has already told the bishops of Brazil that he is prepared to consider ordaining so-called *viri probati* (or 'tested married men'), suggesting that it is up to bishops' conferences to put forward proposals.[991] Mature married men have already been admitted to the permanent diaconate.

Does celibacy cause child sexual abuse?

> Our sexuality is an inherent part of what it means to be human, and in as large an organization as the Catholic Church, in which a call to pastoral ministry as cleric or religious also means a call to celibacy, it should not be surprising that some fail to maintain that high standards [sic] required by the Church.[992]
>
> ***Towards Healing: Guidelines for Church authorities***

Case study evidence regarding celibacy as a causal factor

The Royal Commission heard mostly consistent evidence that the Catholic Church's celibacy rule in itself has not directly caused child sexual abuse in Catholic institutions.

In its submission on behalf of the Catholic Church to the *Institutional review of Catholic Church authorities* hearing, the Truth, Justice and Healing Council (the Council) argued that no direct causal relationship has been established between the obligation to live a celibate life and the inclination to sexually abuse a child: 'On the contrary, empirical evidence demonstrates that individuals, celibate or not, sexually abuse children due to a range of causal factors'.[993] As we address in Section 13.11.2, 'Individual factors', the Council submitted that, in the case of a person who is 'mandatorily required to live as a celibate', the potential risk of child sexual abuse is greater if one or more of the following factors are present:

- a confused sense of priestly identity
- a general motivation that is characterised by (immature) compliance rather than by (mature) internalisation
- uncertainty about the nature of one's sexual orientation beyond the age of 25 (the earliest age of ordination)
- any personality disorder of moderate or greater severity, but especially antisocial personality disorder
- borderline personality disorder
- narcissistic personality disorder
- any concealed sexual disorder.[994]

We accept the Council's submission that a variety of potential pre-existing individual factors may heighten the risk of child sexual abuse and that the requirement to live a celibate life, in combination with one or more of these pre-existing individual factors, may exacerbate the risk of child sexual abuse. However, this does not mean that the Catholic Church's celibacy requirement, in itself, is not also a risk factor.

The former provincial of the Marist Brothers, Brother Jeffrey Crowe,[995] the Deputy Province Leader of the Christian Brothers Province of Oceania, Brother Julian MacDonald,[996] and the former provincial of the Christian Brothers Province of Western Australia and South Australia, Brother Anthony Shanahan,[997] all gave evidence that there was no strong evidence of a causal relationship between celibacy and child sexual abuse.

The Director of Mission and Formation, Centacare Brisbane, and former seminary rector Dr John Chalmers gave evidence that:

> Celibacy has little, if any, direct impact on the occurrence of child abuse. Most abusers are married or not celibate. However, enforced celibacy may create an environment that does not enhance cognitive, emotional, behavioural or spiritual intimacy.[998]

Dr David Ranson, theologian and Vicar General of the Diocese of Broken Bay, gave evidence, consistent with the Council's submission, that sexual abuse is not 'sourced simply in the requirement of celibacy, itself – even if mandatory celibacy may exacerbate pre-existing pathology'. He told us that 'Sexual assault is not the behaviour of the sexually starved. The overwhelming majority of sexual assault is engaged by those who do not profess celibacy, who are married, and who are sexually active. It is the outcome of the dynamic of power, not sexuality'.[999] We also considered an article written by Professor Neil Ormerod, Professor of Theology at the Australian Catholic University, in which he argued that it is simplistic to identify celibacy as a cause of child sexual abuse because it occurs in a number of other settings, including the family and other professions that deal with children.[1000]

Dr Whelan gave evidence that he believes the relationship between celibacy and child sexual abuse is 'accidental rather than essential':

> There are married people who have engaged in predatory sexual behaviours and there are celibates – [I] would say many – who are fine human beings, emotionally mature and who demonstrate a great capacity to love. The issue is more about the individuals than about celibacy – Do they have a psychopathology? Do they suffer from arrested development? Are they emotionally immature? Are they dealing with serious unresolved and even unacknowledged inner conflicts?[1001]

However, Dr Whelan also told us that 'it may be true that the person who has the propensity to predation may get more opportunity as a celibate than he/she would in some other social structures'.[1002]

Professor Patrick Parkinson AM, professor of law at the University of Sydney, who was invited on two occasions to review the Catholic Church's Towards Healing protocol, told us in a submission that he believes that:

> celibacy has played a significant role in fuelling the propensity of some Catholic priests and male religious to sexually abuse children. That is contested, but perhaps it wouldn't be contested so strongly were it not for the fact that their Church has a theological commitment to the retention of this obligation. The disproportionate level of sex offending against children by Catholic priests and male religious cries out for explanation.[1003]

Professor Parkinson further told us that while celibacy in itself was 'obviously not causative' of child sexual abuse:

> the combination … of mandatory celibacy and unchosen celibacy, really, for many priests and religious, combined with the emotional isolation of being in the position of pastoral responsibility that they have, is, I think, causative. I think it explains some of the shocking figures we have heard.[1004]

We heard from Dr Doyle that mandatory celibacy is directly implicated as a factor in the extent of child sexual abuse in the Catholic Church, but it is not the cause of child sexual abuse.[1005] Dr Doyle has written that:

> One common misconception about the clergy sexual abuse it that it is caused by mandatory celibacy. It is much too simplistic to assume that the inability to turn to women for sexual release causes clerics to prey on children or adolescents. Mandatory celibacy alone does not *cause* sexual dysfunction of any kind. Even scholarly critics of the Church's celibate tradition agree that healthy celibacy is possible for those who freely choose it [emphasis in original].[1006]

Retired judge of the District Court of New South Wales, former priest and seminary lecturer Dr Christopher Geraghty gave evidence that compulsory, institutionalised celibacy was one of a number of critical doctrinal and ideological positions which became dominant in the life of the Catholic Church and the lives of the clergy and which he considers to be contributing factors to child sexual abuse.[1007] However, he told us that to assert that there was a 'direct and obvious causative connection' between institutionalised celibacy and the emergence of paedophilia would be 'simplistic and naïve':

> No necessary link can be established, especially if one sees celibacy merely as a life without sex. There are many celibate people in the world who appear to function quite happily and successfully without the need of becoming involved in sexual encounters, though the vast majority of these people did not enjoy the benefit of seminary training or a religious Catholic education focusing on sin, sex, virginity, self-denial and mortification.[1008]

The Archbishop of Sydney, Archbishop Anthony Fisher OP, gave evidence similar to that of Dr Geraghty on this point. He told us that 'the great majority of child sexual abuse, as far as we know, occurs within families. So clearly it's not just a problem for celibates'. He said the majority of Australians of marriageable age today are not married, and many are not sexually active at any particular time, but they are not regarded 'as a hazard to the public. So it's not something about celibacy or sexuality per se that makes you a risk to children or to vulnerable adults for that matter'.[1009] Archbishop Fisher added:

> I don't blame marriage for why some men in marriage offend against their wives or even against their own children. I don't blame celibacy for why some men in the celibate state offend against celibacy. In each case, I would say: if only you were more faithful to your own ideals or the ones you profess publicly, you wouldn't have hurt people.[1010]

Archbishop Fisher acknowledged that celibacy could be a contributing factor to child sexual abuse by clergy and religious, in the sense that people could hide behind celibacy and use it as a cover for predatory behaviour.[1011] The Archbishop of Adelaide, Archbishop Philip Wilson, and the Archbishop of Perth, Archbishop Timothy Costelloe SDB, also agreed that celibacy could be a contributing factor to child sexual abuse.[1012] Archbishop Costelloe told us that, if the motivation for choosing celibacy was just a practical one, because it was 'part of the deal' associated with becoming a priest, 'then the potential for the enormous damage we have seen is very real'.[1013]

Archbishop Coleridge told us he had no doubt that 'celibacy poorly lived', meaning celibacy 'lived as a burden, precisely as mandatory and not as a gift and a call that comes from God', had been a contributing or aggravating factor in relation to child sexual abuse by Catholic clergy and religious but not a cause.[1014] Archbishop Coleridge told us that he was 'not persuaded' that clerical celibacy was a causative factor but that 'It still seems to me, however, that the question as to whether it was a major aggravating factor is on the table, and has to be'.[1015]

The Archbishop of Hobart, Archbishop Julian Porteous, also expressed the view that 'I'm personally not convinced that celibacy per se is the issue. I think formation for people to live a celibate life is a very important aspect, so not celibacy as such but how people understand it and live it'.[1016]

Archbishop Fisher and the Archbishop of Melbourne and President of the Australian Catholic Bishops Conference, Archbishop Denis Hart, agreed with the proposition put by Archbishop Wilson, that 'if we do maintain celibacy as a requirement we have to be really, really careful about our selection process, the evaluation of people, and also to be just to them, to form them properly, to give them a very healthy way of living out their sexuality and so on in a celibate manner'.[1017]

We discuss the role of selection, screening and formation of candidates for the priesthood and religious life in detail in Section 13.11.8, 'Selection, screening and initial formation'.

Research and inquiries regarding celibacy as a causal factor

Overseas, a number of formal inquiries and more than a few research studies regarding child sexual abuse in the Catholic Church have considered the question of whether celibacy is a causal factor.

The expert group that advised the formal inquiry into the Diocese of Ferns (the Ferns inquiry) in Ireland was 'unanimous in its view that the vow of celibacy contributed to the problem of child sexual abuse in the Church'.[1018] However, the 2005 Ferns report also observed, in relation to the suitability of candidates for the priesthood to live a celibate life, that there had been important changes in seminary selection and training in response to 'growing awareness [on the part of Church authorities] of the problem of clerical child sexual abuse'.[1019]

Also drawing attention to the link between celibacy and poor formation, the 2004 United States Conference of Catholic Bishops National Review Board, in their *Report on the crisis in the Catholic Church in the United States* (National Review Board report), observed in relation to celibacy that, 'Although the discipline of celibacy is not itself a cause of the current crisis, a failure properly to explain celibacy and prepare seminarians for a celibate life has contributed to it'. Without proper formation and discipline, 'those candidates who were most troubled sexually were most likely to fail'.[1020]

We note that *The causes and context of sexual abuse of minors by Catholic priests in the United States, 1950–2010*, the 2011 report of the John Jay College research team that was commissioned by the United States Conference of Catholic Bishops, argued that what it referred to as the 'crisis' of sexual abuse of minors by Catholic priests had been a very recent 'historical' problem. It found that the pattern of complaints in the United States indicated a concentration of allegations in relation to abuse in the 1960s and 1970s, followed by a decline in allegations from the mid-1980s. According to the research team, this increase in abusive behaviour was consistent with the rise in other types of 'deviant' behaviour in the 1960s and 1970s, such as drug use and crime, as well as changes in social behaviour, including an increase in premarital sexual behaviour and divorce. The report concluded, controversially, that, because the rule of celibacy was a constant throughout the period under review, it could not explain the differences in reported abuse from decade to decade and so could not be considered a cause of the 'crisis'.[1021]

However, in their review of the literature, Desmond Cahill, professor in the School of Global, Urban and Social Studies at RMIT University and researcher Peter Wilkinson commented that the 2011 John Jay College study lacked a genuinely historical perspective and did not always fully appreciate the limitations of its 1950 baseline – including that the study's own data indicates that the level of abuse in 1950 was already substantial.[1022] As addressed in Chapter 3, 'Child sexual abuse in the global Catholic Church: early history and previous inquiries', we are satisfied that there is significant documentary and archival evidence of a long history of child sexual abuse by clergy and religious going back to the earliest centuries of the Christian Church.

Professor Parkinson has argued that the John Jay College team's methodology may confuse the incidence of child sexual abuse with the incidence of its disclosure and that it may confuse propensity to offend with opportunity.[1023] He also argued that the reason there were fewer reports prior to the 1960s and 1970s may be due to a 'lack of a cultural context in which complainants would be encouraged to come forward'.[1024]

Dr Doyle gave evidence in our *Institutional review of Catholic Church authorities* case study that, in his opinion, the second John Jay College report in 2011 was 'shallow' and that it was 'roundly criticised' because, in considering potential causal factors, it failed to deal with structural issues and dealt instead only with 'circumstantial issues in the sociocultural environment'.[1025]

Celibacy is one of the potential risk factors considered in a research report commissioned by the Royal Commission, written by Professor Parkinson and Judy Cashmore, Professor of Socio-Legal Research and Policy at the University of Sydney, entitled *Assessing the different dimensions and degrees of risk in child sexual abuse in situations*. The purpose of the research was to establish a means of identifying which institution types and activities may be more risky environments for child sexual abuse than others.[1026] The authors identified that there seems to be a large body of evidence suggesting that the Catholic Church in Australia has a much higher incidence of reported child sexual abuse than other churches or secular institutions, and they suggest that these incidence figures are also out of proportion to the number of Catholic institutions in Australia compared with those of other religious organisations or government bodies.[1027]

Parkinson and Cashmore considered the question of whether there is a potential causal link between celibacy and child sexual abuse but said that such a link would be very hard to prove, although more research was needed. They argued that celibacy was very unlikely to be a factor in explaining paedophile attraction, and they pointed out that only some perpetrators of sexual abuse of minors are classified as paedophiles.[1028] They also referenced research suggesting that Catholic priests who abuse minors are 'a heterogeneous group with varying offence histories' and suggest that much clergy offending against minors arises from opportunity.[1029]

Instead, they approached the question of a potential link between celibacy and child sexual abuse largely in terms of the correlation between 'propensity risk' (that is, the risk arising from a greater-than-average clustering of those with a propensity to abuse children and young people) and 'situational risk' (arising from opportunities for abuse that the environment offers).

In relation to 'propensity risk', Parkinson and Cashmore noted that gender is the most significant issue, meaning that institutions with a predominantly male staffing profile have a greater risk.[1030] In relation to 'situational risk', they noted that residential institutions of all kinds carry an elevated risk.[1031] They concluded that 'Boarding schools and children's homes run by male religious orders provide an example of high situational risk'.[1032] They speculated that the link between child sexual abuse and celibacy may indicate a 'perfect storm' with several factors coming together, including:

- priests or religious who suffer from loneliness and unfulfilled sexual desires, or otherwise feel the need for intimate contact
- adolescents, mainly boys, who may be in need of love and attention or are isolated from ready parental support
- ample opportunity for unguarded access to these young people without attracting suspicion.[1033]

They concluded that 'the association between celibacy and child sexual abuse is only correlational, and causal pathways have not been demonstrated'.[1034]

Parkinson and Cashmore's conclusions appear to be consistent with comments by Diarmaid MacCulloch, Professor of the History of the Church at the University of Oxford, noted in Chapter 3. MacCulloch has written that the sexual abuse of children by Catholic clergy and religious since the 17th century can be attributed to the combined effect of the enforcement of mandatory celibacy following the Council of Trent and an increased commitment on the part of the Catholic Church to the education of the young.[1035]

Dysfunction associated with mandatory celibacy

> I personally believe … mandatory celibacy isn't a gift, it's an imposition and, although it's accepted by priests as a condition of ministry, I think there's a significant number of priests who don't embrace it and find the celibate life particularly difficult.[1036]
>
> **Philip O'Donnell, former Melbourne priest**

The Royal Commission has considered whether the difficulty of living according to the Catholic Church's rule of compulsory celibacy for clergy and religious is a cause of sexual dysfunction, including child sexual abuse.

Violation of the celibacy rule

In Chapter 3, we note that child sexual abuse in the Catholic Church can be traced back through historical records to the earliest centuries of Christianity. We received evidence that sexual misconduct by clergy and religious has been a matter of ongoing concern to the Holy See for centuries and that, particularly in the medieval period, despite the decrees of various popes and councils, the Catholic Church's attempts to impose mandatory celibacy on the clergy met with 'little consistent success'.[1037] Dr Doyle has argued that:

> in spite of the noble ideals of the concept of celibacy, violations against it have been numerous and constant. The most serious are those that involve force or minors …
>
> There is abundant evidence that the institutional Church has grappled with the sexual sins of the clergy from its earliest centuries. At times the response was open and decisive and at other times, clandestine and ineffective.[1038]

Dr Doyle gave evidence that 'Sexual abuse of minors and women was not a result of mandatory celibacy since it had been recognized as a serious problem for several centuries before it became a universal obligation' in the 12th century.[1039]

Dr Doyle also gave evidence that the rule of celibacy is routinely ignored by priests in many parts of the world, including in Latin American, South American and African countries.[1040] Cozzens has also written about 'the open disregard for celibacy in numerous parts of the world'.[1041] He argued that 'Celibacy's exceptions and the tragic scandal of clergy abuse of minors lead many to conclude that mandated celibacy is just not working'.[1042]

A number of witnesses drew our attention to research on the sexual behaviour of priests in the United States conducted over more than 40 years (1960–2002) by psychotherapist and former priest Richard Sipe, which included data on 2,776 active and former priests. Sipe concluded that up to 50 per cent of clergy in the United States were sexually active at any one time.[1043] Twenty per cent were involved in heterosexual relationships and behaviour patterns; 10 per cent were sexually active with adult men; 8 per cent were engaged in activities he termed 'sexual experimentation' (evenly divided between heterosexual and homosexual); 5 per cent were engaged in 'problematic masturbations'; and 6 per cent were sexually active with minors.[1044]

Sipe concluded with the warning that the Catholic Church's 'celibate/sexual system as it exists fosters and produces, and will continue to produce, at a relatively stable rate, priests who sexually abuse minors'.[1045]

Celibacy as a 'rare gift' or a burden

We heard consistent evidence that the ability to live a celibate life is rare. In Chapter 3, we noted that an examination of papal documents from the 20th century suggests that the behaviour of the clergy in relation to chastity and celibacy was a matter of mounting Vatican concern throughout this period. A number of those who gave evidence that celibacy was not in itself a cause of child sexual abuse nonetheless went on to describe significant problems associated with mandatory celibacy and the formation and support given to clergy and religious to help them successfully live out a celibate life. We heard evidence from numerous witnesses that celibacy for Catholic clergy should be voluntary, and we also received a number of submissions to the same effect.[1046]

For example, Dr Whelan gave evidence that, in his view, mandatory celibacy was 'a huge issue' that the Catholic Church needs to deal with.[1047] Dr Whelan told us that in his view celibacy is a 'very, very rare gift':

> To put it piously, I think the Church has called more people to celibacy than has God ... I think the Church's law of compulsory celibacy is misguided and it should not be in place. I think it is unjust, actually. And I think there were a lot of people who came into religious life, say, coming through the first part of the 20th century, for all sorts of reasons and not all of them were good, and they found themselves celibate, as it were, but they weren't really called to celibacy and they should never have been there.[1048]

During *Case Study 31: The evidence of retired Bishop Geoffrey Robinson regarding the history and development of the Catholic Church's response to child sexual abuse prior to the introduction of Towards Healing*, retired auxiliary bishop in the Archdiocese of Sydney, Bishop Geoffrey Robinson told us that he thought mandatory celibacy was 'one of the most obvious things we that have to look at' in relation to child sexual abuse:

> BISHOP ROBINSON: Celibacy itself I do not believe is necessarily the cause of abuse, but I believe that obligatory celibacy is, because, look, I know of many, many, many priests who are living a celibate life but they are doing it because the Church says they have to. It's never been something that they have accepted as good in itself, or even as an essential part of being a priest. They believe they could be very good priests as married people and would love to do so, but an unwanted, unassimilated celibacy has to be dangerous and I think, therefore, that this is one of the very first things I would want the Church to look at.
>
> MS FURNESS: To look at and leave behind?
>
> BISHOP ROBINSON: Well, I mean, look at first and then decide whether to leave it behind. Personally, I believe the decision would be to leave it behind.[1049]

Dr Geraghty said that compulsory celibacy had come at 'a very high price', in the form of loneliness, depression, personality disorders, alcoholism, guilt, secret affairs, double lives and sexual promiscuity – a 'social mess' which he said has remained hidden until recently:[1050]

> In a significant number of the cases, the high-bar could not be negotiated. Trainees and members of the clergy were doomed to constant failure – spread out tight on the wheel of guilt, confession, forgiveness and starting again … Some young men inevitably failed to evolve and grow into their bodies and into their adult lives. Precious, critical years of psycho-sexual development were being lived out in an artificial world, behind the gates of the seminary where the role of sex in a young man's life was being suppressed and denied, and at the same time sublimated, exaggerated and idealized.[1051]

During *Case Study 16: The Melbourne Response*, Archbishop Hart said that he had experience of priests who found celibacy a burden and had asked the pope to dispense them from priesthood but that, on the other hand, he had 'a much wider experience' of priests finding celibacy fulfilling.[1052] Archbishop Hart described celibacy as 'a very high ideal. Not everyone attains to it. But it's very, very worthwhile'.[1053]

However, in giving evidence during the *Institutional review of Catholic Church authorities* case study, Archbishop Hart accepted the proposition that, given what we now know about candidates for the priesthood and religious life, the way that they are selected and inadequacies in their formation, mandatory celibacy was a contributing factor for some clergy who sexually abused children:

THE CHAIR: They just couldn't handle it?

ARCHBISHOP HART: Yes, I could agree with that, your Honour.[1054]

Archbishop Hart told us that he thought the only legitimate way celibacy can be lived was 'as a gift by someone who freely and totally embraces it'.[1055]

Dr Ranson has written that, in spite of the fact that celibacy is a precondition for priestly or religious ministry, the Catholic Church is continuing to ordain and profess men and women who have never discerned whether they have a celibate vocation or not: 'They simply enter into a celibate commitment because it is a necessary part of the package. These people are then committed to lives of quiet despair and frustration, a tension which, in the end, is ripe for sexually acting out'.[1056]

This is consistent with the views of Cozzens, who argued that obligatory celibacy for many priests is 'a silent martyrdom'[1057] and 'an unnecessary, unnatural, and unhealthy burden that has shrunk their souls and drained the last drops of passion from their lives'.[1058]

In this context, we note Australian research published in 2011 by Chris McGillion and John O'Carroll of Charles Sturt University, who surveyed 1,700 active and retired Catholic priests about their lives and their views and received responses from 542 of those priests (a response rate of 31.6 per cent).[1059] They also conducted interviews with 50 priests chosen at random from across the country. In relation to celibacy, 70.3 per cent of respondents said they thought celibacy should be optional.[1060] McGillion and O'Carroll identified three main attitudes towards celibacy among the Australian priests they interviewed. The largest group had an attitude of 'resigned acceptance', with many admitting that celibacy was a cause of 'ongoing struggle'. The second-largest group was hostile to celibacy, and the third group (one in five) strongly favoured the rule of celibacy.[1061]

We also note the observation in 1990 of *The report of the Archdiocesan Commission of Enquiry into Sexual Abuse of Children by Members of the Clergy* (Winter report) on the Catholic Archdiocese of St John's Newfoundland in Canada, that the issue of celibacy had been raised repeatedly during the inquiry, not only as a possible factor contributing to the incidence of child sexual abuse but also as an important issue contributing to patterns of dependency, isolation and low morale among priests who did 'not feel they have become respected and independent adults'.[1062] The Winter report recommended that the Archbishop of St John's 'join with other bishops across Canada to address fully, directly, honestly and without reservation questions relating to the problematic link between celibacy and the ministerial priesthood'.[1063]

The most extensive consideration by any previous overseas inquiry of the role of celibacy in child sexual abuse in the Catholic Church was by the Commission of Inquiry into Sexual Abuse of Minors in the Roman Catholic Church (Deetman inquiry) in the Netherlands in 2011. The Deetman inquiry was specifically directed by its Terms of Reference to address whether there

was a connection between celibacy and child sexual abuse. The Deetman inquiry's report, *Sexual abuse of minors in the Roman Catholic Church*, found that there was no scientific evidence to support the notion that celibacy provides the definitive explanation for the extent to which sexual abuse occurs within the Catholic Church:

> On the other hand, in light of the archive research and interviews carried out by the Commission of Inquiry, it would be equally inaccurate to conclude that there is therefore no link between sexual abuse and celibacy. The issue here is the mandatory nature of celibacy within the Roman Catholic Church … Experts in the field of mental health have emphasized that it is this obligation that can make clergy vulnerable to various forms of inappropriate behaviour.[1064]

The report provided considerable detail about the early interactions between the Dutch hierarchy and psychiatrists who treated clergy and religious with psychosexual problems and noted that, during the 1950s, a number of Catholic mental health professionals tried to persuade Dutch bishops and religious leaders that mandatory celibacy might be the cause of psychological problems, including paedophilia and psychosexual immaturity in priests and brothers.[1065] On the basis of case histories, the Deetman Commission concluded that – especially in the period up to the 1960s – [mandatory celibacy] gave rise to 'repressed sexuality' in a number of cases:

> It is therefore not inconceivable that, had there been a system of voluntary celibacy, problems such as those addressed by this report would not have occurred or would have been less prevalent.[1066]

We note that the 2013 *Betrayal of trust: Inquiry into the Handling of Child Abuse by Religious and Other Non-government Organisations* report of the Victorian Parliament's Family and Community Development Committee suggested that there was 'an inconsistency between the Catholic Church's public stance on sex-related questions and the reality (known within the Catholic Church) of the lives of significant numbers of its clergy and orders'. The report comments: 'This inconsistency contributed to a culture in which some level of inappropriate sexual activity has been treated as unavoidable, to be addressed internally if at all'.[1067]

We also note the conclusions of American Capuchin Franciscan Michael H Crosby, who has argued in his book, *Celibacy: Means of control or mandate of the heart?* that the Catholic Church's celibate system is riven with a host of 'internal contradictions':[1068]

> this new rationale which considers celibacy to be a 'gift' appears to be fraught with internal contradictions. The first contradiction deals with the difference between something imposed and something offered freely, between something institutionally mandated and something chosen because of a sense of a call.[1069]

The Royal Commission received a significant amount of evidence to the effect that mandatory celibacy was implicated in emotional isolation, loneliness, depression and mental illness.

During *Case Study 11: Congregation of Christian Brothers in Western Australia response to child sexual abuse at Castledare Junior Orphanage, St Vincent's Orphanage Clontarf, St Mary's Agricultural School Tardun and Bindoon Farm School (Christian Brothers)*, Brother Julian McDonald, Deputy Province Leader of the Christian Brothers Oceania Province, told us that there was 'only … a tiny percentage of people for whom celibacy is a healthy choice'.[1070] He told us that there have been people who found their way into religious life for whom celibacy was 'a very unhealthy choice':

> It effectively turned them into lemons – bitter people who could not reach out healthily to anybody else, so that they give their life to the goldfish, the pot plants, or whatever. They are the people who have to be advised to leave in the early stages of formation ... It has to happen, and sadly, I believe that it didn't happen.[1071]

Irish psychologist and researcher Dr Marie Keenan, in her evidence, noted that lack of intimacy and emotional loneliness has been identified by numerous clinicians and researchers as an important aspect of the psychological functioning of clerical men who sexually abused minors.[1072] Depression and difficulty expressing emotional concerns, and anger and over-controlled hostility, were seen as important in a number of studies. Anger also emerged as a factor in Dr Keenan's research.[1073] Dr Keenan's evidence was that the anger that was implicated in the offending of the men who participated in her research 'came from a lifetime of submission and attempts at living a life that was impossible to live'.[1074]

In our *Catholic Church authorities in Ballarat* hearing, psychiatrist and former Franciscan priest Dr Peter Evans gave evidence that it would be 'of great benefit psychologically to those priests of normal sexual orientation' if the Catholic Church were to embrace optional celibacy.[1075] Clinical psychologist Dr Gerardine Robinson, who has treated clergy and religious with psychosexual disorders, agreed that optional celibacy would be a benefit. She gave evidence during the *Institutional review of Catholic Church authorities* case study that it would 'definitely' be better if celibacy was an optional choice and not mandatory.[1076] Dr Robinson told us that many of the clergy she had treated were:

> what we call alexithymic, emotionally destitute. They didn't have the language to talk about sexuality. They hadn't been allowed to talk about sexuality in their formation and in their past. So they didn't have the language. They didn't know how. And not only that, it was forbidden, certainly perceived as forbidden … And I think that has to change.[1077]

Dr Evans told us that celibacy demands the suppression of natural sexual desires and runs 'counter to human nature' and can only be maintained with a strict rule of life, such as existed in the Catholic Church prior to the Second Vatican Council in the 1960s, when the Catholic Church was 'very strict with regard to the behaviour of its priests': 'Unfortunately this suppression of human sexuality can lead to a rigidity of personality and a condemnatory attitude towards sexuality. This by no means happens to all.'[1078]

However, Archbishop Coleridge gave evidence during the *Institutional review of Catholic Church authorities* case study that celibate living does not lead inevitably to emotional isolation:

> It leads to a kind of solitude, but solitude that doesn't have to be loneliness. I have lived a celibate life for the best part of 50 years, I think it is, and I can't say that I've been racked by loneliness, but I've had to learn to inhabit a creative solitude, certainly, but that in itself can be an enrichment.[1079]

Archbishop Coleridge also questioned the idea that mandatory celibacy had been 'imposed' on clergy by the Catholic Church: 'I was given a choice, when I came to ordination – admittedly in my 20s.'[1080] Archbishop Coleridge told us that he had 'never had the sense of being shackled, of having a burden imposed upon me by an oppressive Church'.[1081] Archbishop Coleridge told us that 'the assumption that celibate life is impossible – in other words, that the human being can't live without sexual activity – is clearly wrong'.[1082]

Celibacy lived in the context of a religious community

The Royal Commission heard evidence that the practice of celibacy only makes sense in the context of community. Dr Ranson told us during the *Institutional review of Catholic Church authorities* case study that, viewed positively, celibacy is 'a call to relationship':[1083]

> Celibacy can only be understood – this is my very firm conviction, that Christian celibacy can only be understood within the context of community and the network of friendships. It only makes sense in that network.[1084]

Dr Ranson's views on this point are consistent with those of Melbourne Anglican laywoman Muriel Porter in her book, *Sex, power and the clergy*:

> Celibacy as part and parcel of monastic life has a rationale. The structured community of the monastery, set apart from everyday life, offers in theory at least a holistic and balanced way of life. Companionship, shared purpose, and a degree of asceticism allow integration. Celibacy imposed without the support of a monastic community, however, can be dangerous, quite apart from the struggles priests might have with their sexual urges. The celibate life involves much more than merely giving up sex.[1085]

Similarly, the 2004 National Review Board report for the United States Conferences of Catholic Bishops observed that religious order priests 'often comment' that they believe living in community provides a level of support and intimacy that makes it easier for them to live a celibate life. In contrast, the report noted that:

> many diocesan priests live alone in isolated rectories with little sense of community or oversight and thus may lack some of the emotional benefits afforded by a sense of community. This isolation in some instances may have afforded some priests the freedom to commit acts of abuse without detection.[1086]

The National Review Board report concluded that 'there can be no doubt that while it is a gift for some, celibacy is a terrible burden for others, resulting in loneliness, alcohol and drug abuse, and improper sexual conduct. That does not mean, of course, that celibacy should not remain a principle of priestly life'.[1087]

However, we note that in the Australian context, where the shortage of priests and geographical isolation in regional areas are a fact of life, more communal living arrangements may not be possible for many diocesan priests.

We also note that the Catholic Church claims data indicates that some male religious congregations where priests and/or brothers lived communally had the highest proportion of alleged perpetrators. For example, the Benedictine Community of New Norcia was the religious institute with priest members which had the highest overall proportion of alleged perpetrators (21.5 per cent, when taking duration of ministry into account).[1088] Among institutes of religious brothers, the St John of God Brothers had the highest overall proportion of alleged perpetrators (40.4 per cent).[1089] For three other male religious institutes – the Christian Brothers, the Salesians of Don Bosco and the Marist Brothers – the proportion of alleged perpetrators was higher than 20 per cent.[1090] During the same period, the overall proportion of diocesan clergy who were alleged perpetrators was 7.9 per cent, when taking duration of ministry into account.[1091]

In stark contrast to the above figures for male religious institutes, the Catholic Church claims data indicates that the proportion of alleged perpetrators in female religious congregations whose ministry has involved provision of services to children is much lower. For example, the overall proportion of alleged perpetrators in the Sisters of St Joseph of the Sacred Heart and the Sisters of Mercy (Brisbane) was 0.6 per cent and 0.3 per cent respectively, when taking duration of ministry into account.[1092]

The Royal Commission heard evidence that the structure of community life in Catholic religious institutes makes it very difficult to contemplate any alternative to vowed chastity and celibacy for religious priests, sisters or brothers. Brother Peter Carroll, the Provincial of Marist Brothers in Australia, gave evidence in the *Institutional review of Catholic Church authorities* case study that the structure of community life in the Marist Brothers precluded having married brothers:

> BROTHER CARROLL: I don't think that would be feasible under our constitutions.
>
> COMMISSIONER MURRAY: But if you changed your constitution – could you do it without referencing the Vatican as a whole?
>
> BROTHER CARROLL: No, they do have an oversight of constitutions and they would need to approve them.
>
> Having said that, I'm not sure that the style of life that is a religious's life would be compatible with the married state …

> … the brothers live a communal life and that would be quite difficult in terms of the present structures or the traditional structures of religious life generally.
>
> ... we have communities where there are two, four, six, ten, fifteen brothers living together. So if they were married with families, then that would be very different.[1093]

On the other hand, Brother Clinch told us during our *Catholic Church authorities in Ballarat* hearing that the Christian Brothers could fulfil their teaching and other functions as a community without the vow of celibacy:

> Yes, they could. I think they'd fill their ministerial qualities and do it well … but it would fundamentally change the nature of living in community and the way of community life. Now, is that good or bad? Well, time will tell.
>
> … the Christian Brothers, our average age in Australia is about 75. Our way of life is coming to an end.[1094]

We also note that Crosby wrote in 1996 that the data in the United States showed that celibacy is a secondary consideration for most people who choose to join Catholic religious congregations:

> people still join religious congregations for the same primary reasons they did in the past: for the sake of becoming involved in ministry with the support of a community … However, when the primary motive for joining (and remaining) is linked with mission, and the core reason that has made the consecrated life unique (celibacy) is not really addressed or supported, problems will arise.[1095]

Compulsory celibacy as a discipline without oversight

We also heard that the Catholic Church's clerical celibate requirement is, in practice, a system without oversight.

The National Review Board report made this point when it stated that 'The effect of the discipline of celibacy on the behaviour of priests should be viewed in light of the reality that priests traditionally have not been subject to close oversight'.[1096]

Archbishop Coleridge gave evidence that he could not know the details of the sexual behaviour of his clergy: 'How can I know that?'[1097] Archbishop Coleridge told us that he had:

> no right to go to a priest who is not an employee of mine and say, 'Excuse me, are you in a sexual relationship?' See, at that point I intrude into what's called the internal forum and I have no right, as the bishop, to do that. And the priest would have every right to say, 'It's no business of yours' … I have no right to ask those questions or, if I do, to expect an answer.[1098]

Archbishop Coleridge told us that, if his priests wanted to 'open their heart' to him about their sexual lives, that was 'terrific'. 'My difficulty is in taking the initiative and calling a priest to account at that point. If it emerges publicly, of course, I deal with it. But a lot of this does not emerge publicly'.[1099]

The issue of support and supervision for clergy and religious in ministry is discussed in detail in Section 13.11.9, 'Oversight, support and ongoing training of people in ministry'.

Celibacy and the theology of sexuality and the body

> Today's young Catholics have no idea what previous generations were forced to accept as 'church teaching' in the area of sexual morality. In fact, it can be claimed that it was the church's own bad theology that was largely responsible for the abuses that are now coming to light.[1100]
>
> **Seán Fagan, Irish Marist priest and counsellor**

In our case studies and review of the literature we also considered arguments that the Catholic Church's discipline of compulsory celibacy for clergy and religious is grounded in a deeply flawed and distorted theology of the body and sexuality which may also be a contributing factor in relation to child sexual abuse. For example, upon reviewing the available theological literature on child sexual abuse by Catholic clergy and religious in 2011, Linda Hogan, Professor of Ecumenics at Trinity College Dublin noted:

> For over a decade, theologians reflecting on the clergy sexual abuse crisis have drawn attention to the Church's teaching on sexuality as an underlying issue that merits attention. The view that an inadequate theology of sexuality is one of the causal factors in this crisis fits within a broader frame of dissatisfaction and debate about the Church's approach to the body and sexuality.[1101]

In an essay entitled 'The abuse and our bad theology', written in response to the 2009 *Final report of the Commission to Inquire into Child Abuse*, Irish Marist priest Seán Fagan argued that:

> In practice, absolute obedience to the rule and the institution often damaged people deeply. They were encouraged to subdue the unruly passions of the body by mortification that often included self-flagellation. The suppression of sexual attitudes and desires at an early age often led to perverted and unhealthy expressions in later life.[1102]

Dr O'Hanlon gave evidence that it is not good for the Catholic Church that its teachings around sexuality, celibacy and gender are 'almost 99 per cent in the hands of celibate males. I think there's bound to be some kind of an imbalance there in what comes out in the form of the teaching'.[1103]

In her evidence to the Royal Commission Dr Keenan stated that, while 'celibacy is not the problem that gives rise to the sexual abuse of children, a Catholic sexual ethic and theology of priesthood, which problematises the body and erotic sexual desire and emphasises chastity and purity over a relational ethic as the model for living, may be'. Dr Keenan's evidence was that generations of clergy had been given insufficient help to live according to such rules – a fact that Pope Benedict XVI had come to accept.[1104] Dr Keenan commented that:

> In effect, attempts to control sexual desire and sexual activity in my view led to sex-obsessed lives of terror, in which the body was disavowed, sexual desire was a problem to be overcome and the moral superiority of vowed virginity was presumed.
> …
> When one adds the practices of self-flagellation into this mix, practices which mark the biographies of some of the participants in my research ... the unhealthy disregard for the mortified and sacrificed body that emerges from these, and many other clerical narratives, begs an important question: not why so many Catholic clergy sexually acted out in the way that they did, but rather why more did not? The theology of sexuality, which contributes to self-hatred and shame, needs serious theological examination and revision.[1105]

Dr Keenan has written that several commentators who are either priests or former priests have argued that 'the inadequate theology of sexuality serves to make sexuality into something dark, secretive and troublesome for many clerical men … In these circumstances sexuality becomes split from other aspects of the priest's life. Clergy try to ignore the fact that they are sexual as well as spiritual beings'.[1106]

Dr Geraghty submitted that 'For almost its whole life … the Christian community has suffered from a profound fear of the human body, of flesh and sex, leading to a contempt for the material, physical world', misogyny, and an obsession with sin, chastity and purity. [1107] Dr Geraghty told us that the Catholic Church's celibacy rule was the product of an 'other-worldly spirituality' associated with this 'mangled theology'[1108] of sexuality: 'a crass form of sexless Angelism where angels were seen as the ideal of human perfection, where ordinary men and women were challenged and encouraged to achieve some form of a disembodied existence'.[1109]

Dr Geraghty's comments were echoed by Dr Whelan, who gave evidence about theological ideas that he believes may have contributed to shaping a cultural mindset in which child sexual abuse could have occurred. Dr Whelan told us that the Catholic Church still held pessimistic ideas about the body which had their origins in the early Church. He told us that these 'can leave people joyless and even depressed. It can generate chronic anger and rigidity. Perhaps more alarmingly, it can lead to compensatory behaviours … such as inappropriate eating, inappropriate drinking and inappropriate sexual activity'.[1110]

Dr Whelan also told us about 'objectivism', which he described as a 'deformative and deforming' way of thinking which demands that people's subjective human experience must conform itself to notions of truth and reality that are located in the realm of abstract ideas: 'Templates are produced by philosophers and theologians as to what it means to be "the good Christian" or "the good priest". Then it is simply a matter of doing it'.[1111]

Dr Whelan gave evidence that approaching the rule of celibacy in this way could lead to 'especially sad, even tragic' results, because it tended to encourage 'a wilful conformity, which necessarily involves a certain amount of suppression and repression of emotion in most people. This is fertile ground for compensatory and defensive behaviours of one kind or another'.[1112]

The Council, in its submission, quoted Bishop Robinson:

> There is a most dangerous insistence that priests and religious must be perfect or since they can't achieve that, at least appear to be perfect. An extraordinary number of people believe the naïve idea that 'Priests and religious are celibate, so they can't really have sexual desires and feelings the way the rest of us do'.[1113]

Dr Ranson expressed a similar view:

> there has been, I think, within the Catholic tradition this unrealistic expectation that life is lived perfectly. This is very dangerous because it means then that people's vulnerability and their struggle goes subterranean.[1114]

Dr Ranson has written that the 'Christian tradition has regarded sexuality with significant ambivalence', and that:

> Inadequate theologies of sexuality become institutionalised in celibate cultures which hitherto have been idealised as the perfection of sanctity. In these cultures, sexuality is something 'dark', 'secretive', and 'troublesome'. It becomes split from the individual's primary goals and possibly assumes a life of its own.[1115]

Dr Ranson has stated that 'Needs for intimacy cannot [be] quashed … They simply seek their expression in covert and distorted ways and are often sexualized'.[1116]

We note that in 1990 the Winter report recommended that the archbishop press the Canadian Bishops' Conference to initiate and support the development of a national research and study program aimed at more fully developing the Catholic Church's theology of sexuality and that this should be informed by advances in understanding derived from the human and medical sciences as well as contemporary theological, philosophical and biblical perspectives.[1117]

The subsequent 1992 report of the Canadian Conference of Catholic Bishops Ad Hoc Committee on Child Sexual Abuse, *From pain to hope: Report from the Ad Hoc Committee on Child Sexual Abuse*, noted that clergy child sexual abuse:

> presents a major challenge for the Church to re-examine its traditional attitudes towards both sexuality and relationships of power. In addition, professional clinical experience involving priests accused of sexual abuse reveals clear shortcomings in their formation in how to relate interpersonally, control their sexual urges, integrate their personalities and live as celibates.[1118]

The report invited the Canadian bishops to call for 'immediate and continuing research in the social sciences regarding the complex reality of human sexuality (both homosexual and heterosexual orientations), the sexuality of celibates, as well as the issues linked to the deviant expressions of sexuality'.[1119]

We also note that in his 1998 report on sexual abuse in the Christian Brothers, *An initial report on child sexual abuse*, Brother Gerald Faulkner specifically addresses the austere and sin-focused Catholic theological tradition known as Jansenism, which heavily influenced Irish Catholicism, Irish-Australian Catholicism and the internal culture of the Christian Brothers. He wrote, 'Jansenism made a clear distinction between the soul and the body, leading to an unhealthy dualism between things spiritual and things corporeal' and that this worked against psychosexual integration:

> Jansenism was anti-integration ... The spirit was good but the body was bad. This philosophy, coupled with Church teaching of the time, could easily lead to a gross distortion of one's vision of the body ...
>
> Jansenism feeds into shame, and shame comes from low self-esteem, a common trait in those who sexually abuse children or adolescents.[1120]

Dr Doyle told us that traditional Catholic teaching on human sexuality is woven into 'clericalist spirituality' in such a way that it has a harmful impact on both victims of child sexual abuse and priest perpetrators:

> Priests and their victims are both taught that any sexual act, thought or desire outside of marriage is a mortal sin which, unless absolved by a priest in confession, can be a potential sentence of eternity in hell. Catholic children are immersed in this distorted and harmful teaching before they even realize what sexuality is all about.[1121]

Dr Doyle gave evidence that the Catholic Church has 'perhaps the most stringent and restrictive approach to the morality of human sexual interaction of any religious body'. He told us that this attitude has shaped the way seminarians are formed and the way celibacy is viewed and practised, and that it has prevented Catholic Church authorities from having a clear understanding of the nature of psychosexual disorders:

> Consequent to this is the lack of appreciation for the true nature of the behavior of clerics who act out sexually in an inappropriate manner as well as an even more radical ignorance of the spectrum of effects of sexual abuse on a child or adolescent victim. To put it succinctly, Catholic clerics generally do not understand the complex and lasting nature of the impact of sexual violation. This has influenced the way victims have been treated.[1122]

Mandatory celibacy and psychosexual immaturity

In our consideration of the extent to which mandatory celibacy was a contributory factor to child sexual abuse in Catholic Church institutions, we regard the question of whether there is a link between celibacy and psychosexual immaturity as particularly important.

As indicated in Volume 2, *Nature and cause*, research suggests perpetrators in institutional contexts may show a greater preoccupation and emotional congruence with children than perpetrators in other settings.[1123] Individuals with high emotional affiliation with children may fear adult relationships and have experience of rejection and loneliness more than other people. They may find children less threatening and more attractive as friends and sexual partners.[1124]

As noted in Section 13.11.2, a 1971 study by Eugene Kennedy and Victor J Heckler found that only 7 per cent of priests were psychosexually mature and 18 per cent were developing, while another 66 per cent were underdeveloped and 8 per cent were maldeveloped.[1125]

In 1994, the Southdown Institute in Canada – a facility which by that time had treated more than 2,400 priests and religious clergy from Canada, the United States and other English-speaking countries, including Australia, who were suffering from alcoholism and psychosexual problems – noted in a submission to the United States Conference of Catholic Bishops Ad Hoc Committee on Child Sexual Abuse that:

> There remains a significant group of grossly immature, sexually repressed, psychosexually underdeveloped persons who have transgressed behavioural norms for a variety of reasons and who may or may not represent significant continued risk to the population at large.[1126]

For a number of those Catholic clergy and religious who gave evidence to the Royal Commission that celibacy itself was not the cause of child sexual abuse, a common theme was that the real problem was immaturity, viewed as a pre-existing condition rather than as a condition caused by the requirement to live a celibate lifestyle.

For example, Brother Shanahan told us during our *Christian Brothers* hearing that he believed there was a 'prior problem' in relation to child sexual abuse of 'immaturity that means that people can't live celibacy properly'.[1127] He also argued that emotional immaturity was not only a problem in relation to celibacy but was also likely to be at the root of child sexual abuse in families.[1128]

Archbishop Hart expressed a similar view during the *Institutional review of Catholic Church authorities* case study. He told us that 'celibacy seen as a burden runs the risk of turning in on oneself and would feed any immaturity or lack of balance in the person'.[1129] Archbishop Hart stated that where a person lacked the capacity to 'embrace celibacy intellectually and in their own person, where there are weaknesses there … the possibility of abuse is certainly increased'.[1130]

Archbishop Porteous also gave evidence that child sexual abuse by clergy and religious had 'more to do with the individuals and their maturity' than it did with celibacy:

> My view is that some priests who have not adequately developed a mature approach to issues of sexuality, effective maturity, of ability to live a celibate life, have failed, and it has been a failure in their commitment to the ideals of the priesthood. I believe that it's not a sole determinant of this. It's to do more with the individuals and their maturity.[1131]

Such views are consistent with the approach of the Council, which told us as noted above in a submission that, in the case of a person who is 'mandatorily required to live as a celibate', the potential risk of child sexual abuse is greater if one or more of a number of individual psychosexual factors, including immaturity and uncertainty about the nature of one's sexual identity, is present.[1132]

In this context, Dr Doyle gave evidence during the *Institutional review of Catholic Church authorities* hearing that:

> the grounding for celibacy, the training, the nurturing and the formation for celibacy has prevented men from maturing sexually, emotionally, psychologically in many ways, so that, as one priest psychologist said, what we have out there is the best-educated group of 14-year-olds in the country'.[1133]

He added that a lot of clerics 'have a very stultified comprehension of human sexuality, and that plays in when they are unable to comprehend the damage that the sexual violation of a boy or girl does to an individual'.[1134]

Dr Doyle told us that many of the clerical abusers of the past two decades were products of a traditional seminary system:

> Here we find males who are entering puberty, isolated in an all-male environment with an institutionalized negativity (or even hostility) towards marriage, sexual contacts, intimate relationships and women. The idea was that men could be best prepared to accept and live a celibate life if they were cut off from all contact or even discussion of the sexual dimension of humanity. The seminarians were young boys whose meaningful emotional and sexual development was paused at a most crucial age ... Many of these men would go on to become sexually involved with young adolescents.[1135]

Professor Ormerod has written that, 'There are serious questions that need to be faced about the impact of celibacy on the development of a mature psychosexual identity'.[1136] Cozzens has also suggested that mandatory celibacy unwittingly fosters psychosexual immaturity.[1137] He described the mandatory celibacy system as 'arguably the linchpin of the ecclesiastical system. No one is more controlled than when his or her sexuality is controlled',[1138] and he has written that, 'For some this is a release from adult responsibility for which they are, unfortunately, grateful'.[1139]

Sipe has argued that celibacy:

> forms a synergism within a *homosocial culture* that fosters and rewards psychosexual immaturity or regression. Emotional and social dependence, overvalued conformity, a sense of entitlement, assurance of superiority, the arrogance of absolute certitude, and immunity from criticism or personal responsibility for mistakes are constitutive elements of the Catholic clerical culture.[1140]

Elsewhere, Sipe has written that, while it would be simplistic to suggest that a married priesthood would by itself solve the sexual problems of the Catholic Church, it is nonetheless 'ridiculous' to summarily dismiss celibacy as a causative factor of the problems of Catholic clergy.[1141]

During our *Catholic Church authorities in Ballarat* hearing, Dr Evans drew attention to the link between psychosexual immaturity and the young age at which many priests and religious were recruited to minor seminaries and juniorates in earlier decades. He told us recruiting priests and brothers at such a young age impairs psychosexual development, so that it is 'not at all surprising to us psychiatrists' to see sexuality later acted out in a distorted way.[1142] Dr Evans gave evidence that all the male religious teaching orders, and the Christian Brothers in particular, had access to a large number of boys in their schools who they had enlisted as adolescents into their juniorates:

> so it's not at all surprising to me that the Christian Brothers are vastly over represented in the sexual abuse of young boys … because of their selection at a premature age, the suppression of normal psychosexual development, and the emergence in early adult life of deviant sexual behaviour.[1143]

Dr Evans also gave evidence that, while celibacy is a factor in child sexual abuse, it is not the primary cause: 'Sexual deviancy exists quite independent of celibacy. However, the rule of celibacy … may attract sexually deviant but pious Catholic youths'[1144] into the priesthood or religious life. He said that some may perceive celibacy as 'a means of escaping from overwhelming and deviant sexual thoughts and desires'.[1145] This evidence is consistent with the view of Cozzens, who has noted that Catholic teaching about homosexuality is that it is 'intrinsically disordered'. He argued that, for men who are 'terrified by the possibility or certitude that they are gay, a celibate priesthood is often appealing'.[1146]

We note that the National Review Board report noted that some witnesses had suggested that 'certain sexually immature or conflicted individuals and certain homosexual men' were 'attracted to the priesthood because they mistakenly viewed the requirement of celibacy as a means of avoiding struggles with their sexual identities. Others may have felt it provided them with "cover" – a ready explanation as to why they were not married'.[1147]

There is no evidence that homosexuality is a causal factor in child sexual abuse. We consider this issue in Section 13.11.2.

Dr Keenan's evidence to us was that ignorance of sexual matters, lack of knowledge of the basic physiology of sexuality and of emotional responses in sexually charged situations, and sexual and emotional under-development had all been identified in studies of sexually offending Catholic clergy.[1148] Dr Keenan's evidence outlined how her own research with a group of priest perpetrators illustrated the devastating consequences of unreflective psychosexual immaturity in the priesthood. The men in Dr Keenan's study had a diminished sense of authority and autonomy which overshadowed their conscious awareness of their power as adult men and Catholic clergymen. They were preoccupied with obedience and rules, and at a sexual and emotional level their stories indicated that they thought of children as 'friends' and 'equals' and did not countenance adequately the power imbalances involved in their 'relationships' and 'friendships':

> Their principal preoccupation was one of personal and individualised inner conflict and distress, mainly related to celibacy, sexuality and inner emotional turmoil and frustration. Many of the men did not feel powerful, despite the power positions they occupied in the communities in which they worked and in the minds of the Irish laity.
>
> It does not appear to be the case that the abuse perpetrated by these men was about gaining power *over* the victims in order to feel powerful. Rather, their abusive behaviour was more likely to have its genesis in other factors: their interpretation of 'friendship'; their blindness to their power position in Irish society, especially in the sexual, emotional and moral sphere; their preoccupation with Church rules and regulations; their fear of Church leaders and those in authority; their lack of empathy to childhood sexual vulnerability; and their own sexual and emotional immaturity and loneliness.
>
> In these circumstances, children and young people can be recast as the receptors for adults' needs and feelings.[1149]

The Provincial of the of the Salesians of Don Bosco Australia Pacific Province, Father Gregory Chambers SDB, gave evidence that celibacy could be understood in two ways – either as offering the opportunity for individual flourishing and human growth or as restricting and inhibiting the individual from personal growth and development.[1150]

Father Chambers also told us that, because of their experience of marriage, family and their careers, the lay leaders working in ministry with the Salesians not only had greater life experience but also had a better understanding than many of the Salesians themselves of the needs of the children and young people in their pastoral care:

> what I'm saying is because they've had that married and family and child-raising experience, that close contact with the family unit and what children and families and partners and their fellow laypeople require to be effective, well-balanced individuals in society … in many ways they are better leaders in our centres and better animators of our spirit and charism and identity than many of the Salesians with whom and for whom they work.[1151]

By way of contrast, we note two much more recent studies in the United States on the psychological profile of candidates for the permanent diaconate. These are mature men, most of whom are married, who are ordained as deacons to carry out a range of ministerial service roles. The studies demonstrated that they tended to be well-adjusted and psychologically healthy.[1152] Cahill and Wilkinson have noted that figures based on different sets of data from the Center for Applied Research into the Apostolate in Washington DC suggest that the offending rate by permanent deacons in the United States is about 0.3 per cent – about 20 times lower than the offending rate for priests.[1153]

Celibacy and clericalism

> Celibacy is essential to the continuation of the power and prominence of the clerical subculture, the home of the elite minority who rule the Catholic Church. Despite the documented history of celibacy violations through the centuries, Catholic leadership has strongly resisted any serious consideration that there might be something wrong with the concept itself. To abandon celibacy would be to risk the demise of the fortified clerical world and the consequent loss of power and influence.[1154]
>
> **Dr Thomas Doyle, Richard Sipe and Patrick Wall, *Sex, priests and secret codes***

In this section, we discuss the proposition that, although celibacy may not be a direct causal factor of child sexual abuse, the culture of clericalism that it engenders is a significant problem in relation to child sexual abuse because of the deference and power that is part of clericalism. The role of clericalism itself as a factor in child sexual abuse in the Catholic Church is discussed in more detail in Section 13.11.3, 'Clericalism'.

Although the Council has submitted to us that no causal link has been established between celibacy and sexual offending against children, it has stated that the culture that can evolve amongst celibate male clergy, 'if they come to regard themselves as on a "special" even "superior" spiritual journey, can become self-serving and in the extreme oppressive'.[1155]

In its submission, the Council explained the link between celibacy and clericalism as follows:

> Throughout the history of the Church, power associated with sex has had considerable symbolic meaning. Power has accrued to those who overcame sex. Sex was banished to the person's unconscious; it became not so much controlled as denied. The man who attained this total mastery was acknowledged as a spiritual master. But the very radical nature of such a belief meant that it could be managed only by especially estimable people who were all the more admirable because they were exceptional. The link was established between celibacy and purity, ensuring the priest's position of superiority. With a strict system of behavioural control reinforcing an attitude to sex in this way, the Church reinforced its own power.[1156]

We accept the Council's submission in relation to the link between celibacy and clericalism.

In their evidence to the Royal Commission in the *Institutional review of Catholic Church authorities* case study, the Bishop of Darwin, Bishop Eugene Hurley,[1157] the Bishop of Parramatta, Bishop Vincent Long Van Nguyen OFM Conv,[1158] and Dr Whelan[1159] all gave evidence that there was a connection between celibacy and clericalism.

Bishop Long told us that compulsory celibacy operated to set the ordained apart from the rest of the Catholic faithful:

> It's creating that power distance between the ordained and the non-ordained. Insofar as it is an instrument of subjugation or subservience, if you like, of the laity, it is wrong and it has to be reviewed. It has to be looked at, I think, very seriously.[1160]

Dr Whelan also gave evidence that celibacy was one of the factors that set the clergy apart as a special category of Christians. He told us that this resulted in what has been called 'the exaltation of the clergy', and that historically this phenomenon was manifested in two key ways: a growing tendency to place all Church affairs in the hands of the clergy, and the increasingly prominent social standing of the clergy as they took on public functions and entered the higher classes of society.[1161]

Dr Chalmers gave evidence that:

> While there is no direct link between celibacy and child abuse, celibacy may be linked to clericalism and a **clerical culture** which has played a part in abuse [emphasis in original].[1162]

Dr Doyle told us that that celibacy feeds the belief that clerics have to be superior and stronger than lay persons in order to live a celibate life and that this sets them apart and makes them special.[1163] Dr Doyle also told us that the public sees the clerical facade created by distinctive dress, ceremonial robes, societal deference and religious power, but behind the 'high walls of the clerical subculture there exists a dimension of life hidden from the public' in which 'sexual dysfunction is both nurtured and enabled'. He said that 'The mystique surrounding mandatory celibacy constitutes a major if not *the* major source of support for this hidden clerical world with its power and privilege'.[1164]

Dr Geraghty gave evidence during the *Institutional review of Catholic Church authorities* case study that clerical celibacy comes with an all-encompassing way of life that he associated with clericalism:

> However, with clerical celibacy comes an all-encompassing way of life, a sub-culture, and a particular mindset which in turn, generates a particular set of tensions and problems – loneliness – unsatisfied urges – lack of social and psychological stimulation – an unearned conferral of power and control over others … a confident belief that members of the clerical caste are holier, wiser, better educated and more perfect than others.[1165]

In their book *Sex, Priests, and Secret Codes*, Dr Doyle, Sipe and Patrick Wall have written that celibacy is 'a well-worthwhile and sanctifying living style for those who choose to live it successfully without compromising their public stance with their private behavior'. However, they also note that 'the ongoing inability of the Church to enforce the obligations of celibacy, coupled with the elitist and secret club mentality that it fosters, contributes to a climate that allows child abuse to happen'.[1166]

Dr Ranson also gave evidence that one of the factors that drives clericalism is the denial of the feminine, which may be associated with an unhealthy practice of celibacy. He told us that this creates:

> an hermetically sealed culture in which there is an overdeveloped masculine ethos. In cultures built on a masculine energy not balanced by the feminine there is an incapacity for genuine interior reflection, the inability to relate with intimacy, a dependence on role and work for self-identification, the loss of a humanizing tenderness (often illustrated in architecture and design of living space). Men grow in a forgetfulness of how to relate to peers (men and women) in healthy, adult and truly generative ways.[1167]

We note that Sipe has written that, while priests may be ordinary men, they do not exist in an ordinary social-moral culture:

> Theirs is a culture apart. It is an exclusively male world bounded by mandatory celibacy, where power, control, employment, and even financial reward are dependent on the exclusion of women and the appearance of a sex-free existence. No one can say that this culture has nothing to do with the problem of child sexual abuse. Experience demonstrates clearly that cultural factors inherent in the celibate/sexual system are crucial and pivotal in some instances of sexual abuse not only of minors but also of adult women and men.[1168]

In a submission to the Royal Commission, President of Catholics for Renewal, Mr Peter Johnstone, told us that 'We believe that the predominance of celibate men in the administration of the Church together with the exclusion of women from the governance of the Church are clearly related to the culture of clericalism and associated dysfunctional governance'.[1169]

Celibacy and a culture of minimisation

The Royal Commission heard that there may be a link between mandatory celibacy and a culture of minimisation, both in response to individuals who broke their commitment to live a celibate life and in understandings of the impact of child sexual abuse on victims.

Minimisation of the perpetrator's behaviour

In *Case Study 13: The response of the Marist Brothers to allegations of child sexual abuse against Brothers Kostka Chute and Gregory Sutton*, AAJ, a former student at Marcellin College, Randwick, run by the Marist Brothers, gave evidence that he had been sexually abused by Brother Kostka Chute. AAJ told us that, in his mind, within the Marist Brothers 'it appears there was a culture that things were acceptable that shouldn't have been. They weren't spoken about, but they were allowable'.[1170] AAJ explained that, by a culture where 'things were acceptable that shouldn't have been', he meant interpretations of celibacy and chastity:

> When I think about the whole issue of celibacy and the cloistered existence of the Marist order and other orders, and it goes on and on, what I think is that you get the justification for doing things, and the justification, it would seem to me, with Brother Kostka would be that women were out of bounds, but boys weren't.
>
> I'm not saying that every Marist Brother accepted this and that they thought this was acceptable, but I think there was a culture of accepting things and protecting people that should have never been allowed to develop, and the protection should have never happened. So that's what I feel.[1171]

AAJ told us that he later worked at a Marist Brothers school in New Zealand and came to understand that chastity and celibacy were ideals that the brothers had accepted as young men, 'but found ways to rationalise and circumvent'. In an exchange with Counsel Assisting, AAJ said:

> And they would talk about it in different ways … I think the expression was 'washing the dirty water off your chest'.
>
> Q. What was that?
>
> A. That was a reference to being able to go outside of the chastity, the celibacy vow, and come back, go to confession and get the slate wiped clean. Now, there were women at the school who wouldn't stay there when the brothers – on their own. I mean, I was there. I knew these women by the end of the year. They told me the dangers of being around with the brothers.[1172]

The role of the sacrament of confession and the Catholic Church's theology of sin and forgiveness are discussed in more detail in Section 13.11.10, 'The sacrament of reconciliation'.

AAJ's evidence about women being out of bounds but boys not being out of bounds is consistent with the views of Stephen Rossetti and LM Lothstein,[1173] Professor Ormerod and Thea Ormerod,[1174] and Lothstein.[1175] They argued that some clergy and religious perpetrators have rationalised their abusive behaviour on the basis that sexual activity with boys is not a breach of their vow of celibacy, whereas sexual relations with a woman would be, and that different levels of sexual contact falling short of penetration have also been excused this way. We note that, in its examination of child sexual abuse in churches and religious organisations in New South Wales, the Royal Commission into the New South Wales Police Service (Wood Royal Commission) commented on celibacy in the Catholic Church. The Wood Royal Commission's report quoted Sydney priest and social worker Father John Usher, who acknowledged that there had been a widely held 'belief' among clergy that the vow of celibacy was confined to heterosexual relations involving penetration and did not extend, for example, to acts of indecency or to encounters with male children. The report commented that:

> Clergy might see it as a moral wrong but might not define it as a serious sexual offence, or as a breach of the vow of celibacy. This has the traditional overtone of paedophile minimisation and distortion in cognitive thinking. Should there be any residual doubt in this respect, then it would be appropriate for those in preparation for the ministry or priesthood to have any such notions clearly dispelled.[1176]

Clearly, any rationalisation that sexual activity with boys is not a violation of the celibacy rule, whether because of the child's gender or age, is a faulty rationalisation and an example of a kind of distorted thinking, all the more so because sexual activity with boys was clearly contrary to the teachings of the Catholic Church.

Minimisation of the impact of child sexual abuse on victims and their families

We also heard that the fact that celibate priests and bishops do not have children may be a factor in the minimising of child sexual abuse in the responses by some clergy and religious to allegations or information about abuse. Professor Ormerod has written that clergy and religious have tended to view child sexual abuse more 'in term of failings in celibacy and sexual ethics rather than as abuses of power with destructive impact on the victims'.[1177] He said:

> Their spontaneous identification is with the abusive priest or religious, not with their victim. They may well have faced the same temptations, particularly in relation to situations involving exploitation of pastoral relationships. They may well have crossed the line themselves. Their first response is likely to be one of feeling sorry for the abuser.[1178]

In her evidence in relation to the Irish priest perpetrators in her own study, Dr Keenan told us that their abusive behaviour was likely to have had its genesis in a number of factors, including 'their lack of empathy to childhood sexual vulnerability'.[1179] Dr Keenan has written that:

> when they were abusing, the clerical perpetrators focused on the moral or sin aspect of their behaviour and not on the personal or psychological consequences for the young person. All of the men thought first about breaches of the moral code and focused on the sexual 'act' rather than on the consequences for the young person. They adopted an approach to morality that was based on rules and rational thought rather than personal or relational engagement. It was possible to bargain with the rule-book without putting themselves in the shoes of the child. Some perpetrators persuaded themselves that while there was a moral breach, it was minor when compared to other sex acts. Their thinking was accompanied by minimisations that the behaviour in which they were engaged was 'only touching'.[1180]

Dr Doyle's evidence was also that the Catholic Church's traditional teaching on human sexuality has heavily influenced the response to child sexual abuse, 'because it has shaped the understanding of sexual abuse, its cause and its effects, for many clerics but most important, it has shaped the bishops' understanding of the problem'.[1181] He said:

> Outrageous as it is, some clerics' understandings of human sexuality is so deficient that they simply cannot comprehend the profound impact of the power of the priesthood on the youthful vulnerable victim. As a result of the Church's teaching on sexuality, all sexual behaviour is reduced to a matter of the will. The sexually immature cleric, often overwhelmed with both confusion and shame at his sexual activity, cannot (as opposed to will not) fathom the destructive impact of abuse on a young victim. His narcissism causes him to focus only on himself so he often uses his position and power to intimidate the victim into silence.[1182]

We discuss the way in which canon law frames child sexual abuse as a failing in celibacy rather than a crime perpetrated against the child in Section 13.11.6, 'Canon law'.

Celibacy and a culture of secrecy

> What has happened in our Church as a result of this problematic relationship between sex and power is that there has developed a culture of 'don't ask, don't tell'.[1183]
>
> **Dr Gerry O'Hanlon SJ, Professor of theology, Trinity College, Dublin**

The Royal Commission heard evidence about how, within the culture of clericalism, sexual dysfunction associated with celibacy produces a culture of secrecy and hypocrisy. We heard that secrecy and hypocrisy in relation to the reality of sexual dysfunction associated with the Catholic Church's celibacy rule, led to similar secrecy and a tendency to 'look the other way' in relation to child sexual abuse.

Dr Keenan has written that a number of researchers, including Kennedy and Sipe, argued that a conspiracy of secrecy surrounds clerical sexuality:

> Defenders of celibacy do not accept that mandatory celibacy may have devastating consequences for many clerical men who remain within the priesthood or religious life by living a double life, living in a clerical sexual underworld and developing an almost dual existence.[1184]

We also note that the American psychologist John C Gonsiorek has written that:

> The problem is not celibacy per se, but the corruption that flows from the hypocrisy surrounding its failure ... This hypocrisy fosters a culture of deceit, lack of emotional integration, and self-delusion about personal sexuality among Catholic clergy, which then more generally impairs their attitudes, beliefs and behaviours about sexuality.[1185]

Michael L Papesh, a former seminary director for spiritual formation in the Archdiocese of St Paul, Minnesota, has argued that the clerical culture's way of handling sexuality is 'to intellectualize and evade'. He said open discussion of sexuality is rare:

> Many healthy priests exercise their ministry nobly and faithfully. Yet the terrible reluctance of the clerical culture as a whole to engage [with] matters of sexuality forthrightly and constructively is a grave impediment to ministry. It is intensified by Catholic moral teaching, fear and anxiety, undergirded by concerns for institutional preservation and self-protection. Consequently, realistic, wholesome and candid discussions of sexuality are silenced. Healthy, balanced formation of ordained ministers is hobbled. Sexuality, for many priests, becomes privatized, solemnized and darkened. Public and private accountability is thwarted. Many live in confusion and anguish about sexuality.[1186]

During our *Institutional review of Catholic Church authorities* case study, Dr Doyle told us that the fact that celibacy is not practised universally and consistently by priests has led to 'a hypocritical dimension … where the Church will say 98.9 per cent of priests are practising celibacy, [but] where the data from surveys, from the courts, from therapists who are actually dealing one-on-one with the priests, says something quite different'.[1187]

As addressed in Section 13.11.2, the Catholic Church officially prohibits practising homosexuals, those with 'deep-seated' homosexual tendencies, and those who support the 'gay culture' from being admitted to holy orders.[1188] Dr Geraghty gave evidence that this prohibition has also contributed to a culture of secrecy:

> While I do not for a moment directly associate a homosexual orientation with the crime of paedophilia or with the urges which drive it (prejudices asserts this link – evidence undermines it) – this prohibition encourages dishonesty and secrecy, as well as perpetuating a deeply flawed system geared to produce unhealthy priests.[1189]

Dr Geraghty told us that, in his view, the Church's policy in response to child sexual abuse had been:

> not to talk about these sensitive and private matters, to ignore the problem, to pretend that the situation is regular and beyond reproach. But like any other dark subterranean region lacking sunlight and air, this policy prevents normal, vigorous development. Nothing kept permanently under cover and in the dark can hope to flourish.[1190]

We note that Dr Geraghty's evidence on this point is similar to the observation of the 2009 *Report of the Commission of Investigation into the Archdiocese of Dublin* (Murphy report), that 'The American phrase 'don't ask, don't tell' is appropriate to describe the attitude of the Dublin Archdiocese to clerical sex abuse for most of the period covered by the report'.[1191]

We note that, in an interview in 2012 when Pope Francis was Cardinal Jorge Bergoglio, Pope Francis referred to the link between breaking the promise of celibacy and a culture of hypocrisy. He was reported as saying: 'The double life is no good for us. I don't like it because it means building on falsehood'.[1192]

Conclusions about celibacy

It is apparent that celibacy in itself is not a direct cause of child sexual abuse. However, we are satisfied that the Catholic Church's rule of compulsory celibacy is a contributing factor for the incidence of child sexual abuse, especially when combined with other risk factors.

We accept that religiously motivated celibacy is not a factor in the majority of cases of child sexual abuse that occur in Australian society. We acknowledge that only a small but significant minority of Catholic clergy and religious have sexually abused children, that many Catholic clergy and religious live successful celibate lives, and that many have devoted themselves to the education and care of children and young people. However, it is clear from our inquiry that, for many of these non-offending clergy and religious, celibacy has involved great personal struggle.

We are persuaded by the conclusions outlined in the commissioned research of Parkinson and Cashmore, as detailed above, that there is an elevated risk of child sexual abuse where the 'propensity risk' of compulsorily celibate male Catholic clergy and religious to sexually abuse children is combined with the 'situational risk' afforded by privileged access to children in certain types of Catholic Church institutions. This includes residential settings such as boarding schools, day schools, parishes and Church camps, and specific religious settings that provide opportunities for clergy or religious to be alone with children, including the sacrament of reconciliation.

The sexual abuse of children in the Catholic Church is not a recent phenomenon. There is significant documentary and archival evidence of a long history of child sexual abuse by clergy and religious going back to the earliest centuries of the Christian Church. Child sexual abuse is only one aspect of a centuries-long history of sexual dysfunction in the Catholic Church. We are also satisfied with the accuracy of Dr Doyle's statement that violations of the Catholic Church's celibacy rule have been 'numerous and constant', and that this has been known about by, and been of concern to, the highest levels of the leadership of the Catholic Church for centuries.[1193]

We are persuaded by the argument that celibacy is, as it is practised in the Catholic Church, often unattainable, and that this may result in the requirement to live a double life. It is apparent that compulsory celibacy has been implicated in emotional isolation, loneliness, depression and mental illness. It is also apparent that flawed theological ideas about human sexuality may have contributed to the mistaken view that clergy and religious are 'perfect', live at a different level, and that they do not have human needs or libidinal drive. In this respect, compulsory celibacy may have contributed to various forms of psychosexual dysfunction that pose an ongoing risk to the safety of children.

Diocesan clergy

In the context in which diocesan or secular clergy live their lives, we have no doubt that the isolation and loneliness of priests in presbyteries, especially in remote or isolated locations, provides a further risk factor in which celibacy, psychological ill health, substance abuse and sexual misconduct are interrelated. Research suggests that the rate of child sexual abuse in those Eastern Catholic Churches with married clergy is comparatively negligible and that the psychological profile of (mostly married) permanent deacons is much healthier than for diocesan priests.

The Catholic Church itself accepts that celibacy is a matter of discipline, not doctrine. Married clergy in the Latin Church were permitted to marry during much of the Catholic Church's early history. Currently, married Eastern Church clergy are permitted, as are married former Anglican clerics who have joined the Catholic Church. Pope Francis has also made statements indicating that celibacy is not intrinsic to the Catholic priesthood and that the compulsory celibacy rule can be changed to allow mature married men to be ordained.[1194]

We are persuaded that celibacy is an intrinsic component of the culture of clericalism. In relation to child sexual abuse, the Catholic Church's compulsory celibacy rule has played a significant role in the way Catholic clergy and religious were placed on a pedestal and regarded as sacred, holy and trusted figures both within the Catholic community and in the wider community. It was this aspect of the culture of clericalism that saw power over innocent children and their families abused by some clergy and religious. We are also persuaded by Bishop Long's argument that the Catholic Church's celibacy rule operates to create 'a power distance between the ordained and the non-ordained', and that insofar as it is 'an instrument of subjugation or subservience' of the laity (or indeed of the clergy), 'it is wrong and it has to be reviewed'.

Also, within the clerical 'caste' or 'club' mentality which a number of witnesses described, sexual dysfunction relating to the rule of celibacy fostered a culture of secrecy and hypocrisy inside the Catholic clergy and religious orders. This appears to have contributed to some clergy and religious overlooking violations of celibacy and minimising child sexual abuse and other boundary violations as forgivable moral lapses committed by fellow clergy and religious who were struggling to live up to an ideal which for many proved to be impossible or a terrible burden.

The religious orders and congregations

Earlier in this section, we noted that the Catholic Church claims data indicates that the proportion of alleged perpetrators who ministered in some male religious institutes in the period from 1950 to 2010 was as high as, and in some cases much higher than, the proportion of diocesan priests who were alleged perpetrators in the same period.

This is something that we cannot ignore. It is clear that some male religious congregations in particular have handled celibacy very poorly and, as a consequence, have been very unhealthy institutional environments in which to live and work. We are persuaded that this has significantly contributed to the sexual abuse of many hundreds, probably thousands, of Australian children.

Accordingly, we have given careful consideration to whether we should recommend that Catholic religious institutes in Australia should consider adopting voluntary celibacy. We are conscious that this is to enter into very complex and difficult territory, given the communal structure of religious life. We are also conscious that our recommendations need to be feasible and practical and that they need to take account of the religious context in which they will be received.

We acknowledge that celibate religious communities have been a major strand of the Catholic tradition from the earliest centuries, and that they are also a feature of other religious traditions, and that they have every right to exist. Although it is clear that a number of Catholic religious congregations in Australia have had very unhealthy cultures, we have received no evidence to suggest that healthy celibate communities are not possible or that there are no healthy celibate Catholic religious congregations in Australia.

We recognise that it is difficult to contemplate how optional celibacy in a Catholic religious congregation might work. However, we note that the nature of life in many religious congregations in Australia has changed. Most religious congregations whose members work in the broader community in positions such as teachers, social workers, healthcare workers or chaplains no longer operate as the quasi-monastic communities they were originally set up to be 150 or 500 years ago. Most Catholic religious lead more independent lives than was once the case, and many religious now live alone or in groups of two or three in separate houses or apartments.

We have also heard that a number of religious congregations in Australia have evolved new forms and structures and that lay people are increasingly collaborating in, and taking responsibility for, the work of religious congregations. In this context, we are persuaded by Brother Clinch's evidence that a religious congregation such as the Christian Brothers could carry out its mission without celibacy, and do it well, although this would mean fundamental changes to the way of community life.

We understand that, for some Catholic religious institutes that were previously engaged in providing services to children (such as school teaching or residential care), the practical realities are that they have now withdrawn from this form of ministry and that, due to aging and declining membership, some religious institutes may no longer have a presence in Australia within a few years (to quote Brother Clinch, their 'way of life is coming to an end').[1195] On the other hand, those Catholic religious institutes which see themselves as having a viable future in Australia may wish to consider alternatives to their current model of celibate community living, including alternative forms of association, shorter terms of celibate commitment and/or optional celibacy.

In making our recommendation about celibacy as it relates to Catholic religious institutes, we also take note that the evidence before us suggests that a far lower proportion of women religious is alleged to have sexually abused children compared with clergy and male religious, and that the proportion of alleged perpetrators has been significantly lower in some male religious congregations than others. We discuss this evidence in Section 13.3, 'Private sessions and data about child sexual abuse in the Catholic Church'. Religious who live in enclosed monastic institutions are also likely to pose a very much lower risk to children.

Finally, we recognise that, even if optional celibacy were to be introduced, there will continue to be individuals in the Catholic Church who choose to live as celibates, whether as individuals or in community. Such a personal choice is valid and to be respected. It follows that Catholic celibate religious communities will continue to exist, despite their declining presence in Australia. We also recognise that there are likely to continue to be individual diocesan priests who choose to be celibate, even if the Catholic Church's discipline changes to allow diocesan clergy to marry.

For this reason, in order to promote the living of healthy celibate lives for these individuals and communities, it will remain vitally important for the Catholic Church to continually improve its selection, screening and initial formation processes, together with the ongoing formation, support and supervision it provides to its clergy and religious. More detailed consideration of these issues and recommendations are located in Section 13.11.8 and Section 13.11.9.

Recommendation 16.18

The Australian Catholic Bishops Conference should request the Holy See to consider introducing voluntary celibacy for diocesan clergy.

Recommendation 16.19

All Catholic religious institutes in Australia, in consultation with their international leadership and the Holy See as required, should implement measures to address the risks of harm to children and the potential psychological and sexual dysfunction associated with a celibate rule of religious life. This should include consideration of whether and how existing models of religious life could be modified to facilitate alternative forms of association, shorter terms of celibate commitment and/or voluntary celibacy (where that is consistent with the form of association that has been chosen).

Recommendation 16.20

In order to promote healthy lives for those who choose to be celibate, the Australian Catholic Bishops Conference and all Catholic religious institutes in Australia should further develop, regularly evaluate, and continually improve, their processes for selecting, screening and training of candidates for the clergy and religious life, and their processes of ongoing formation, support and supervision of clergy and religious.

13.11.8 Selection, screening and initial formation

> My research suggests that Catholic seminarians of the 1950s, 1960s, 1970s and 1980s had little training on the parameters of power and how to exercise power appropriately, while operating in a position of power as adult men and as ministers of the Catholic Church. Instead, their training had taught them to think of power in one direction only – upwards. Within such a context, boundary violations, including sexual violations, were inevitable.[1196]
>
> **Dr Marie Keenan, Irish psychologist and researcher**

During our public hearings we heard evidence from ordained priests and religious, non-ordained religious, former priests and members of religious congregations, as well as from lay people, about their experiences with and opinions about formation practices. We have also received submissions relevant to this area. This material suggests that inadequacies in selection, screening and formation practices within Catholic seminaries and religious houses of formation may have contributed to the incidence of child sexual abuse by Catholic clergy and religious in Australia and to inadequate responses to this abuse. We heard that these inadequacies included a lack of appropriately trained staff and a curriculum and formation process that reflected a comprehensive understanding of human development and experience.

In Section 13.11.3, 'Clericalism', we note the significant role that formation in seminaries and houses of formation has played in initiating young clergy and religious into the culture of clericalism in the Catholic Church.

In Section 13.11.7, 'Celibacy', we also discuss the way in which the Catholic Church's celibacy requirement is an important component of the culture of clericalism. We note that compulsory celibacy has contributed to psychosexual immaturity in some priests and religious, particularly because of inadequate training in how to live a celibate life. We also note that some candidates appear to have chosen to enter seminaries or religious houses of formation as a way of avoiding personal difficulties with intimacy or sexual identity or other problems. We conclude that because there will always be individuals in the Catholic Church who choose to be celibate it is essential to have the best possible selection, screening, and initial and ongoing formation processes in place.

In this section we consider whether and how selection, screening, and training of Catholic clergy and religious in Australia may have contributed to an increased risk of child sexual abuse and to inadequate responses to allegations of child sexual abuse. First, we consider how selection, screening and initial formation practices have evolved over time. Then we consider particular issues in initial formation, including:

- selection and screening
- human formation, including formation for celibacy
- clericalism
- pastoral formation
- previous admission to the formation process
- overseas seminarians and candidates trained overseas.

As we detail in Section 13.1, 'Structure and governance of the Catholic Church', as of December 2016 there are eight diocesan and inter-diocesan seminaries in Australia located in Brisbane, Melbourne, Parramatta, Perth, Sydney and Wagga Wagga. These include two Redemptoris Mater seminaries, located in Perth and Sydney, run by the Neocatechumenal Way, a Catholic movement founded in Spain in 1964. There are also 13 seminaries operated by religious orders of priests, and numerous houses of formation run by religious institutes of brothers and sisters.

The process by which Catholic priests and religious are trained prior to ordination or profession of final vows is often referred to as 'initial formation' or, simply, 'formation'. The purpose of initial formation is to prepare candidates to live out their priestly or religious vocation and for the realities of life in religious and pastoral ministry, including the living of a celibate life.

Initial formation of diocesan priests takes place in seminaries, typically over a period of six or seven years. The period of initial formation for religious varies depending on rules of the order or congregation. Typically there are a number of stages, commencing with a period as an 'aspirant', followed by a short period as a 'postulant', during which a candidate lives with a religious congregation in order to discern whether the religious life is for them. This is followed by a novitiate, lasting one or two years, which usually takes place in a religious house of formation called a 'novitiate'. Following novitiate, the candidate is 'professed' – that is, they are accepted into the congregation and take formal vows. Often, a period known as post novitiate commences with temporary vows, which are followed later by permanent vows. In some religious congregations, such as the Jesuits, an extended process of initial formation may be broken up by periods during which the candidate is engaged in active pastoral ministry.

We have heard that formation of clergy and religious is a lifelong process.[1197] 'Ongoing formation' refers to the training provided to priests and religious after their ordination or profession of vows. We consider the ongoing formation or education of priests and religious in Section 13.11.9, 'Oversight, support and ongoing training of people in ministry'.

The terms 'intellectual formation', 'spiritual formation', 'pastoral formation' and 'human formation' are used throughout this section. These are the terms identified to describe four main areas or 'pillars' of formation, in a document on the formation of priests, *Pastores dabo vobis*, published by Pope John Paul II (1978-2005) in 1992.

'Intellectual formation' refers to the academic formation that seminarians receive in subjects such as theology, philosophy, biblical studies and canon law. 'Spiritual formation' refers to their formation in relation to spirituality and prayer life. 'Pastoral formation' refers to the training they receive to help them to undertake pastoral ministry in service to members of the Catholic community, the wider community, and with the practical aspects of running a parish. 'Human formation' refers to training seminarians to become aware of themselves, their sense of identity, and how to relate to others in a healthy way, and it includes formation for celibacy. We heard this is a crucial aspect of initial formation that receives insufficient attention.

'Pastoral ministry' refers to any form of ministry of care and service to the community, including both the church community and the broader community. Pastoral ministry includes leadership and administration within a church community, administration of the sacraments, spiritual direction, outreach to marginalised individuals and communities, hospital and prison chaplaincy, counselling and social work. In the Catholic Church, care and service of the community is one of the functions of priests and deacons, but pastoral ministry is increasingly undertaken by lay people. For this reason, throughout Section 13.11.8 and Section 13.11.9, we frequently refer to 'religious and pastoral ministry' in recognition of the fact that selection, screening, initial formation, and support, supervision and ongoing formation are increasingly issues that pertain to lay people in ministry as well as to clergy and religious.

Historical selection, screening and formation practices and the occurrence of child sexual abuse

> formation and training of them is an issue … the fact that so many of the older men were removed from home life, family life, at very young ages, some 12, 13, went into juniorates which were like, really, mini-monasteries, if you like, but they were boarding schools, so I think the removal of them from their families and the normal development that occurred within families was probably not helpful to a lot.[1198]
>
> **Brother Peter Carroll, Provincial, Marist Brothers in Australia**

It is apparent that initial formation practices were inadequate in the past, particularly before the 1970s, in relation to screening of candidates for admission, preparing seminarians and novices to live a celibate life, and preparing them for the realities of life in pastoral ministry. We heard that these practices were particularly inadequate when it came to formation in key areas of human development, identity formation, intimacy and relationships, good communication, education about human sexuality, ministerial ethics, maintaining healthy personal boundaries, childhood development, and child safety.

This is acknowledged by the Truth, Justice and Healing Council (the Council) in a submission to us. The Council said:

> There seems to be consensus in the literature about the inadequate preparation that many priests and religious received in the past. The Royal Commission too has received plenty of evidence from experienced priests and religious bewailing the adequacy of their own preparation in that regard.[1199]

Irish psychologist and researcher Dr Marie Keenan has written that the literature on clergy child sexual abuse 'points to the formation or training programs for clergy, as contributing both in content and in structure to the complex web of factors that facilitate child sexual abuse within the Catholic Church'.[1200] She stated that 'the absence of an environment' where the 'realities of clerical life can be honestly discussed appears to be a recurring feature' in the training of clergy internationally.[1201]

Biblical scholar and senior Professorial Fellow at the Catholic Theological College, University of Divinity, Victoria, Professor Francis Moloney SDB AM, told us that he believes 'poor formation'[1202] was one of the reasons why there have been so many allegations of child sexual abuse against members of the Salesian order.[1203]

The current Provincial of the Salesians of Don Bosco, Australia Pacific Province, Father Gregory Chambers SDB, gave evidence that:

> somehow we lost our way in the production line of young Salesians coming through, I think with the idea of trying to build up our numbers in the province … and we just didn't have the necessary skills, perhaps, the training, the qualifications, the wherewithal, to follow the Salesian vocation and call as it should have been followed. And I think a lot of Salesians – young, middle-aged and old – fell into these difficulties and sins and crimes because of a lack of sufficient grounding, training, experience and advice and guidance and accompaniment along the way.[1204]

Marist Father and Director of the Aquinas Academy, Sydney, Dr Michael Whelan SM, gave evidence in relation to seminaries and novitiates and their relationship to the culture of clericalism. In his opinion, seminaries and novitiates encouraged conformity rather than adult participation and critical reflection on what was being taught and adequate self-reflection: 'this tended to obstruct healthy psychological development and even allowed – perhaps facilitated – emotional immaturity and underdevelopment'. He stated that 'unsuitable candidates could remain undetected or at least unchallenged in such a culture'.[1205]

The Archbishop of Melbourne and President of the Australian Catholic Bishops Conference, Archbishop Denis Hart, gave evidence that:

> I believe that psychosexual immaturity, lack of proper human formation, as well as other things I believe necessary for priesthood – they can and I believe do contribute to the occurrence of abuse.[1206]

Archbishop Hart's comments suggest that there have been inadequate processes of screening of young candidates who were contemplating a lifelong commitment to religious life. This was an issue that we heard about in our case studies and submissions. Particular issues with historical selection, screening and formation practices raised with us included the age of candidates entering the formation process, selection and screening of candidates, the formation environment, and inadequate training to work with children. We address these issues below.

Age of entry

At least prior to the 1970s, seminaries and houses of formation recruited candidates as young as 12 years old. Their formation commenced in 'minor seminaries', 'juniorates' and 'juvenates'.

During the 1960s to the 1990s, the formation process for Marist Brothers generally commenced with a period in a 'juniorate', where boys completed their high school education in a boarding school environment, living with other boys and brothers.[1207] Recruitment was primarily 'by way of contact with interested students within the Marist Brothers school system'.[1208]

Brother Peter Carroll, Provincial of the Marist Brothers in Australia, told us that the formation practices of the Marist Brothers in earlier decades resulted in 'a lot of people being very immature'.[1209] Taking candidates from their families at the age of 12 into an institutionalised environment 'had an effect on their relationships and I think it sort of caused dysfunction in their ability to relate to people'.[1210]

During *Case Study 28: Catholic Church authorities in Ballarat (Catholic Church authorities in Ballarat)*, Australian psychiatrist and former Franciscan priest Dr Peter Evans drew attention to the link between psychosexual immaturity and the young age at which many priests and religious were recruited in earlier decades:

> It is a tragedy that the Catholic Church condoned its selection of priests and religious from adolescent young boys … because it impairs psychosexual development. It leads to a failure to properly develop psychosexually. It's not at all surprising to us psychiatrists that, when that happens, then it's only a matter of time ... that their sexual behaviour is acted out, and it's acted out in a distorted way, by sex with young boys.[1211]

The Province Leader of the Oceania Province of the Christian Brothers Congregation, Brother Peter Clinch, agreed with Dr Evans. He said:

> I think this resulted, unfortunately, with the poor development of psychosexual emotional development in relationships, and the dominance over young people exerted itself in a very catastrophic way, in the way of abuse, both physical and sexual.[1212]

Changes in the Christian Brothers' formation began to occur in the 1970s and continued through the 1980s and 1990s. In our report of *Case Study 11: Congregation of Christian Brothers in Western Australia response to child sexual abuse at Castledare Junior Orphanage, St Vincent's Orphanage Clontarf, St Mary's Agricultural School Tardun and Bindoon Farm School (Christian Brothers),* we noted that the practice of taking people into the order before they finished secondary school has been discontinued.[1213]

Father Chambers gave evidence that many of the young men who were recruited by the Salesians in the 1950s and 1960s came straight out of school.[1214]

Retired Sydney Auxiliary Bishop, Bishop Geoffrey Robinson, who himself entered a minor seminary at 12 years old,[1215] has written that traditional seminaries and novitiates could 'be unhealthy places in which to grow to maturity, especially when candidates are taken in as young as 11 or 12 years of age'.[1216] We agree with Bishop Robinson's observations. Likewise, we agree with the Christian Brothers' assessment that accepting students at juvenates in the last two years of secondary school 'at that critical stage of their personal development was neither in the best interests of the students nor the Christian Brothers'.[1217]

The Council explained that there was a shift in relation to minor seminaries from 'about the mid-1960s'. The Council told us that, in addition to screening candidates more intently, entry ages were raised to a minimum of 18 years.[1218]

Selection and screening

> They wanted to know whether my parents went to church and they wanted to know, I think, why I wanted to become a priest. And that was all. That was the assessment. From that day to my ordination, I didn't have any assessment, ever.[1219]
>
> **Dr Christopher Geraghty, retired judge of the District Court of New South Wales, former priest and seminary lecturer**

In the 1950s, 1960s, and into at least the 1970s in Australia, selection and screening of candidates for the priesthood and religious life seems to have involved little more than filling out an application, obtaining a reference from the parish priest and meeting with the vocations director or the bishop. Many of the priests and religious perpetrators of child sexual abuse about whom we heard underwent formation during this period.

Father Chambers told us that among the factors that explain the extent of child sexual abuse in his congregation is that in the past 'there was a very rash and haphazard selection and vetting of young Salesians', and that some of those people were able to advance to various offices 'without being properly vetted or advised or guided at any time, and I think a large number of those fell into abuse and paedophilia and very negative tendencies without being brought to task'.[1220]

The Provincial of the Hospitaller Order of St John of God, Oceania Province, Brother Timothy Graham, told us that one of the factors that explain the extent of child sexual abuse in the St John of God brothers was that there was 'virtually no assessment' of people entering the congregation:

> It was about trying to develop up a workforce. Very poor psychosexual, or non-existent psychosexual formation of young people. Very little supervision. People were asked to do things they weren't adequately trained for.[1221]

Brother Clinch believes that inadequacies in vetting and initial formation by the Christian Brothers meant that 'there were some predisposed towards paedophilia and that was not picked up'.[1222]

Dr Christopher Geraghty is a retired judge of the District Court of New South Wales, and a former priest and seminary lecturer. He told us about the process of joining the minor seminary and the assessment of his suitability as a 12-year-old in 1951.[1223] He was a student at a Marist Brothers school at Mosman in New South Wales when the Marist Brothers vocations director visited the school looking for candidates.[1224] Dr Geraghty said that, in order to join the Marist Brothers, he needed a reference from his parish priest. He went to see his parish priest, who told him, 'You are not going to the Brothers. I've got you marked out to go to Springwood' (St Columba's College, a minor seminary in New South Wales).[1225] Within two weeks, Dr Geraghty told us, he had an interview with the Archbishop of Sydney and the rector of the Springwood seminary.[1226] Dr Geraghty recalled that within a couple of weeks after that he was at Springwood.[1227]

Clinical psychologist Dr Gerardine Robinson was the clinical director of the Encompass Australasia program established by the Australian bishops in 1997 to treat clergy with psychosexual and other disorders. Dr Robinson has worked with priests and religious who have been accused or convicted of child sexual abuse both in Australia and overseas. She gave evidence during the *Case Study 50: Institutional review of Catholic Church authorities (Institutional review of Catholic Church authorities)* public hearing.[1228] In addition, she provided a research paper in which she reviewed the assessment profiles of 51 Catholic priests and religious brothers with psychosexual and related disorders who had been evaluated by Encompass Australasia.[1229] Typically, these priests and brothers reported that their problematic sexual behaviours began immediately prior to their ordination as deacons, within two years of their ordination as priests or, for religious brothers, either just prior to or within two years of leaving houses of formation.[1230] Dr Robinson said an explanation of this phenomenon is 'no doubt, multidimensional'.[1231] Dr Robinson explained in the paper that:

> Until recently (and perhaps to date) poor or non-existing screening procedures allowed for the selection of candidates who were relatively immature psychosexually and psychologically. Furthermore, formation systems were typically characterised by rigid, formal, hierarchical relationships that inhibited healthy psychological development and precluded opportunities for healthy psychosexual development. In such systems, candidates were deprived to a large extent of the opportunity for responsible decision making. The system rewarded compliance and the inhibition of both aggression and libidinal energy; encouraged repression and dependence; and promoted a preoccupation with short term goals, namely ordination or Final Profession. When a candidate transitioned from the rigid, formal structure to a more open system, and when there were no longer any external goals or structures, some clergy found that they lacked the internal resources for self-direction, self-monitoring and self-maintenance.[1232]

The environment

> Seminaries, as they have been structured for the last several centuries are essentially tridentine, [that is] they run on the Counter-Reformation model established in the sixteenth century to equip a hitherto uneducated clergy in the face of a hostile culture.[1233]
>
> **Dr David Ranson, theologian and Vicar General, Diocese of Broken Bay**

We heard evidence that, historically, seminaries and houses of formation tended to be situated in isolated or remote locations. Highly regimented monastic environments that afforded limited contact with outsiders and emphasised intellectual formation, piety, and conformity to rules, have been described to us as 'Tridentine', meaning they followed a seminary model that emerged out of the Council of Trent (1545–1563). This Council decreed that the formation of religious and clergy should take place in seminaries, and emphasised formation from a young age in 'piety and religion, before habits of vice have taken possession of the whole man'.[1234]

In his evidence during the *Institutional review of Catholic Church authorities* public hearing, the Archbishop of Sydney, Archbishop Anthony Fisher OP, told us that during his boyhood the Sydney seminary was 'this monastery on the top of a hill in Manly, very, very institutional and very monastic'.[1235] Others gave similar evidence.

Dr Geraghty told us that his experience of formation at the minor seminary at Springwood was that it was a closed environment where obedience and conformity to the rules were expected:

> It was geared to military discipline, so that obedience and conformity to the rules was essential. It was the most important thing … So it was discipline, it was regulation, regularity, routine, getting up early in the morning, going to church, going to lectures, doing sport. Not a minute to yourself.[1236]

Dr Geraghty said that minor seminarians generally did not have any contact with people outside the seminary.[1237] He described the expectation that, even when visiting home for the Christmas holidays, seminarians would go to church every day, meditate, examine their consciences and do spiritual reading, with a report being sent back to the rector by the parish priest. Dr Geraghty told us, 'I was a seminarian from 12 until I was ordained, even when I was on holiday'.[1238]

In the opinion of theologian and Vicar General of the Diocese of Broken Bay, Dr David Ranson, the system Dr Geraghty had described was clearly a 'distorted system':

> And it would be helpful for us not to pretend it to be otherwise, to call it for the distortion that it was. No-one could live in that system and not end up with at least having to wrestle with the possibility of distortion – I'm not saying that everyone who emerged out of that was distorted, but clearly that system was both dangerous and detrimental to human flourishing.[1239]

We agree with Dr Ranson's observations.

Inadequate training to work with children

We also heard that, once in active ministry, Catholic clergy and religious were required to take on tasks, including as school teachers and residential childcare workers, for which they had not been appropriately trained.[1240]

In our report on *Case Study 26: The response of the Sisters of Mercy, the Catholic Diocese of Rockhampton and the Queensland Government to allegations of child sexual abuse at St Joseph's Orphanage, Neerkol (St Joseph's Orphanage, Neerkol)*, we reported that Sister Berneice Loch rsm, the current Institute Leader of the Institute of the Sisters of Mercy of Australia and Papua New Guinea, accepted that many of the nuns who were given the responsibility of looking after children were not properly trained to do so.[1241]

Former Christian Brother Stephen Farrell gave evidence about his teacher training during his time at a Christian Brothers novitiate in the early 1970s. Of his training, he said, 'I would say the quality of any teacher training was so minimal as to not count'.[1242]

Dr Whelan gave evidence about being posted to a high school in Tasmania shortly after his ordination in 1972. He said that prior to being sent to the high school he had not received any formal teaching training. He explained that while he was a seminarian he had sought some training on his own initiative during his holidays.[1243]

Changing approaches to selection, screening and formation practices

We heard that there was a period of change in the selection, screening and formation of priests and religious following the Second Vatican Council. There was a further period of change in the 1990s and 2000s, following the publication of Pope John Paul II's 1992 document on seminary formation, *Pastores dabo vobis*.

Professor Neil Ormerod is a Professor of Theology at the Australian Catholic University. He has written that the changes in formation that took place after the Second Vatican Council, in the 1970s and 1980s, included changes in piety, intellectual and moral education, and personal psychological scrutiny of candidates for the priesthood and religious life.[1244] Professor Ormerod noted that some commentators have blamed the child sexual abuse scandal in the Catholic Church on the changes introduced after the Second Vatican Council, especially in relation to formation:

> It is important to review the evidence for such a claim as it has consequences for the ongoing formation of priests and religious. The proposal is suggesting that the older, more strict forms of formation, where morality was more black and white, together with the reintroduction of older forms of piety, would help alleviate the problem of sexual abuse in the church.[1245]

Professor Ormerod has stated that it is not difficult to find evidence that calls this proposition into question:

> In fact the most notorious cases of sexual abuse in the Australian Church occurred in institutional settings in the 1940s–60s by men (and sometimes women) who were thoroughly trained in the strict morality and rigorous piety of the pre-Vatican II Church.[1246]

Professor Ormerod referred to the institutions run by the Christian Brothers in Western Australia which were the subject of our *Christian Brothers* public hearing and the orphanage at Neerkol in the Rockhampton Diocese, which was the subject of our *St Joseph's Orphanage, Neerkol* public hearing.[1247]

We heard evidence from a number of witnesses who went through the formation process at different points in time after the Second Vatican Council.

Dr John Chalmers is the Director of Mission and Formation at Centacare, Brisbane. He was a seminarian at Pius XII Provincial Seminary at Banyo in Brisbane between 1967 and 1973. Dr Chalmers explained that, in 1967, seminarians had many interactions with lay people, who were encouraged to come out to the seminary. Seminarians were also encouraged to work outside of the seminary.[1248] Dr Chalmers later became the rector of that seminary between 1995 and 2000.

Dr Ranson commenced his formation in 1978, when he entered Corpus Christi College at Clayton, Victoria, as a candidate for the Archdiocese of Hobart. In 1980 he joined a community of Cistercian monks in Melbourne and was ordained a Cistercian priest in 1992.[1249] In 1998, Dr Ranson left the Cistercian community in pursuit of a more active ministry as a diocesan priest.[1250]

Dr Ranson gave evidence that a turning point in the system of seminary education in Australia came in the 1970s, when it was decided that the theological training that seminarians undertook would be split off from the seminary and undertaken in separate institutions.[1251] Seminarians began to undertake their theological education in institutions that were separate from seminaries, such as the Melbourne College of Divinity and the Sydney College of Divinity.[1252] At these institutions, seminarians went to classes with other men and with women, not just other seminarians.[1253] Dr Ranson said that, following the separation of theologates and seminaries, some changes for the better could be seen in relation to pastoral and human formation.[1254]

Bishop Anthony Randazzo is an auxiliary bishop in the Archdiocese of Sydney. He was ordained in the Archdiocese of Brisbane after attending Pius XII Provincial Seminary between 1985 and 1991. Bishop Randazzo recalled that during his time as a seminarian he had relationships both inside and outside the seminary, 'with the people who were there and with families and friends, women, men, outside of the seminary'.[1255] Later, between 2009 and 2015, Bishop Randazzo became the rector of the seminary at Banyo in Queensland. While he was the rector, Banyo seminarians went to the Australian Catholic University or the University of Queensland for the intellectual aspect of their formation. There:

> they were sitting in mixed classes of male and female composition, ordinand students, lay students. They were being taught by male and female religious, ordained, married, single. It was quite a normal, in my estimation, mix of society.[1256]

We see these changes in approach as a positive step.

Issues in selection, screening and formation

During our inquiry, a number of particular issues in relation to selection, screening and formation frequently arose. These issues related to the potential for inadequate selection, screening and formation practices to contribute to the risk of child sexual abuse by priests and religious. We heard evidence of some specific concerns and views about what constitutes best practice in selection, screening and formation.

Purpose of screening

> Initial psychological assessment must be regarded first and foremost as one tool within a much larger context of formation. No amount of initial vocational assessment will, in itself, eliminate the possibility of abuse occurring in the Church in the future.[1257]
>
> **Dr David Ranson, theologian and Vicar General, Diocese of Broken Bay**

Psychological screening of candidates for the priesthood began to be introduced in the 1970s. We heard that it was a standard practice by the 1990s.[1258]

Dr Ranson told us he supported pre-admissions screening, but expressed some concerns about it. In 2002, he wrote about pre-admission screening that: [1259]

- it is limited in the scope of what it can evaluate in the 'inner life' of those being screened
- results are 'often in the hands of superiors and bishops who are not professionally trained or well informed in the human sciences'
- it is of 'little benefit' to candidates and formation staff 'unless resources and structures are in place to process, develop and integrate' the results.

In her evidence, Dr Keenan stated that the question of why individuals 'with a disposition to prey sexually upon minors gain admission to the priesthood and why they are not weaned out before they infiltrate the organisation' is based on a number of assumptions: [1260]

- that priests and religious who come to be accused of the sexual abuse of children have a predisposition to do so
- that such inclinations can be discerned at the point of entry to the seminary or while they are seminarians
- that some men become priests and religious in order to gain access to children to abuse.

Dr Keenan's evidence was that the emphasis on better screening of those seeking to enter the formation process was based on the assumption 'that the sexual abuse of a child by Catholic clergy is the result of individual pathology or predisposition – a theory that is favoured by some men in leadership in the Catholic Church'.[1261] However, Dr Keenan said that, while such screening might be important for a lot of reasons, 'the assumption that it will pick up those men who might come to be accused of the sexual abuse of children is not borne out by the available research and clinical experience'.[1262]

Dr Robinson told us that no amount of experience, screening or psychological testing 'is going to pick up every offender'. However, she said it is critical that selection and screening of candidates for formation uses a multidisciplinary approach, which has a better chance of picking up patterns.[1263] Dr Robinson currently works in this area. She said that a best-practice multidisciplinary assessment should include the following components: [1264]

- medical assessment
- neuropsychological assessment
- comprehensive psychosocial interview
- comprehensive structured psychosexual assessment
- psychiatric assessment
- psychological testing
- spiritual assessment.

Dr Robinson gave evidence about personality traits that could be picked up through psychological screening, discussed further in Section 13.11.2, 'Individual factors'. Giving evidence on research she conducted in the United States, Dr Robinson said that, historically, the Catholic Church has attracted and rewarded priests 'who have three strong flavours in their personality – dependent, compulsive, and schizoid'.[1265] When Dr Robinson replicated her study in Australia, she found the same pattern, with one difference: Australian Catholic clergy also have a 'higher level of narcissism'.[1266] Dr Robinson went on:

> I think a lot of our diocesan clergy particularly work in rural areas and would have had to have had a strong resilience in their character, so narcissism in that sense is good. But when it comes with a sense of entitlement – and we've heard here in the last couple of weeks people talking about clericalism, entitlement, a sense of superiority and exclusion – that's a very dangerous combination.[1267]

Father Peter Thompson CM is the Rector of Vianney College Seminary for the Diocese of Wagga Wagga in regional New South Wales. He was asked about whether seminary leaders in Australia had any shared formal understanding about the characteristics which have been identified in priests and religious that may give rise to later aberrant behaviour or whether this was something each seminary rector formed a view about based on their own personal experience.

He told us that seminary rectors talked among themselves, but his own conviction is that:

> You don't find a good holy priest, who says his prayers, and so forth, offending in this area. If there is a kind of a general lack of discipline, a lack of prayer life, a lack of seeming commitment to what the priesthood is all about, that would kind of be a danger sign.[1268]

This stands in marked contrast to what we have heard during our inquiry. We have been told about priests whose prayer lives and pastoral lives gave no hint of their sexual abuse of children. Professor Ormerod has written that it is 'quite possible for abusers to live outwardly a life of piety and moral rectitude while engaging secretly in abusive activities'.[1269] We agree with this assessment.

In Chapter 20, 'Making religious institutions child safe', we consider and make recommendations to all religious institutions about the selection, screening and initial training of candidates for religious ministry. In that chapter we recommend that, as part of a suite of screening mechanisms, all candidates for religious ministry should undergo external psychological testing, including psychosexual assessment, for the purposes of determining their suitability to be a person in religious ministry and to undertake work involving children (see Recommendation 16.42).

Who conducts the screening and the timing of screening

Dr Robinson expressed a concern that some of those conducting screening assessments of candidates are themselves religious and may have an unconscious bias not to exclude people because numbers are diminishing.[1270] Sister Lydia Allen rsm, who is a member of the Religious Sisters of Mercy and the Director of Human Formation at the Seminary of the Good Shepherd, Sydney, does not believe this to be an issue.[1271] She said that during her time at the Seminary of the Good Shepherd, the number of seminarians has been increasing.[1272]

Sister Allen joined the Sisters of Mercy of Alma in the United States in 1981 and professed final vows in 1989.[1273] Prior to that she trained as a psychologist in the United States and Germany.[1274] Sister Allen has worked at the Seminary of the Good Shepherd since 2009.[1275] At the seminary she has 'responsibilities in human formation as a psychologist'.[1276] Sister Allen conducts the psychological screening and testing of candidates seeking admission to the Seminary of the Good Shepherd.[1277] She gave evidence that she is licensed as a psychologist in Michigan and Germany.[1278]

Sister Allen told us that psychological testing of candidates for the seminary is 'very much desired by the entire Church',[1279] although it is up to individual seminaries to design their own screening protocols.[1280] Sister Allen said that the Catholic Church does not give any guidance at either a national or diocesan level about the psychological tests she should be conducting.[1281]

On the screening practices she has adopted at the Seminary of the Good Shepherd, Sister Allen told us that she questions candidates about their families, their childhood and adolescent experiences, whether they have ever been sexually abused, and their sexual experience, including any same-sex attraction.[1282]

Unlike candidates seeking to enter the Seminary of the Good Shepherd in Sydney, candidates entering Vianney College usually do not undergo psychological screening until after they have entered the seminary.[1283] Screening at Vianney College is usually undertaken within the first six months of the first year after entry, which is a probationary year.[1284] Father Thompson explained that once those at the seminary 'get to know the men a little bit', they are able to 'direct the psychologist to look out for certain things'.[1285] Father Thompson told us that it is only if there are 'serious doubts about the suitability of an applicant' that psychological screening is conducted prior to seminary admission.[1286]

In 2017, Vianney College introduced another round of psychological screening prior to a candidate being considered for the diaconate. Dr Ranson told us that this was something he recommended when writing on the subject in 2002.[1287] Father Thompson said the reason for the change at his seminary was that, by the time candidates got 'to their seventh year, their original psychological test is a long way away'.[1288] This practice is not universal in seminaries across Australia. There is no national requirement or guideline on this issue. It is up to individual bishops and rectors.[1289]

Father Thompson explained that it can be difficult for seminarians in country areas and those from overseas to find an adequate psychological tester. He told us that the psychologist used by Vianney College is local to Wagga Wagga and was formerly a Uniting Church minister who has an understanding of some of the challenges and needs of those in ministry.[1290]

Father Thompson told us that he 'knows very little about psychology', and leaves designing the type of psychological assessment to the psychologist.[1291]

Inconsistency of approaches to selection and screening

The Council submitted to us that the Second Vatican Council generated a significant shift in the approach to the selection of candidates for the priesthood and religious life.[1292] According to the Council, bishops no longer take advice from just the local parish priest about the suitability of candidates to enter seminaries.[1293] Instead, they are advised by a range of people, both lay people and priests, as well as by vocations directors who have undergone a process of discernment with potential candidates.[1294] The Council told us that the changes included raising the entry age for formation 'to a minimum of 18 years', and introducing 'aspirancy' or trial periods to assess the suitability of candidates before entering formation.[1295] The Council said that there was an attempt to 'shift seminary training to become more integrated with contemporary understandings of human development and psychological wellbeing'.[1296]

Notwithstanding the matters set out in the Council's submission, selection and screening practices across dioceses, seminaries and houses of formation appear to us to be varied. Ultimately, it is the decision of the bishop or religious superior whether the candidate will be admitted to undertake initial formation and, later, whether they will be ordained as a priest or profess vows as a member of a religious institute.[1297]

We heard evidence during our *Institutional Review of Catholic Church authorities* hearing about the differing approaches of archbishops to assessing candidates for formation.

Archbishop Fisher told us that the Archdiocese of Sydney had introduced a 'seminary council' for the archdiocese – 'a seminary council with people from outside giving their own judgments on the life in the seminary and their own views; having external people comment on their performance when they go out for pastoral placements to lots of different activities'.[1298]

The Archbishop of Perth, Archbishop Timothy Costelloe SDB, said there was a 'need to involve a much wider group of people in the ongoing discernment and assessment of our seminarians'.[1299]

The Archbishop of Canberra and Goulburn, Archbishop Christopher Prowse, gave evidence that the inclusion of lay people, 'especially in parish settings where there are focus groups with families, intelligent, prudent laypeople, coming to be able to help us to monitor possible future priests is a plus'.[1300]

The need for a national selection and screening protocol

The Royal Commission has recommended 10 Child Safe Standards that articulate the essential elements of a child safe institution. These standards can guide what institutions need to do to be child safe by setting best practice to drive and guide performance. We consider the Child Safe Standards in detail in Chapter 20.

Child Safe Standard 5 is relevant to the selection and screening of candidates for the priesthood and religious life. That standard is that people working with children are suitable and supported. Adequate selection and screening processes can play an important role in protecting children from harm. Child-focused selection and screening practices help to identify people unsuitable for working with children or discourage their application. Such practices make sure that child safety is prioritised in advertising, recruitment, employment screening and the selection and management of all staff and volunteers.

The evidence before us suggests that a best-practice approach to selection and screening should include:

- a multidisciplinary approach, including medical, psychological and spiritual elements
- that screening is conducted by qualified professionals, including medical professionals
- that screening is conducted both prior to admission and prior to ordination or the profession of final vows
- that bishops or religious superiors take wide-ranging advice about whether a candidate should be admitted to a formation program and whether a candidate is ordained or invited to profess final vows
- a requirement that before a candidate commences initial formation they undergo a Working With Children Check.

It is clear to us that across Australia there is inconsistency in approaches to selection and screening of candidates for formation, including:

- the nature of the screening
- who conducts the screening
- when and how frequently screening is conducted
- whether and from whom advice is taken on accepting candidates for formation, and ordination or profession of vows.

In Chapter 20, we consider psychological screening as a human resource management tool in religious institutions generally. There we recommend that, in accordance with Child Safe Standard 5, each religious institution should require that candidates for religious ministry undergo external psychological testing, including psychosexual assessment, for the purposes of determining their suitability to be a person in religious ministry and to undertake work involving children. In relation to Catholic priestly or religious ministry, such testing also has the purpose of assisting in a determination about a person's capacity to live a celibate life.

The Catholic Church does not have a national selection and screening protocol. We believe that such a protocol would be beneficial.[1301] A national selection and screening protocol should be framed in a way that provides guidance about the type of screening to be conducted, who conducts it and the use of the results of the screening, including how they may be usefully integrated into the formation of candidates. The protocol should be able to be adapted to address the unique needs of religious formation while maintaining consistency of process and allowing for comparison of results between clergy and religious candidates. The protocol should also establish a process for screening that is conducted at various times throughout formation, including prior to ordination or the profession of vows. Assessors should be external and independent. We heard that psychological assessments are of limited value unless they are part of an ongoing process of review with the candidate and 'resources and structures are in place to process, develop and integrate the initial material'.[1302]

We heard that some bishops and religious superiors are taking advice and consulting more widely about candidates for the priesthood and religious life. However, it is not clear to us that all bishops and religious superiors draw upon broad-ranging advice when making decisions about selection of candidates for the priesthood or religious life. They should do so.

Consistent with our recommendations in our *Working With Children Checks* report, the protocol should also require that all candidates for the priesthood and religious life undergo a Working With Children Check prior to admission to seminaries or religious houses of formation.

Recommendation 16.21

The Australian Catholic Bishops Conference and Catholic Religious Australia should establish a national protocol for screening candidates before and during seminary or religious formation, as well as before ordination or the profession of religious vows.

Recommendation 16.22

The Australian Catholic Bishops Conference and Catholic Religious Australia should establish a mechanism to ensure that diocesan bishops and religious superiors draw upon broad-ranging professional advice in their decision-making, including from staff from seminaries or houses of formation, psychologists, senior clergy and religious, and lay people, in relation to the admission of individuals to:

a. seminaries and houses of religious formation

b. ordination and/or profession of vows.

Human formation

> Future priests should therefore cultivate a series of human qualities, not only out of proper and due growth and realization of self, but also with a view to the ministry. These qualities are needed for them to be balanced people, strong and free, capable of bearing the weight of pastoral responsibilities.[1303]
>
> **Pope John Paul II, *Pastores dabo vobis***

In 1992, human formation was put squarely on the agenda by *Pastores dabo vobis* ('I will give you shepherds'). This document, about the 'formation of priests in the circumstances of the present day', was issued on 25 March 1992 by Pope John Paul II and was addressed to the bishops, clergy and faithful.[1304] According to anthropologist Jane Anderson from the University of Western Australia, it was recognised, for the first time in the history of the Catholic Church, that human formation was an area that needed to be addressed as part of clergy formation.[1305] The aim of human formation is to help those undergoing formation to become aware of themselves, of their 'evolving sense of identity' and of how they 'can relate in a healthy way with others'.[1306] Human formation includes formation for celibacy, but we consider celibacy as a separate issue below.

Pastores dabo vobis refers to human formation as the 'basis of all priestly formation', and says that the 'whole work of priestly formation would be deprived of its necessary foundation if it lacked a suitable human formation'.[1307]

The Council told us in its submission that *Pastores dabo vobis* represented, and remains:

> a significant shift from the seminary training of the 1950s, 60s and into the 70s, where intellectual education, through theology and philosophy courses, overwhelming dominated the training years and human formation was neglected. While study of philosophy and theology remains an integral part of current seminary training emphasis is now placed on the four pillars.[1308]

Bishop Randazzo told us that:

> When we talk about human formation now, we make specific reference to the apostolic constitution that was put up by Pope John Paul II in 1992. That specifically breaks down four areas of formation. We talk about them in terms of the four pillars of formation – the human, the spiritual, the intellectual and the pastoral.[1309]

The Archbishop of Brisbane, Archbishop Mark Coleridge, attended Corpus Christi College in Melbourne between 1969 and 1974, and he was ordained as a priest in May 1974.[1310] Archbishop Coleridge gave evidence about the training provided to candidates for the priesthood about relationships and sexual matters. He said:

> what they are given today is vastly different from what we were given all those years ago. It was – when I look back now, it was absurd. Human development, as we now call it somewhat demurely, didn't exist. It was just taken for granted. Well, of course, you can't, and we have reaped the hardest of horror because of that.[1311]

Archbishop Coleridge told us that, when he looked back to his own seminary training in the late 1960s and early 1970s, there was a 'fumbling attempt' to deal with human formation and sexuality:

> I can say that that attempt has continued, and the attempts, as far as I can see, are less fumbling. Are they completely adequate? No I don't think so.[1312]

In a pastoral letter written in 2012, when he was Archbishop of Canberra and Goulburn, Archbishop Coleridge outlined a number of factors that he felt had contributed to the scandal of child sexual abuse by Catholic clergy and religious, including 'certain forms of seminary training which failed to take proper account of human formation and promoted therefore a kind of institutionalised immaturity'.[1313]

Archbishop Coleridge told us that, under his leadership as Archbishop of Brisbane, the human formation and education in sexuality provided to seminarians in his archdiocese was grounded in official Catholic Church teaching about human sexuality, which 'I happen to think is the most profound, comprehensive and joyous that the planet has seen', and also in biblical revelation.[1314]

Sister Loch told us that in the Sisters of Mercy an emphasis in formation processes on human development and psychosexual development has been 'around for decades'.[1315]

Dr Keenan published the results of her research on child sexual abuse and the Catholic Church in 2012.[1316] She concluded that, in many seminaries and houses of formation in the 1990s, the new subjects addressing human and pastoral formation, which had been outlined in *Pastores dabo vobis*, were attached to an already overcrowded academic schedule and 'not given due attention'.[1317] Dr Keenan went on to say that several commentators, including Dr Ranson, had suggested that the culture of the seminaries is 'predominantly one of education to orthodoxy and not education of the whole person'.[1318] Dr Keenan said the research she undertook, 'not only with older clergy who had abused minors but also with other clerics and former clerics of a newer generation', confirmed this view.[1319]

The Council conceded that, although human development programs are now a compulsory feature of seminary training, there is a need for consistency and quality control in their application.[1320]

In its preface, the *Ratio nationalis institutionis sacerdotalis: Programme for priestly formation* (*Programme for priestly formation*) approved by the Australian Catholic Bishops Conference, dated December 2015, states that candidates for the priesthood undertake their ministry 'in the context of the scandal of child abuse by clergy and inadequate response to it by some Church leaders in the past'.[1321] This context 'gives rise to expectations for careful screening and selection of seminarians, rigorous training, integrity, transparency and demonstrable accountability'.[1322] The *Programme for priestly formation* states that a 'programme of awareness and education in principles and procedures for the safety and protection of children' prepares seminarians for pastoral placements.[1323] However, it does not otherwise include any clear reference to the specific issue of clerical child sexual abuse and its prevention.[1324] It should.

Father Thompson told us that, across Australia's various seminaries, there was no prescribed syllabus in relation to child development, child psychology or an understanding of how to work with children and child safety, and that he would support the creation of such a syllabus. Father Brendan Kelly SJ, Provincial Delegate for Jesuit Formation, said he would also support this.[1325] We agree with this proposal.

Recommendation 16.23

In relation to guideline documents for the formation of priests and religious:

a. The Australian Catholic Bishops Conference should review and revise the *Ratio nationalis institutionis sacerdotalis: Programme for priestly formation* (current version December 2015), and all other guideline documents relating to the formation of priests, permanent deacons, and those in pastoral ministry, to explicitly address the issue of child sexual abuse by clergy and best practice in relation to its prevention.

b. All Catholic religious institutes in Australia should review and revise their particular norms and guideline documents relating to the formation of priests, religious brothers, and religious sisters, to explicitly address the issue of child sexual abuse and best practice in relation to its prevention.

Formation for celibacy and its challenges

We heard evidence, including from the Council, that there is wide agreement that the standard of formation that Catholic clergy and religious in Australia received in relation to living a life of celibate chastity was especially inadequate, at least before the early 1970s.[1326] The Council submitted to us that inadequate training and formation to prepare and support priests and religious to live celibate lives, rather than celibacy itself, 'may have been a factor which contributed to the child sexual abuse crisis'.[1327]

Dr Thomas P Doyle OP, an American Dominican priest, canon lawyer and survivor advocate, told us that:

> the grounding for celibacy, the training, the nurturing and the formation for celibacy has prevented men from maturing sexually, emotionally, psychologically in many ways, so that, as one priest psychologist said, what we have out there is the best-educated group of 14-year-olds in the country.[1328]

Dr Keenan observed that, in the past, the structure of seminary life, which included prayer, theological reflection and celibate community life, was meant to be the seminarian's instruction in celibacy. It is clear that this method often failed.[1329] We have heard evidence and received submissions that make it clear that the preparation for how to lead a celibate life that priests and religious received in the past was inadequate.

Dr Geraghty told us that, in the 1950s, there was no instruction on celibacy or how to live a celibate life apart from a program of lectures 'on the sixth commandment, which is about sex ... but only after we had become deacons, after we had made our celibacy promise, and it was done in Latin'.[1330]

During our *Christian Brothers* public hearing, Brother Julian McDonald, Deputy Province Leader of the Christian Brothers Province of Oceania, told us that he was invited into the Christian Brothers formation program in 1973 to be the director of formation. Brother McDonald, having not received an education in psychosexual development during his own formation, made a promise to himself that those in his care would receive a proper psychosexual education. He said:

> I would be derelict in my duty if I did not ensure that people in my care were given a proper psychosexual education … when I was in the novitiate … we were given a day on reproduction in lilies. That was neglect.[1331]

Bishop Randazzo told us that while he was going through the seminary in the second half of the 1980s and early 1990s, celibacy was not presented as 'a series of denials or deprivation':

> Celibacy wasn't presented to me in the seminary as, 'You can't get married. You can't have sexual intercourse. You can't have a relationship. You can't have children.' … Seminary presented me with the whole concept of celibacy as one of relationships, a freeing of the person to be able to engage in relationships. For me, that was fundamentally different to what I had heard from people in the past.[1332]

However, despite an increasing emphasis on human formation and formation for celibacy following the Second Vatican Council, and especially following the promulgation of *Pastores dabo vobis* in 1992, some commentators on the issue of formation and child sexual abuse have raised concerns in more recent times.

In a 1997 briefing to the National Committee of Professional Standards on the state of formation in Australia at that time, Dr Ranson stated that, although discernment that one has a vocation to live a celibate life is a precondition for priestly or religious ministry, the Catholic Church in Australia was continuing to ordain and profess men and women who had never discerned whether they had such a vocation:

> They simply enter into a celibate commitment because it is a necessary part of the package. These people are then committed to lives of quiet despair and frustration, a tension which, in the end, is ripe for sexually acting out.[1333]

Dr Ranson said that a celibate person is able to maintain a healthy personality while not engaging in sexual expression, because 'sexual expression doesn't exhaust the ways of being intimate, and so it's linked to the way in which we imagine intimacy'.[1334] He said:

> It would be a disaster if one's life was not open to the possibility of intimacy, but sexual relationships are only one form of intimacy. There are many other forms of intimacy. But if I don't have the sense that there are other forms of intimacy that are available, if I'm not entering into those, and therefore if my life is not committed to it and replete with building up and cultivating a sense of intimacy in the broader sense of the term, then the denial of sexual relations will be highly problematic.[1335]

Dr Ranson gave evidence about workshops he ran in seminaries during the 1990s that were 'primarily about trying to assist the participants to reflect more deeply on what it meant to lead a celibate life'.[1336] Dr Ranson went on to say one of the aspects of the workshops was:

> to look at the question of intimacy and to suggest that celibacy is not a denial of intimacy, that celibacy is in fact a way of becoming intimate, and so how might intimacy be defined and how might our life as a priest be full of intimacy rather than not with intimacy.[1337]

We are concerned that a focus on the development of intimacy may minimise the challenges of managing physiological sexual responses. In our view, the challenge of celibacy is not just about how to have intimate relationships without sex but also how to successfully suppress these physiological responses. These challenges could be addressed during formation for celibacy.

Writing in 1997, Dr Ranson stated that it would be 'illusory' to think that formation for celibacy had vastly improved since the changes introduced by the Second Vatican Council. He described the situation in relation to formation in religious congregations, as 'less bright in its picture than seminary formation'.[1338]

Dr Ranson stated that most candidates had 'little emotional literacy' and that many faced issues of sexual awareness and sexual identity. He said the high percentage of newly ordained priests who left the priesthood, and the level of depression among those who stayed, was evidence that those questions were not being adequately resolved before ordination:[1339]

> The end point is this – and I will put it starkly: on the basis of current formation paradigms and practices there is every reason to expect that professional misconduct will continue to be a feature of clerical and religious life in future.[1340]

Clearly, dioceses and religious institutes should ensure that the formation of candidates for priesthood and religious life specifically addresses psychosexual development, healthy human relationships and the challenges of celibacy. In Section 13.11.7, we recommend that, in order to promote healthy lives for those who choose to be celibate, the Australian Catholic Bishops Conference and all Catholic religious institutes in Australia should further develop, regularly evaluate, and continually improve, their processes for selecting, screening and training of candidates for the clergy and religious life, and their processes of ongoing formation, support and supervision of clergy and religious (Recommendation 16.20).

Sexuality and sexual orientation

The Council submitted that sexuality, sexual orientation and celibacy and its challenges are all addressed as part of current human formation programs.[1341] The Council explained that, as part of this, Australian seminaries implement the requirements of *Pastores dabo vobis* and a document issued in 2005 by the Holy See Congregation for Catholic Education – the *Instruction concerning the criteria for the discernment of vocations with regard to persons with homosexual tendencies in view of their admission to the seminary and to holy orders* (the 2005 Instruction).[1342]

The Council submitted that, during formation, there is regular discussion and exploration of celibacy and 'issues surrounding human affectivity'.[1343] The Council said seminarians are 'encouraged to acknowledge their own sexual orientation and its expression in a chaste and life giving friendship'.[1344] This seems to us to be at odds with the content of the 2005 Instruction, which states that the Catholic Church cannot admit to the seminary or holy orders those 'who practise homosexuality, present deep-seated homosexual tendencies or support the so-called "gay culture"'.[1345] It is unlikely that anyone would be open about their sexuality when they fear exclusion.

Sister Allen stated that policy of the Seminary of the Good Shepherd was that as long as there is no 'deep-seated' homosexuality 'then they would be allowed in and we would work with them in terms of seeing what is underneath it'. Sister Allen explained that 'deep-seated' homosexuality meant someone who said, 'This is who I am and this is what I want to be … I don't want to be changed'.[1346] She went on:

> Well, we're not out to change people. We're out to help people come to understand what their real sexual identity is ... So if we have a candidate who rejects his masculinity, whatever the basis is, whether he's same sex attracted or not, then he will not be able to be fully the priest which he is meant to be and able to be.[1347]

Sister Allen was asked why the Holy See thought it necessary to be prescriptive about testing candidates for any homosexual tendencies but had not issued a similar directive in relation to testing candidates for any sexual interest in children. Sister Allen responded, 'I would think it's an unspoken rule. I don't think it needs to be stated explicitly. Because it's so obvious'.[1348]

During the *Institutional review of Catholic Church authorities* public hearing, Dr Robinson commented on the Holy See and Australian documents on formation: 'To be quite honest, at best I found them inadequate and at worst I found them alarming'.[1349] Dr Robinson asked why, in light of the 2005 Instruction, a young man who was struggling with his sexuality or even a sexual disorder would volunteer that information to someone in the seminary who had the power to decide whether or not he could be ordained: 'So, in fact, the environment itself is duplicitous'. Dr Robinson described suggestions in the formation documents that seminarians are encouraged to talk openly about their sexuality as:

> very sophisticated rhetoric, but I don't think it's the reality. And I don't think it's the reality because we are still seeing young men, less than five years ordained, who have serious personality pathology and serious sexual pathology, and not just homosexual.[1350]

Clericalism in formation

> Induction into the institution, and into a hierarchical class structure, where priestly privilege is a part of the priestly culture, has dominated formation into priesthood and religious life even over recent decades.[1351]
>
> **Dr David Leary OFM, Provincial Secretary, Order of Friars Minor (Franciscans) and Lecturer, Yarra Theological Union, University of Divinity, Victoria**

In Section 13.11.3, 'Clericalism' we discussed the issue of clericalism in the Catholic Church as a contributing factor to child sexual abuse. Here we discuss the emergence of clericalism in candidates during the formation process and how an improved selection, screening and formation process may ameliorate the effects of clericalism.

We heard that there is a concern within the Catholic Church that some seminaries around the world and in Australia have reverted to promoting clericalism in their seminarians and are at risk of producing clergy who are rigid and less capable of dealing with the wider world. Professor Moloney told us that, while 'there are good things happening', to say that the seminarians are now all fine, that they have been renewed and are now more exposed to the wider society, 'is simply not true'.[1352]

Professor Moloney told us that, while there was a genuine effort on the part of the bishops and the Catholic culture at large to 'somehow or other turn around this death-dealing wheel' of child sexual abuse, there was also resistance to change and some real problems in areas such as formation. He told us that many seminaries had returned to a model of training which in fact reinforces clericalism:

> The seminaries are closing their doors. They're putting garments on the boys. They're having long Latin liturgies. They like to walk around the streets with their soutanes. That's what's happening. So don't tell me things are changing. A lot of people believe that this is the solution to the problem – make them more clerical than ever. We've got to face these truths. I mean, we have a major problem in the Australian Church.[1353]

Professor Moloney told us that following the Second Vatican Council there have been a number of Holy See documents on seminaries which had identified a need for broader social integration of seminaries and seminarians. He believed these changes were necessary. He said that for five or 10 years a radical remodelling of the whole seminary system had taken place, at considerable expense. For example, in Sydney, St Patrick's College, Manly, closed and in 1996 a new seminary opened closer to the city, with the seminarians living together in individual houses. Professor Moloney said:

> That went well. Things were looking good. But then suddenly in comes another archbishop, and it all got shut down. Back to the old system. And the old system is well and truly in force, so much so that the newly ordained priests will now wear little hats on their heads and long lace vestments and say their first mass in Latin. That's what we're looking at. We went backwards.[1354]

During this period, Professor Ormerod was teaching at the Catholic Institute of Sydney. He explained:

> People who were working on issues of human development and sexuality and professional – you know, getting people to develop as mature Christians, people I knew and respected, were simply pushed out … we noticed almost overnight a change in attitude in the students, that a lot of them sort of lost interest in their studies because it didn't matter anymore, as long as they were pious.[1355]

The Catholic reform advocacy association Catholics for Renewal told us in a submission that formation is a tool that can either serve to 'reinforce a dysfunctional culture' or to reform it. Catholics for Renewal told us that its understanding was that current formation 'reinforces the prevailing culture of clericalism'. They told us that reform of selection, screening, training and ongoing formation programs 'will be of little value' unless they are part of 'a broader reform of the Church's governance to ensure … major reform of structures, culture and governance' to 'remove the culture of clericalism and its associated dysfunctions'.[1356]

Dr David Leary OFM, Provincial Secretary, Order of Friars Minor (Franciscans) and Lecturer, Yarra Theological Union, University of Divinity, Victoria was a seminarian at Springwood and at Manly between 1974 and 1976.[1357] He did not proceed to ordination. Instead, he worked in various capacities, including as a counsellor, before becoming a Franciscan friar in 2011.[1358] Dr Leary now works as a lecturer at the Yarra Theological Union, University of Divinity, Victoria, and at the School of Theology at the Australian Catholic University.[1359] In relation to current formation practices, Dr Leary told us that closed and protected formation environments may seem appropriate to train and enculturate someone into their vocation, but there are potential negative outcomes,[1360] including:

> The clericalising of the candidate through institutionalisation and the use of symbols (eg clothing and practices) that stress otherness and a hierarchical order based on power and privilege.[1361]

Bishop Randazzo told us that he thinks 'any kind or any form of clericalism is against the mission of the Church. It is not healthy'.[1362] He was asked whether there was a recognition that clericalism contributed in some way to the unhealthy aspect of the Catholic Church in relation to child sexual abuse. He replied, 'I think that there is'.[1363] Bishop Randazzo told us he had visited the Seminary of the Good Shepherd and the Redemptoris Mater Seminary in Sydney and found that the seminarians:

> seem like fairly well-adjusted, normal people, who talk about football, tennis and other sporting activities … I haven't been to Good Shepherd and heard long drawn-out Latin liturgies. I haven't seen them all dressed up in soutanes with lace albs or lace surplices. So I'm not sure what Father Moloney's experience is, but that has not been my experience.[1364]

Archbishop Fisher told us that 'it has not been at all my experience that there is some kind of return to clericalism of the past amongst my young seminarians or young priests'.[1365]

Archbishop Costelloe also denied that there had been 'a major swing back to an ultra-conservative approach'. He told us that seminary formators in the Perth archdiocese were 'very alert' to clericalism:

> I have always been very conscious of the dangers of clericalism in the sense of that desire for prestige and deference and those kinds of things. We work very hard to identify if that is there – and it is not there very often, but where it is, that we take steps to see whether the young man can grow through this or he is so locked into this that he's not suitable for ordination.[1366]

In contrast, Dr Robinson told us she had noticed that some major seminaries in Australia were reverting back to an earlier model.[1367] She told us about a recent visit to an Australian seminary where she passed two 'young men' who were talking about going shopping. Dr Robinson recalled that she greeted one of the young men, who looked at her but neither acknowledged her nor returned her greeting.[1368] Dr Robinson said:

> So I thought, well, that's just lacking in common courtesy, for a start, but I also wondered about misogynism. But the thing that worried me most was, why was this young man going into the CBD to buy his CD or fix his computer or buy his toothpaste dressed in a soutane? What was the meaning of that for him? I certainly question that.[1369]

Pastoral formation

We heard evidence and received submissions that candidates for the priesthood and religious life receive inadequate training to prepare them for the realities of pastoral life. We heard that Australian seminaries and houses of religious formation have given inadequate attention to preparing clergy and religious to understand and deal with the power dynamics that they will experience in pastoral ministry and that few, if any, courses are provided about professional ministerial ethics.

Dr Chalmers was the rector of the seminary at Banyo in Queensland between 2009 and 2015. He gave evidence that, for decades, the pastoral dimension of seminary formation was 'left to "osmosis", assuming that new priests would "pick up" pastoral practice in their parish appointments'. He told us there are few priests 'born' to a pastoral role, rather, they are made pastors by their parishioners.[1370]

The Council told us that, following the introduction of *Pastores dabo vobis*, there has been 'a change in the approach' to pastoral formation.[1371] The Council said there is now a focus on the practical duties of the life of a priest. Some seminaries include clinical pastoral education and reflection in this area.[1372] However, this does not seem to be a universal requirement.

Professor Ormerod told us that he knew of no course in any Australian seminary that looked at the ethics of priesthood or the use and misuse of power in the priesthood. He explained that sexual abuse is one such abuse of power.[1373] He said:

> So I think a strong recommendation from the Commission should focus on the need for seminary training to include compulsory courses on the ethics of priesthood, on how to behave ethically as a responsible adult running a parish.[1374]

Others agreed that such courses should be part of seminary education.[1375] Some gave evidence that the sociology of priestly ministry was not understood.[1376] Bishop Randazzo said a lot of clergy 'struggle to recognise the fact that they are public figures and that as a public figure they accrue a certain responsibility and accountability to the community'.[1377]

In Section 13.11.9, we further discuss the need for training in ministerial and professional ethics to be included as part of ongoing formation. That discussion is also relevant to the need for training in ministerial and professional ethics as part of initial formation.

Previous admission to the formation process

A relevant consideration in the screening and selection of candidates for formation is whether they have been admitted to and excluded from seminaries and houses of formation in the past. This was a particular issue in the case of a convicted former Ballarat priest, who entered one seminary and was asked to leave two years later before being given permission by Bishop Ronald Mulkearns to join a different seminary as a candidate for the Diocese of Ballarat.[1378]

Although a change from one process of formation to another does not mean of itself that there is a problem, the reason for the change is critical. It can be an indication that something is amiss.

In its *Programme for priestly formation*, the Catholic Church in Australia recognises the issue of previously enrolled candidates as a matter requiring careful investigation.[1379] In 2008, the Holy See's Congregation for Catholic Education cautioned that 'often candidates leave the educational institution spontaneously so as to avoid enforced dismissal'.[1380]

Although addressed as an issue in documents by both the Catholic Church in Australia and the Holy See, there is no system for the exchange of information about those who have previously been enrolled for formation.

Bishop Randazzo was the rector of the seminary at Banyo in Brisbane between 2009 and 2015. He told us that applicants to the seminary were asked about whether they had ever been in a seminary or house of formation before. If they disclosed that they had been, the vocations director 'would make every attempt' to contact that previous formation institute to establish the 'background as to why the person might have left' and to determine whether there were 'any other circumstances'.[1381] This was an initiative established in Brisbane and was dependent on the person accurately answering the question about whether they had ever been in a seminary or house of formation before.[1382] Bishop Randazzo was not aware of any system for independently checking the information.

Father Kelly gave evidence during our *Institutional review of Catholic Church authorities* public hearing that the Jesuits ask candidates whether they have been enrolled in formation elsewhere.[1383] However, there is no database in Australia that allows independent checks to be made about why the person left and the circumstances behind the change.[1384] Father Kelly agreed that having such a database in Australia would assist in assessing candidates.[1385]

We note that, following a review conducted by the Catholic Bishops' Conference of England and Wales, the 2001 report *A programme for action* (Nolan report) concluded that inadequate sharing of information between dioceses and a lack of access to information known to selection boards had 'produced situations in which children have been exposed to serious harm'. It was regarded as 'essential' that those involved in advising and decision-making about the formation and ordination of candidates 'have access to all the necessary information'. Accordingly, it was recommended that:

> the Church should maintain a single national database of information on all applicant candidates for ordained ministry and that decisions should not be made by Selection Boards, bishops or religious superiors without reference to it.[1386]

In Chapter 23, 'Recordkeeping and information sharing in religious institutions', we discuss the Australian Catholic Ministry Register, which we heard is an online system for a Catholic Church authority to verify that an individual coming to exercise ministry in a new jurisdiction is currently in good standing.[1387] The Catholic Church in Australia might consider expanding this register to include limited but sufficient information about seminarians and candidates for consecrated life to assist seminaries and houses of religious formation to identify and respond to any risks to children posed by candidates for their programs.

Overseas seminarians and candidates trained overseas

We heard that, increasingly, the Catholic Church in Australia is sourcing seminarians, priests and religious from overseas, particularly over the past 15 years.[1388] In addition, we heard that some Catholic religious orders in Australia train their novices overseas, and that overseas religious in training also come to Australia.

This gives rise to questions of:

- the screening of candidates from overseas
- the quality of training received by candidates undergoing formation overseas.

Bishop Randazzo gave evidence that, over a number of years, the seminary at Banyo in Brisbane had been involved in a reciprocal arrangement with a diocese in Nigeria. This arrangement involved a number of Nigerian students who had already completed their philosophical studies coming to Brisbane to undergo further formation in theological, pastoral and human and spiritual formation. He explained that police checks were done in Nigeria on each of the potential candidates and when they arrived in Australia they underwent psychological examination in the same way as other seminarians in Brisbane.[1389] Later, the Archdiocese of Brisbane established an office to liaise with and train overseas seminarians outside the seminary and to support them in living in a new cultural environment. However, this program has not continued.[1390]

Father Thompson told us that some overseas seminarians who came to study in Australia from strongly Catholic communities, including the Philippines and parts of India, displayed clericalist attitudes, and that this was a 'challenge that we have to meet, that they do come with this idea of the special privilege of the priest that they find in their home culture. But, to be fair to them, they do seem to react very positively to the instruction and to the change of outlook that they see here'.[1391]

The Diocese of Darwin has a policy of not accepting seminarians from overseas. The Bishop of Darwin, Bishop Eugene Hurley, described his diocese's policy as 'a personal thing'.[1392] Bishop Hurley told us he 'didn't want to trust other seminaries that I know nothing about'.[1393] However, Bishop Hurley said that he did accept overseas-born priests:

> I will know either the bishop very well or the vicar general. I would normally go, or the vicar general would go and interview those people in their place, where you have an opportunity to listen to them, to see how they react, to ask others about them and to look at any records that you might want to look at. And then they're on a contract, maybe a four-year contract.[1394]

Brother Ambrose Payne is the Professional Standards Officer for the De La Salle Brothers, District of Australia, New Zealand, Pakistan and Papua New Guinea. He gave evidence that the person who most recently joined the De La Salle Brothers in Australia was trained in the United States.[1395] Dr Leary gave evidence that the Franciscans in Australia currently had no Australian novices, but, if they did, they would be trained in the United States.[1396]

Father Chambers gave evidence that the Salesians had recently sent an Australian candidate to do his novitiate in Fiji.[1397] He told us that the Salesians were experiencing strong growth in East Asia, Oceania and South Asia and that a number of overseas-trained members of the order came to work in Australia, usually for three years. Father Chambers explained that the Salesians 'ensure that they go through the proper certification of police checks in their own countries, Working With Children Checks, various training before they come' to Australia as well as obtaining 'the usual statement of Church authorities, declarations, et cetera, before they come'.[1398]

Dr Ranson told us that, in his view, it was 'absolutely essential' that the Australian people were able to have confidence that seminarians and clergy brought to Australia from overseas were 'able to understand and also act appropriately' in the context of what has been learned about child sexual abuse.[1399] We agree.

We heard evidence that some of the issues that we have considered during our inquiry 'do not assume the same significance in other cultures and in another consciousness'.[1400] This raises the question of how people from different countries, cultures and consciousness are introduced and integrated into the Australian understanding of these matters.

It follows from the evidence we have heard that the Catholic Church in Australia needs to be particularly vigilant in its own selection and screening processes in relation to seminarians, priests and religious from overseas.

As we note in Chapter 20, recruiting or sourcing people in religious ministry, including seminarians, priests and religious, from overseas can raise difficulties for appropriate screening of those individuals. For example, Working With Children Checks are of limited use because they do not capture crimes or charges from overseas jurisdictions. Although checks may be done in the home country of overseas candidates, these checks may not meet Australian standards. Some countries have a different understanding of matters relevant to working with children. In Chapter 20 we recommend that religious institutions which receive people from overseas to work in religious or pastoral ministry, or otherwise within their institution, should have targeted programs for the screening, initial training and professional supervision and development of those people. These programs should include material covering professional responsibility and boundaries, ethics in ministry and child safety (see Recommendation 16.46).

The Catholic Church in Australia should satisfy itself that adequate checks are undertaken in the home country of overseas candidates, but it should not rely solely on these checks. The practices and conduct of overseas candidates should be monitored, both during initial formation and after ordination. It should also satisfy itself that candidates undergoing formation overseas who come to work in Australia receive adequate training so that they understand and act appropriately in the context of what has been learned about child sexual abuse. The implementation of our recommendations should provide a sound basis for this.

The issue of support and supervision of overseas-sourced clergy and religious will be addressed further in Section 13.11.9.

Current selection, screening and formation practices

During the *Institutional review of Catholic Church authorities* hearing we received evidence about current selection, screening and formation practices. That evidence included various Catholic Church documents relevant to formation,[1401] as well as statements[1402] and oral evidence from those currently involved in selection, screening and formation.[1403]

The Council submitted that 'selection, screening and training of priests and religious has changed markedly from the approach in place until the early 1990s'.[1404]

However, evidence before us suggests that in Australia these changes have been implemented in an ad hoc and inconsistent manner. We also received evidence that, although seminary training has changed since the 1970s and is now less closed, monastic and regimented, it continues to be influenced by some elements of the thinking and practices of the older Tridentine 'paradigm' of seminary training (although this varies from seminary to seminary).

Professor Moloney prepared a document in response to the Council's submission.[1405] In his opinion, the Council's submission about seminaries and seminarians is 'far too optimistic'. Professor Moloney queried whether the Council's claims that the 'former model of a solitary and monastic-like formation has been replaced by a more integrated and communal form of life' can really be made when, in some seminaries, 'soutanes, clerical collars, long and complex liturgies' are still 'the order of the day'.[1406] Professor Moloney concluded that the Council's submission is representative of how things should be rather than how they are.[1407]

Archbishop Fisher told us there had been 'a huge change' in the nature and culture of seminaries in his lifetime. He told us that seminary training at the Seminary of the Good Shepherd in Sydney had moved away from the Tridentine seminary model.[1408] He explained:

> At least looking at my own diocese, we've moved from the monastery on the hill to now the young men living in small communities in suburban houses together, to my now sending them to university first, to do a university degree with ordinary university

> students, before they do their intensive theology at the theology college; our having now a seminary council with people from outside giving their own judgments on the life in the seminary and their own views; having external people comment on their performance when they go out for pastoral placements to lots of different activities. Over six or seven years in the seminary, that might be six or seven different placements, in a parish, in a school, with a community group, with a prison, whatever.[1409]

Archbishop Fisher told us that he was not saying this was perfect, 'but it is changing before our eyes', and there was much more of a sense of seminarians being formed 'out in the community ... rather than them being extracted to some special, secret place for it to happen'.[1410]

Father Kelly told us that the Jesuit novitiate currently comprised two suburban houses in the western Sydney suburb of Emerton in the Diocese of Parramatta.[1411] The aim is to enable novices to experience an apprenticeship as part of 'a Jesuit community that was active, working in that area, so that these people were modelling how you were relating to this very multicultural community and you were picking up on that'.[1412]

Father Kelly said that, in Jesuit formation, psychological screening commences after the period of candidacy and before entry into the novitiate.[1413] Screening is conducted externally and is a 'comprehensive, five-hour testing' that 'happens right at the start of the process'.[1414] He explained that there is a stage of pre-formation that the Jesuits refer to as 'candidacy'. It is a period of no less than 12 months between application and formal admittance into the novitiate.[1415]

Father Kelly explained how the Jesuit process of initial formation differed from other religious congregations. He told us that, after the first three years of study, Jesuit novices go into a full-time Jesuit ministry – for example, in a school – for two or three years. After that, they return to more study over three or four years and then apply for ordination. Following ordination, a further four to six years in ministry concludes with a seven-month program called a 'tertianship', which brings together Jesuits from all over the world:[1416]

> Then there's another period when they're finally invited to take final vows, which is really then the Society's acknowledgement of full incorporation into the Society. So that's why I mean it's a fairly lengthy period of formation.[1417]

The Rector of the Holy Spirit Seminary at Parramatta, Father John Hogan, told us that, unlike the 'old type of seminaries set up by Trent', his seminary certainly was 'not in lockdown any of the time'.[1418] He said:

> It's a very open and fluid environment and the lads there are going to the local universities, so they're mixing with lots and lots of very, very different people all day … Again, they have a tremendous exposure to the world.[1419]

Father Chambers gave evidence that the current Salesian system of formation was 'light years away from the system that operated in the 1950s and 1960s and 1970s'. He told us that candidates these days were having a 'tangibly better experience, a more well-balanced experience, a far more extensive and thorough experience' than in the past:

> There is serious testing and there is investigation along the way. The time between when they join, the aspirants, say pre-novitiate, and when they're ordained, it's the best part of 11 or 12 years, during which time a lot of them leave us and some are asked to leave us because they're found not suitable for the mission among the young to whom we've dedicated ourselves. So there's a strong vetting process not simply at the start but all the way through.[1420]

Bishop Randazzo became the Director of Vocations for the Archdiocese of Brisbane in 2001.[1421] While in this position, he established a 'House of Discernment' within the Archdiocese of Brisbane, called Canali House.[1422] Canali House was established as a place where young men who were considering becoming a priest could reside while going about their daily lives as students or in the workforce and undergo 'a basic kind of discernment process'.[1423] Bishop Randazzo was not aware of similar places elsewhere in Australia.[1424]

Proposals for a different model of seminary formation

> As long as seminaries are principally tridentine in their structure and content, the Church will have theologically literate priests, but priests still struggling to be emotionally and sexually literate, and therefore candidates for sexual dysfunction.[1425]
>
> **Dr David Ranson, theologian and Vicar General, Diocese of Broken Bay**

> The impersonal nature of the institution can cause a sense of emotional isolation, and this can be accentuated by an emphasis on the intellectual and spiritual at the expense of human development. Ordinary needs for intimacy can seek their satisfaction covertly. While the situation varies greatly from one seminary or novitiate to the next, one must seriously question whether institutions are the place to form priests and religious.[1426]
>
> **Bishop Geoffrey Robinson, retired Auxiliary Bishop, Archdiocese of Sydney**

During the *Institutional review of Catholic Church authorities* hearing we received evidence about suggested proposals for a different model of seminary formation.

Dr Ranson recommended a number of changes to formation practices in Australia, including the introduction of a national charter for seminaries, which would be adhered to by all members of the Australian Catholic Bishops Conference. It would outline the priorities of formation, expectations regarding suitability of candidates, training and ongoing formation of staff, protocols for transfer of students from one seminary to another or from a religious institute to a seminary, and the minimum discernment process required for pre-entry and pre-ordination.[1427]

Dr Ranson also said that, while he believed that the advances brought about by the separation of theologates and seminaries have been significant, he would not 'pretend that they are sufficient':

> Because, though we have made significant advances, I think, over the last 30 years, the paradigm is still the same. The paradigm is still a Tridentine paradigm, and until the paradigm itself changes we still bear the liabilities of long institutional programs of formation.[1428]

Dr Chalmers agreed with Dr Ranson in relation to the need for shorter periods of initial formation.[1429] On this point Dr Whelan went even further:

> Get rid of seminaries. Seminaries are like boarding schools and I don't think they are healthy environments for maturation to take place. Let the would-be ordained minister live in the community, and a lot of the formation would go on in that context, as it were, de facto.[1430]

Dr Leary expressed a similar view about the need to move 'beyond the Tridentine model that we've inherited and stuck to religiously', and for placing a greater emphasis on experiential aspects of training for religious and pastoral ministry.[1431] Dr Leary said he thinks 'seminaries need to think very strongly about whether or not they exist in the model in which they exist at the moment'.[1432] Dr Leary told us that if he were crafting a new approach to formation:

> I would start by saying that the domicile for each student – after a short period of time in intensive formation … would not be in a seminary. It would be in an environment where they receive mentoring from another priest; where they were engaged not in any formal role within a parish but engaged with a parochial community, learning, being observed; where people in that parish could be part of their mentoring process; where they could be exposed to the rigors of everyday life.[1433]

According to Dr Leary, rather than 'cocooning the candidate' in a seminary, the starting point of formation should be exposing the candidate in a guided way 'to a whole range of thoughts and ideas and experiences that then they can reflect on'.[1434] Dr Leary told us that the emphasis should be on the candidate themselves becoming, 'in a sense, the primary formator':

> If you don't place the emphasis on the candidate being the primary formator, the primary assessor, the primary discerner, then there is a risk that we end up with a form of clericalism again where we have candidates who do what they are required to do in order to pass certain points in the process.[1435]

In Dr Leary's view, candidates for the priesthood do not benefit from having the seminary as their primary domicile, 'because there is too much experience that says that it isolates people and it creates a form of silo'.[1436]

We have heard that some victims and survivors of child sexual abuse and their families have found the pastoral response of Catholic Church authorities to be inadequate. One way of addressing weaknesses in an ability to pastorally respond to victims and survivors of child sexual abuse and their families may be to adopt an apprenticeship model of formation as suggested by Jesuit formator Father Kelly. He recommended putting candidates with 'good priests who are pastorally effective and are known to be so' to ensure that those who are pastorally effective are utilised in formation.[1437]

Father Kelly explained that, as Jesuit novices move out of the novitiate to engage in pastoral work, they are under the guidance of a professional pastoral care supervisor and at some stage of their formation they will also undertake a course in clinical pastoral education.[1438] Father Kelly stated that the distinctive ways in which the Jesuits trained their priests had to do with the Jesuits' 'charism' (or particular mission) of being 'people who will move and go anywhere. Therefore, there's an adaptability, a flexibility that is needed. That automatically differs, I think, from a seminary'.[1439]

Archbishop Costelloe gave evidence that he was 'very sympathetic to the idea that we need to have our seminarians much more engaged with the local community', but said he was 'just a little nervous' about the idea of shifting them out of the seminary and into the community 'unless, in doing so, we also managed to find another way of achieving what we achieved by having them in a seminary where hopefully well-trained staff are able to monitor the capacity for growth and development'. He told us it could sometimes take from six to eight years 'for problems to emerge'.[1440]

The Archbishop of Adelaide, Archbishop Philip Wilson, and the Archbishop of Brisbane, Archbishop Mark Coleridge, expressed support for the 'apprenticeship model' of initial formation outlined by Dr Ranson, Dr Whelan, Dr Leary and Father Kelly. Archbishop Wilson told us that he supported a similar model adopted by Cardinal Jean-Marie Lustiger, who was Archbishop of Paris from 1981 to 2005:

> Cardinal Lustiger, when he was archbishop, closed the seminary and moved all the students out into houses, where they were living in separate, smaller units with priests who were their formators and being engaged, then, in the local communities with the families that were part of those parishes there. I thought that that was a very good model that we needed to consider.[1441]

Archbishop Wilson told us he had 'very strong ideas' about what he thinks needs to happen in terms of formation.[1442] He drew our attention to one particular aspect of the changing reality of religious and pastoral ministry in the Catholic Church in Australia, which is that it is increasingly being carried out by lay people and that this is only likely to be increasingly the case in the future. He told us that seminary candidates for the Archdiocese of Adelaide are sent to the seminary in Melbourne but are also expected to participate 'as much as they can' in a ministry formation program run by the Archdiocese of Adelaide, 'where all our lay leaders and our deacons are prepared. Men and women are in that program':[1443]

> The view that I have would be that I think that they need to be formed together, because that's the Church they're going to work in. When they come out to the parishes, they're going to be working with those men and women who are working as deacons, pastoral associates, and so on, and they all need to get the same vision and to have the same pattern of formation before they do that. So the involvement of people in programs outside seminaries I think is really quite crucial.[1444]

Archbishop Coleridge gave evidence that he was in favour of 'certainly questioning the seminary model and moving more towards an apprenticeship model', as long as it could be guaranteed that there would be 'a solid and effective formation' and that the Church did not 'end up again with an ignorant and ill-formed clergy'.[1445]

Archbishop Coleridge told us it was an irony that the problem which the seminary reforms of the Council of Trent in the 16th century had sought to address was precisely that of an ignorant and ill-formed clergy. He said, 'But we may be – in fact, we are, I think, at a point where the Tridentine seminary, the model that came to us from the Council of Trent, is now an anachronism':[1446]

> I find it hard to see how we wouldn't need some element, perhaps even a national element, of preparation for ordination that might be considered a seminary moment, but I do think we need, in vastly changed circumstances, not least of which is the drama that has emerged in the matters before this Royal Commission, to consider other models of training for the priesthood and religious life that would combine both an apprenticeship model with some element of seminary training for a more intense spiritual and pastoral formation.[1447]

Archbishop Wilson also referred to the possibility that, given Australia's size, the Catholic Church in Australia may not be able to sustain a range of different formation programs but might benefit from bringing them together into a single, national training program 'staffed and serviced by the best people'.[1448] Archbishop Coleridge also referred to the possibility of introducing 'a national element' to seminary formation.[1449]

Archbishop Hart gave evidence that there was a real 'need really to beef up the human formation not only through parish placements, through human relationships, but in a formal way, and then we need to educate them as to how to be pastors, give them practical experience'.[1450] Archbishop Hart told us that each of the various components of initial formation have their own demands, and:

> I think we have to look at a better way. Already, our seminary is in the city. They go across to a theological college where women and men are on the staff and are students. There are regular placements in schools, in parishes and things like that, and an extended parish placement. I think we need to look at how the various ingredients go together.[1451]

It appears that there is significant consensus about the need for further reform of policies and processes for the initial formation of clergy and religious and about the kind of change that is needed. The Catholic Church in Australia should consider its model of seminary formation. We are satisfied that further de-institutionalisation of initial formation and a greater emphasis on pastoral formation in the communities that future priests and religious are being trained to serve is likely to promote greater psychosexual maturity, increased pastoral responsiveness to the safety of children and to allegations of child sexual abuse, and an increasingly open and accountable clerical and religious culture.

Recommendation 16.24

The Australian Catholic Bishops Conference and Catholic Religious Australia should conduct a national review of current models of initial formation to ensure that they promote pastoral effectiveness, (including in relation to child safety and pastoral responses to victims and survivors) and protect against the development of clericalist attitudes.

Conclusions about selection, screening and initial formation

It is clear that formation practices in the past were inadequate, particularly before the 1970s, in relation to screening of candidates for admission, preparing seminarians and novices to live a celibate life, and preparing them for the realities of life in religious or pastoral ministry. These practices were particularly inadequate when it came to formation in key areas of human development, identity formation, intimacy and relationships, good communication, education about human sexuality, ministerial and professional ethics, maintaining healthy personal boundaries, childhood development, and child safety.

Prior to the 1970s, the style of formation was segregated, regimented, monastic and clericalist, based on obedience to religious superiors and conformity. We heard that long periods of initial formation were spent in a closed or cloistered environment where seminarians and novices were separated from the communities they were training to serve.

These arrangements are likely to have been detrimental to psychosexual maturity and to have produced clergy and religious who were cognitively rigid, conformist and poorly prepared for the pastoral realities of life in ministry. We are satisfied that these inadequacies in selection, screening and initial formation have contributed to the incidence of child sexual abuse by clergy and religious in Catholic institutions in Australia, including through the absence of appropriately trained people and a curriculum and formation process that reflected a comprehensive understanding of human development and experience.

The existence of minor seminaries in Australia is now an historical issue. We note that the minimum age of entry to seminaries and religious houses of formation is 18. However, while reaching the age of 18 is certainly a marker of adulthood, it is not necessarily a marker of maturity. We also note that Australian Catholic dioceses are increasingly drawing seminarians and priests from overseas countries where children still attend minor seminaries. In our view, these realities need to be factored into selection, screening and initial formation policies and processes.

From the 1970s, there have been improvements in areas of selection, screening and formation. However, it appears to us that, in Australia, change has largely been implemented in an ad hoc and inconsistent manner. Further steps need to be taken by the Catholic Church in Australia to ensure that seminarians and candidates for formation are adequately selected, screened and trained.

We heard concerns about the current model of formation. In particular, we were told that, despite various changes during the 1970s, 1980s and early 1990s, some current models of formation remain significantly influenced by the thinking and practices of an older Tridentine seminary model. We heard that some seminaries have revived aspects of this model, which lends itself to clericalism and the development of clericalist attitudes. We agree that there are genuine concerns in this area. We heard that moving to a different model of initial formation, which would involve a shorter time spent in an institutional environment and more apprenticeship-style training in the communities that clergy and religious wish to serve, may promote greater pastoral effectiveness.

13.11.9 Oversight, support and ongoing training of people in ministry

> In the main, formal and structured accountability processes are lacking and have never been significant … Blend this culture with a high stress ministry in which dual relationships are commonplace; the fact that many clergy and religious operate in isolation from one another and from support structures; confusion regarding contemporary identity, meaning and purpose of ministry; an inadequate formation for some; inadequate psychosexual development in some, and you have a potent mixture for potential professional boundary violations.[1452]
>
> **Dr Gerardine Robinson, clinical psychologist**

We considered the working environment of priests and religious in Catholic Church institutions, as well as the institutional oversight and support that priests and religious in ministry receive, as it is often in the process of conducting their ministry that priests and religious interact with children.

There is a power imbalance in pastoral relationships in ministry which leads to a risk of abuse. In our case studies, we heard that, historically, priests and religious in the Catholic Church were not trained in the appropriate exercise of power in pastoral relationships. Further, a mindset associated with clericalism may have influenced them to think they were not accountable to those to whom they ministered.

We also heard concerns about systemic issues related to the oversight and support of priests and religious in ministry in the Catholic Church, including inadequate formation, loneliness and social isolation, and overwork.

These issues interacted with an institutional culture in which there was generally minimal structured managerial oversight, support or ongoing formation of priests and religious in working ministry, including in relation to living a celibate life.

We heard that policies and practices in relation to oversight, support and ongoing formation of people in religious and pastoral ministry in the Catholic Church have improved over time but that their implementation has been inconsistent. Catholic Church witnesses agreed that policies and practices in this area should be improved. They told us about measures that may ensure that people in pastoral ministry in the Catholic Church are more accountable in their work and better trained and supported. This should reduce the risk of sexual abuse of children.

As addressed in Section 13.11.8, in the Catholic Church 'ongoing formation' refers to the training and support that priests and religious receive after their ordination and profession of vows, including professional educational development. We heard that formation should be considered to be a lifelong process.

The term professional/pastoral supervision refers to a practice where those in pastoral or caring professions meet regularly with a trained supervisor to reflect upon their practice. This type of supervision is a mechanism used to enhance professional and pastoral skills, competence and accountability. It is distinct from spiritual accompaniment, counselling, or line management.[1453] We use the term professional/pastoral supervision in this section to distinguish the practice from our broader use of the term 'supervision', by which we refer to oversight and accountability.

The primary focus of this section is on whether and how inadequate oversight, support and ongoing formation of priests and religious may have contributed to child sexual abuse and/or inadequate responses to this abuse by Catholic Church personnel.

However, we were told that the reality of the Catholic Church today is that lay people, both paid employees and volunteers, play an increasing role in religious works and pastoral ministry that was traditionally undertaken only by priests and religious.[1454] With the decline of priestly and religious vocations, this is likely to be increasingly the case. For example, writing in 2002, Dr David Ranson, theologian and Vicar General, Diocese of Broken Bay, stated that:

> attention must now be given to the formation of lay people involved in the Church's life for it is precisely these people who will be more and more assuming responsibility for significant dimensions of its life ... [clerical and religious], whilst in no way undermining their vital importance, will nonetheless not be providing the bulk of Church workers in the future.[1455]

To reflect this reality, and because this section is focused on positive and practical proposals aimed at enhancing support for all those in ministry in the Catholic Church in Australia and increasing their effectiveness, accountability and professionalism, the recommendations and much of the discussion in this section will use the term 'people in religious and pastoral ministry' rather than 'clergy and religious'. However, clergy and religious should be understood as being included within the scope of this term.

Power in ministry in the Catholic Church and pastoral accountability

> Sexual abuse by professionals is always about power inequality and a misuse of power. The study suggests that, typically, clergy have been ill-equipped to deal with the psychological and emotional demands of their calling, and that they lack both the external and internal resources to responsibly manage the authority with which they have been invested.[1456]
>
> **Dr Gerardine Robinson, clinical psychologist**

Power, vulnerability and abusive behaviour in pastoral relationships

All pastoral relationships involve an inherent power imbalance in which lies a risk of abuse of power. All sexual exploitation within pastoral relationships, including child sexual abuse but also the sexual exploitation of adults, involves an abuse of that power.

Professor Neil Ormerod, Professor of Theology at the Australian Catholic University, has written of sexual abuse in pastoral relationships, that 'Ministry operates in a dynamic of trust, authority and vulnerability in all cases. Vulnerability is not the consequence of some impairment on the part of the victim, but of the very structure of ministry itself'.[1457] He has written that, 'While paedophilia is a sexual aberration with complex psychological antecedents, the far more common issue of sexual exploitation in pastoral settings is more an issue of such structural power and its misuse'.[1458]

'Dual relationships' in religious and pastoral ministry are relationships in which a person has a professional as well as a personal relationship with someone in their pastoral care. Dr Ranson gave evidence that dual relationships are common in Catholic ministry: 'As a parish priest, not only is there an expectation that I'm pastorally present to individuals, particularly in their vulnerable moments, when they are ill, when they are dying, but also at their times of celebration'.[1459] He agreed with the proposition that this entailed risks that such relationships were open to the abuse of power, and stated that by their nature the 'dual relationships that constitute Catholic pastoral ministry are fraught with liability'.[1460] Dr Ranson has written that:

> The issue of boundaries within pastoral life is problematic for the priest whose ministry is chiefly exercised through the relationships and friendships he forms with people … Dual relationships are fundamentally flawed and disrespect the effective tension between the public and personal dimensions of a priest's life.[1461]

The Archbishop of Brisbane, Archbishop Mark Coleridge, told us, similarly, 'It is a point to which I have returned in my own reflection again and again and again – the fact that there was such pastoral intimacy between priest and family was a great strength, but it became a huge weakness'.[1462]

Australian clinical psychologist and former clinical director of Encompass Australasia, Dr Gerardine Robinson, who has worked with Catholic clergy and religious perpetrators of child sexual abuse, told us that pastoral ministry in the Catholic Church is comparable to other caring professions including her own professional occupation as a psychologist, in that clergy deal with vulnerable people all the time.[1463] Dr Robinson told us that, unlike clergy, as a psychologist she is forbidden to have dual relationships with her clients,[1464] in order to manage the risk of violations of professional boundaries.

Dr Robinson told us that dual relationships require specific skills on the part of clergy to ensure clear boundaries are maintained,[1465] as well as consciousness of one's internal workings through professional practices of self-reflection and clinical supervision:

> Priests in ministry don't have the luxury of being able to draw boundaries that well, which implies they have to be even more conscious of their boundaries, but even more conscious of their own internal workings. You can have the best education on professional boundaries in the world, but if you're not in touch with your aggressive impulses, your libidinal impulses, your neediness, your tiredness, of course you can be pulled over a boundary.[1466]

Training of priests and religious relating to pastoral relationships

We were told that, in the past, priests and religious in the Catholic Church typically have not had the training they require to understand and exercise their power in pastoral relationships and reduce the risk of its misuse. Professor Ormerod, who has taught in seminaries,[1467] told us that Catholic clergy in Australia and elsewhere receive inadequate formation about professional and ministerial ethics:

> A lot of moral theology courses, which they do lots of, grew out of a tradition of training people to hear confessions, which was about other people's sins. They rarely … actually look at the professional and ethical responsibilities of the power that they have as priests. So they don't reflect ethically on their own performance in the priesthood … about the use of power, and there are many ways in which priests misuse power. And the sexual abuse issue is just another one of those.[1468]

American theological ethicist and priest, James Keenan, Canisius Professor in the Theology Department at Boston College, has reached a similar conclusion and recommended that the Catholic Church in the United States develop 'ecclesial professional ethics' in response to the child sexual abuse scandal.[1469] He has written that courses in professional ethics should be mandated for all those who are trained for ministry in the Catholic Church, whether they be 'religious, clerical, hierarchical, or lay'.[1470]

Keenan has described professional ethics as 'the practice of critical ethical thinking in routine decision-making' within a professional context.[1471] He has written that the kind of ethical training he envisages would be broader than training in the observance of sexual boundaries, although that would be among the more important topics, but should include training on issues

such as representation, confidentiality, client expectations, privileges, promotions, evaluations, conflicts of interest, and due process. Keenan has written that, in contrast to the ethical training required in other professions, this kind of ethical training is mostly not provided as part of the initial formation of those preparing for religious and pastoral ministry.[1472] He also argued that this lack of training in ethics is one of the causes of the sexual abuse crisis in the Catholic Church.

> Furthermore, it helps to explain – in part – why the judgements of both priests and bishops were so poor throughout the crisis. Not only were they poor about judging about sexual boundaries, but also about financial responsibility, personnel accountability, the limits of confidentiality, the importance of truth-telling, and so on.[1473]

In a paper analysing the profiles of 51 Catholic priests and religious brothers evaluated by Encompass Australasia in relation to problematic sexual behaviours, including paedophilia and ephebophilia, Dr Robinson concluded that a feature of those men was that, 'The concept of professional misconduct and public accountability in ministry is missing in an analysis of their own behaviour'.[1474]

In *Case Study 50: Institutional review of Catholic Church authorities (Institutional review of Catholic Church authorities)* we received evidence from Dr Marie Keenan, an Irish psychologist and researcher who conducted a study of clergy perpetrators of child sexual abuse in the Irish Catholic Church. She submitted that a lack of training in the responsible exercise of their power in ministry, along with a mindset associated with clericalism and a lack of accountability in ministry, contributed to the occurrence of child sexual abuse by priests and religious.[1475]

In her book *Child sexual abuse and the Catholic Church: Gender, power, and organizational culture,* Dr Keenan observed of the clergy perpetrators she studied that 'they did not think of accountability in terms of the kind of ethical or personal relations that they engaged in with the people to whom they ministered'.[1476]

Dr Keenan observed that, 'Essentially, while formation and the structure of clerical life kept men sexually and relationally immature, ordination and sacred consecration set them apart as elite, superior to other men'.[1477] She further observed that the clergy abusers she studied demonstrated 'little real awareness of the power context from which and in which they operated'.[1478] In their offending, they 'did not countenance adequately the power imbalances that were involved in their "relationships" and "friendships" with children and young people',[1479] and 'little guidance was offered in the seminaries or in clerical life as to how … appropriate professional boundaries were to be developed'.[1480] Dr Keenan also told us that:

> Their experiences of powerlessness in the private sphere combined with their idea of power as accountability upwards, were devoid of facilitated introspection, as they were left unsupervised, unsupported and unchallenged to minister in a site of unregulated public power. It is this dynamic of power/powerlessness that is implicated in their sexual offending.[1481]

The realities of life in ministry for Catholic clergy and religious

We heard evidence that particular aspects of their experience of life in ministry, and inadequacies in the training they received to prepare them for the realities of life in ministry, may have contributed to child sexual abuse by some Catholic clergy and religious. These include:

- initial and ongoing formation and support for ministry, including celibacy
- loneliness and social isolation
- overwork.

Initial and ongoing formation for ministry, including celibacy

> Many clergy and religious have found themselves in situations beyond their capacity, personally and professionally.[1482]
>
> **Dr David Ranson, theologian and Vicar General, Diocese of Broken Bay**

In Section 13.11.8, we concluded that initial formation did not adequately prepare some priests and religious for the reality of aspects of their lives in ministry, including the realities of pastoral ministry, and living out a public commitment to celibacy. Here, we address what we heard about the extent to which the reality of life in ministry, following inadequate initial formation, and with inadequate ongoing formation, support and supervision, may have contributed to the occurrence of child sexual abuse.

We were told that there is a disjunction between the structured and communal nature of initial formation and the demanding and sometimes lonely reality of life in ministry. Retired judge of the District Court of New South Wales, former priest, and seminary lecturer Dr Christopher Geraghty told us about his experience as a young priest:

> After a number of years, after the high expectations of a rich and fulfilling life which were continually re-enforced in the seminary had hit the wall, the life of a young priest in a typical parish proved to be a lonely one – isolated, sheltered, routine, devoid of affection and human warmth, without the comfort and stimulation of a wide range of friends of both sexes which often accompanies [married] life.[1483]

Dr Geraghty told us of his experience of returning to the seminary after two years in a parish. He said that, 'again I'm in the system. And that was very protective of me. The others on the outside are getting hammered, getting a lot of problems, personal problems, and things. I didn't have any of that because I was protected by the seminary'.[1484]

The Archbishop of Sydney, Archbishop Anthony Fisher OP, explained that seminarians of the past did not have pastoral experiences of the kind they now have in his archdiocese. Instead, once ordained, they were thrown into work, possibly without mentoring: 'given the collar and the status and expected to know what to do'.[1485]

Sister Eveline Crotty rsm, a Sister of Mercy and Co-ordinator of the Urban Ministry Movement in Sydney, told us in the *Institutional review of Catholic Church authorities* public hearing that in the early years of ministry, 'the issues that arise can be very confronting and challenging'.[1486]

We heard that priests in ministry became responsible for work for which they had received no training, and that this placed them under stress. Dr Ranson told us that 'As parish priest I am effectively the manager of a small business', and that he has 'responsibility for the life of a community in all of its aspects – its material aspects, its pastoral aspects and its spiritual aspects'.[1487] He told us that:

> we have come from a system that may have trained one in the spiritual dimension, a little in the pastoral, but not a great deal, and nothing in the material and then placed this expectation that all of these things would be undertaken with proficiency. Of course, this places an extraordinary burden on individuals.[1488]

Similarly, former priest Dr Alex Nelson told us in a submission that, while priests may enjoy pastoral work, 'they may also feel greatly burdened by some responsibilities of clerical leadership and administration for which they are ill suited and not well prepared by seminary education'.[1489]

We heard that, historically, members of religious institutes would undertake work in ministry where they were responsible for children, such as teaching or leadership positions in schools, without any relevant training.[1490] For example, Dr Michael Whelan SM, Marist Father and Director of the Aquinas Academy, Sydney, told us that in 1972, six months after his ordination, he was sent to teach at a high school without professional teacher training or any other mentoring or guidance.[1491] Dr Whelan told us that 'There was no mentoring'.[1492] He said:

> I should have been given professional training as a teacher and I should have been mentored and guided. I've thought back on it, in the light of the Commission's work, and I say, 'Thank God I didn't have a proclivity to misbehave' … the tensions that I was under and the opportunities that I had could have led me to that.[1493]

We received evidence that inadequate preparation for ministry, combined with the levels of stress this might induce, may have contributed to child sexual abuse by clergy.

Dr Robinson has written a paper on the profiles of Catholic clergy who were evaluated for problematic sexual behaviours, including paedophilia and ephebophilia.[1494] The subjects typically reported that the behaviours began either immediately prior to or within two years of their ordination or profession of vows.[1495]

Dr Robinson has written that, 'These findings raise a disturbing range of questions about the institutional system in which clergy exercise their pastoral ministry' and suggest that, 'typically, clergy have been ill-equipped to deal with the psychological and emotional demands of their calling'.[1496] For the clergy in her study, Dr Robinson concluded, 'problematic sexual behaviours have been expressions of profound intrapsychic dilemmas'.[1497]

The 2011 report, *The causes and context of sexual abuse of minors by Catholic priests in the United States, 1950–2010* (2011 John Jay College report) concluded that the dislocation between the seminary and parish environments could be a situational stressor for child sexual abuse by clergy.[1498] The report found:

> Men coming to the priesthood are trained in a communal and regimented environment with clear guidelines for behaviour covering schedules of study and prayers as well as social interaction … The transition to this environment from a home environment, or the transition from the communal environment to parish life, may induce high levels of stress in some men. These situational stressors can lead to higher levels of vulnerability to abuse, and though they do not 'cause' abuse, they may serve as 'triggers'.[1499]

As addressed in Section 13.11.8, inadequate human formation more broadly has also been an issue, including in relation to personal identity, psychosexual maturity, relationships, intimacy and communication.

Dr Robinson told us that that internal conflicts in relation to celibacy could 'lead to psychological ill health',[1500] and may contribute to abuse as follows:

> just like rape or domestic violence isn't ultimately about sex, it's about power, any objectification of another person, whether it's a vulnerable adult or a child, is an abuse of power and can be an attempt for one to feel powerful when one knows one's internal state is chaotic and disintegrating.[1501]

This was consistent with Dr Keenan's evidence about the Irish clergy perpetrators of child sexual abuse she has studied. Dr Keenan's evidence was that their narratives were marked by their feelings of private powerlessness connected to celibacy.[1502] For the men she studied, their 'principal preoccupation was one of personal and individualised inner conflict and distress, mainly related to celibacy, sexuality and inner emotional turmoil and frustration'.[1503]

In Section 13.11.7 we recommend that, in order to promote healthy lives for those who choose to be celibate, the Australian Catholic Bishops Conference and all Catholic religious institutes in Australia should further develop, regularly evaluate, and continually improve, their processes for selecting, screening and training candidates for the clergy and religious life, and their processes of ongoing formation, support and supervision of clergy and religious (Recommendation 16.20).

Loneliness and social isolation in ministry

> It cannot be emphasised strongly enough that isolation is profoundly detrimental to the personality, has dramatic implications for sexual dysfunction, and establishes the horizon against which abuse is perpetrated.[1504]
>
> **Dr David Ranson, theologian and Vicar General, Diocese of Broken Bay**

We were told by priests, former priests and members of religious institutes about the ways in which the living and working conditions of ministry can be isolating.

We were told that priests working in parishes are particularly isolated, as they tend to live either alone or with one other priest, unlike religious brothers and sisters, who are more likely to live in community. On the other hand, it is clear that living in a religious community may also be an isolating or lonely experience. Also, given the very high levels of child sexual abuse we heard about in some male religious congregations, it is by no means clear that living in a community reduces the risk of child sexual abuse.

Dr Ranson said that many priests 'live and work alone, often even without any effective peer support or with only superficial peer relationships which can neither affirm nor challenge'.[1505]

Dr Michael Leahy, a former priest, told us in a submission about his experience in the priesthood, that:

> The celibate life is a lonely life, and companions at work and home are determined by the parish to which one is appointed. You just had to get on with your parish priest and any assistant priests as best you could. In some cases luck favoured you, and you got on well with them. In others, life could be extremely difficult.[1506]

Similarly, Dr Nelson told us in a submission, that:

> There is also an element of heroism in the life of the clergy Fathers. Priests are required by their promise of celibacy to renounce marriage and partnership as well as parenting … The declining number of clergy has the effect of reducing opportunities for collaborative ministry with other priests. Priests, especially those in regional areas, are often lone, lonely and exhausted by the amount of work that they are expected to undertake as they age.[1507]

In 1990, the Special Archdiocesan Commission of Enquiry into Sexual Abuse of Children by Members of the Clergy (the Winter Commission), which looked into clergy sexual abuse in the Archdiocese of St John's, Newfoundland, Canada, concluded that a factor in abuse in the archdiocese was that:

> The public perception of the position of the clergy also led to isolation of the priest and his inability to integrate socially with parishioners. When difficulties developed from this kind of isolation, or from other factors, there was no adequate Church structure in place to assist the priest.[1508]

We heard evidence consistent with that conclusion. We heard that a culture of clericalism, in which clergy are perceived as set apart from and above lay parishioners, impacts upon the ability of some clergy to have close relationships. Dr Geraghty submitted that, 'The priest saw himself, and was in turn seen by the faithful, as a superior being – touched with holiness, aloof, removed from the ordinary mundane world, sanctified, pure, trustworthy, isolated from the crowd, alone and without friends'.[1509]

Dr Robinson also said that in the perception of the laity, the priest is 'put on the pedestal, so they actually become separated from the very support networks that would bring balance into their lives and a genuine warmth and relational aspect'.[1510]

We were told that living in religious community can also be devoid of close friendship. Dr Whelan told us about his experience in a Marist community of eight in Tasmania, that the community:

> was very focused on the work. There was little or no intimacy or friendship. There was a saying in religious life at the time: 'Nunquam duo' (Literally: 'Never two'.) In other words, do not form friendships because they are dangerous.[1511]

Former Christian Brother Stephen Farrell, who was convicted of child sexual abuse offences committed when he was a Christian Brother in 1973 and 1974, said of his experience of living in a Christian Brothers community:

> I recall that when I left St Pat's, the brother living opposite me asked – he was aged probably 45; I'd been with him and had meals with him for two full years and he said, 'And what's your name?' That was his question to me. And I was in the room opposite. There was so little interaction … I was lonely there … I asked could I join the local basketball team and he said, 'No your life is with the community of the brothers', and I thought: what community?[1512]

The 2011 John Jay College report stated that 'empirical studies have shown that there does appear to be a link between intimacy deficits and sexual offending',[1513] and that 'Many accused priests began abusing years after they were ordained, at times of increased job stress, social isolation and decreased contact with peers'.[1514]

Dr Keenan told us that 'sexual and emotional immaturity and loneliness' were among the factors involved in the sexually abusive behaviour of the clergy perpetrators she studied, and that in 'these circumstances, children and young people can be recast as the receptors for adults' needs and feelings'.[1515]

Overwork in ministry

We were told that priests and religious within the Catholic Church were commonly overworked in ministry. Dr Whelan told us that:

> Hard and constant work dominated the lives of priests and religious. They had to be omni-available and ready to do any work they were asked to do … This led to many individuals struggling to cope with excessive workload and daily tasks for which they were unsuited and sometimes untrained.[1516]

Dr Robinson gave evidence that her research as a psychologist indicated that historically, in selecting candidates for the priesthood, the Catholic Church attracted and rewarded candidates with compulsive personality traits that could lead to them overworking.[1517]

Dr Geraghty told us that in his initial formation, 'In the isolation of the seminary, the institution worked each day to persuade me and the others that the ideal priest was one who could offer selfless love and tireless service to the Church for the rest of his life'.[1518] Dr Ranson echoed that, saying that in the lives of clergy there was a 'presumption of total availability'.[1519]

As discussed above, we heard that psychological distress, among other factors, may have contributed to sexually abusive behaviour by priests and religious.[1520]

Dr Robinson gave evidence that overwork could have negative implications for the psychological health of priests and religious in ministry.[1521]

We heard from Father Gregory Bourke, National Director Clergy Life and Ministry, Australian Catholic Bishops Conference, that as the number of priests declined from the 1970s onwards, their workloads increased and clergy began to experience 'greater degrees of burnout and needs'.[1522] He said, 'Looking at the daily routine of a typical diocesan priest, it is very activity based. Priests who get exhausted or burnt out would say, "I feel like a sacramental machine, that I just do all these things"'.[1523]

We also heard views that, in contexts in which religious brothers lived in isolated communities with access to and control of children, overwork may have contributed to their abusive behaviour.

Dr Robinson told us that, 'in the past some religious orders poorly trained their men either in formation or even to teach, and often they were overworked. They would teach all day and then maybe have to care for children in orphanages at night'.[1524] Dr Robinson told us about the case of a religious brother she worked with who had abused children in an orphanage:

> He said, 'We worked every day of the year except Christmas Day', and he ended up sexually abusing children because his own needs, healthy, nurturing needs and healthy needs for affection and approval and relationship – the only people he was surrounded by, really, were children.[1525]

In *Case Study 11: Congregation of Christian Brothers in Western Australia response to child sexual abuse at Castledare Junior Orphanage, St Vincent's Orphanage Clontarf, St Mary's Agricultural School Tardun and Bindoon Farm School (Christian Brothers)* we heard from Brother Anthony Shanahan, former province leader of the Christian Brothers Province of Western Australia and South Australia, about Christian Brothers who were perpetrators in those institutions. He told us that many:

> had long years in the same institution working morning, noon and night, very little by way of holidays and time off, very little by way of other human interests or recreation or leisure activities and so on. There is something about the regime under which they worked was not a healthy one, humanly speaking. That's not meant to be an explanation or an excuse for child abuse, but I think it says something about the way the men were worked in those institutions. If you had someone who was already somewhat immature emotionally, psychosexually, then under such circumstances you might have the sort of sexual acting out that we see.[1526]

Brother Peter Clinch, Province Leader of the Oceania Province of the Christian Brothers Congregation, expressed the view that a contributing factor in historical abuse by Christian Brothers was that, 'We worked damned hard … And you became exhausted. And for those in the residential institutions, it was even more so, because they would have had supervision duties on top of that'.[1527]

The leader of the Institute of Sisters of Mercy Australia and Papua New Guinea, Sister Berneice Loch rsm, said of sexual abuse by sisters in religious institutes that 'it's almost true to say that most of those occurred or are alleged to have occurred in homes for children or boarding schools and where the work was very hard; the work was extremely difficult'.[1528]

As addressed above, we heard that social isolation has been linked to sexually abusive behaviour. We also heard that overwork in ministry contributed to the inability of priests and religious to build and maintain close friendships. Dr Leahy submitted to us that, 'As a busy priest, you could have difficulty just for lack of time in seeking support from those closest to you when you needed it'.[1529]

In their submission, the Truth, Justice and Healing Council drew a link between overwork and celibacy:

> If the particular personality of the celibate person is dysfunctional in some way, then that is where the problems arise. As stated above, whilst celibacy is not causative of sexual abuse, it can be lived in social conditions which heighten risks for that individual. If a priest chooses to be a loner, or overworks, or abuses alcohol or drugs, and does not establish good adult relationships and friendships, he is especially vulnerable.[1530]

We accept that submission, in so far as it identifies that there may be a heightened risk of sexual abuse associated with attempts to live a celibate life in combination with certain personal characteristics and social conditions. However, the social conditions in which clergy and religious live are rarely just a matter of personal choice. We also heard that clergy and religious can be overworked, isolated and limited in their ability to sustain relationships as a result of institutional conditions in their ministry.

While these conditions exist, and wherever priests and religious in working ministry are not adequately supported and supervised, the ability of individual priests and religious to live celibate lives without dysfunction is compromised, and the risk of child sexual abuse increases.

Historical practices of oversight, support and ongoing formation

It is evident to us that in the period considered by our case studies, the institutional environment and working and social conditions of Catholic priests and religious in ministry in Australia contributed to a risk of child sexual abuse. It is also evident that the structures and practices of accountability and support for priests and religious in ministry were inadequate to respond to that risk.

Dr Ranson told us that the idealisation of Catholic clergy associated with clericalism has carried with it:

> the presumption that the priest somehow lives a life distinct from the normal obligations and accountabilities of every other profession. And, clearly, one of the factors that has contributed to the situation with which we are faced is that historical idealisation that has removed the clergy from professional accountability in the way that every other profession has to undertake.[1531]

We agree with Dr Ranson's conclusion.

Management and oversight of clergy and religious in ministry

We consider here what we heard about policies and practices in relation to the management and oversight, support and ongoing formation of priests in the period from the 1950s to the 1990s. We address the lack of:

- adequate managerial oversight of clergy and religious in ministry
- institutional support in ministry, including support for celibacy
- ongoing formation.

We heard that regular professional oversight of priests and religious in ministry through formal management structures was uncommon.

As outlined above in Section 13.1, 'Structure and governance of the Catholic Church' parish priests are accountable only to the bishop of their diocese, otherwise operating independently in their parish.

Dr Ranson told us:

> the only real accountability that an ordained minister experienced was to one person, his bishop or his superior. The strength of that accountability, of course, has been entirely dependent on the strength of the relationship between the two persons involved, and the bishop or superior's own facility in calling others to account for their actions.[1532]

Survivors AYB and Ms Mary Adams told us in a submission that, 'as far as the supervision of Parish Priests, they were not accustomed to reporting to anyone other than the bishop. Hence accountability was non-existent'.[1533]

In the period considered by our case studies, the capacity of bishops to personally oversee the activities of clergy or religious was limited, particularly in large dioceses and provinces, or where parishes or religious communities under their authority were rural or isolated. We heard that, within dioceses, there were limited 'middle management' structures below the level of bishop to assist with oversight. This remains an issue of concern.

As outlined in Section 13.1, the diocesan curia is the central administrative apparatus that assists the bishop to govern the diocese. It comprises various individuals and bodies, including the vicar general and auxiliary bishops. Otherwise, we were told that within dioceses 'middle management' structures were and are inadequate and there are few dedicated positions or personnel to manage, supervise or support priests adequately and on a regular basis.

In *Case Study 35: Catholic Archdiocese of Melbourne (Catholic Archdiocese of Melbourne)*, we reported that the vicar general attended to general administration and management in the archdiocese and dealt with matters such as the management of clergy.[1534] We reported that one of the primary roles of the auxiliary bishop, or regional bishop, of the archdiocese was to provide pastoral support to priests of his region within the diocese.[1535]

In his evidence during that public hearing, the Archbishop of Melbourne and President of the Australian Catholic Bishops Conference, Archbishop Denis Hart, told us that it was not quite correct to describe auxiliary bishops as 'middle managers' in the archdiocese, as their role focused more on the archbishop's pastoral outreach to the people.[1536] He also said that it was a practice in the archdiocese, dating back to World War II, for priests to talk with the vicar general, as well as the auxiliary bishops, and that 'often the vicar-general gets to know things that might be happening, challenges that might be happening'.[1537]

We heard that, in practice, line management and oversight of diocesan priests in ministry were informal and provided by colleagues who lived and worked together by virtue of their parish appointments.

Father Bourke gave evidence that prior to the 1970s supervision of clergy was 'informal, non-structured and ad hoc from parish priests'.[1538] He said that, while some alternative practices of supervision emerged in the Catholic Church from the 1970s onwards, such as 'pastoral psychology, group work (and) clinical pastoral education', these were not 'normative'.[1539]

Dr Robinson has written that, prior to the development of national protocols on complaint handling in the Catholic Church in the mid-1990s, the responses of Catholic Church leaders to child sexual abuse were inconsistent.[1540] She attributed this, in part, to different levels of commitment to accountability:

> At this early stage, the quality of responses by Church leaders to complaints of sexual abuse and professional boundary violations was solely dependent on the commitment of individual Church leaders to practice accountability, justice, openness and due process. Consequently, complainants were subjected to something akin to a roulette type game of chance in obtaining an appropriate response from a Church leader.[1541]

It is apparent to us that, as the number of priests in the Catholic Church in Australia has declined, the kind of informal day-to-day support and supervision provided by colleagues will have decreased, as many priests live alone. On the other hand, we have also been told about priests and religious who lived in relatively large communities where there was still not adequate support or accountability.

In relation to particular religious institutes, we heard in our public hearings that, historically, formal supervision was relatively infrequent. In our *Christian Brothers* public hearing, we reported that supervision by the Christian Brothers provincial council of individual brothers living in religious communities in Western Australia between the 1920s and 1980s took the form of an annual visit by a council member for a number of days.[1542] The visitor would speak with and observe the brothers in the community and write a 'visitation report',[1543] which we found tended to be focused on the religious observance of each brother and not on the welfare of the children.[1544]

We were told that a lack of formal oversight of priests and religious in ministry contributed to the problem of child sexual abuse in the Catholic Church.

Father Bourke told us that oversight, ongoing formation and support for working priests and religious historically had 'not been provided and so inadvertently created a weaker environment for human, intellectual, professionally skilled and spiritual development and therefore deviant behavioural tendencies remained unchallenged and/or unrecognised'. When it was offered, he said it was 'poorly constructed, under resourced and not systematic', or else it was 'offered as a *soft option*', meaning that it was not mandatory and was open to non-compliance.[1545]

Professor Francis Moloney SDB AM, Senior Professorial Fellow at the Catholic Theological College, University of Divinity, Victoria, expressed the opinion that one factor which may have contributed to abuse by members of his order was 'insufficient supervision of their lives after ordination … We took it for granted that once people took this life on, they were going to do good things, not bad things, and that was a mistake'.[1546]

AYB and Mary Adams told us in a submission that a 'personality defect in some perpetrators was a contributing factor to the abuse. The failings of individuals were concealed by … no required standards or procedures and no personal supervision'.[1547] They wrote:

> Overindulgence and substance abuse which went unchecked was also a contributing factor. In isolated locations, such as orphanages, there was no supervision which led to an unsafe and an exploitable environment.[1548]

Dr Keenan has written of the clergy perpetrators she studied in the Irish Catholic Church, that in theory they were accountable to the bishops, who were accountable to the pope, but the reality was that 'accountability structures were loose and the men were largely both unsupervised and unsupported in the exercise of their duties'.[1549] She has written:

> This hierarchical model of one-way accountability had no checks and balances, and the men were free upon leaving the seminary to practice and minister unsupported and unsupervised in most cases. The lack of support and supervision was especially felt in the first 5 to 10 years of ministry, during which time many of the men first abused boys. The men rarely met their bishops or leaders for mentoring or advice as they learned to 'sink or swim' outside the protective structures of the seminary and their families, within a context of newfound power conferred on them at ordination and final profession.[1550]

Dr Thomas P Doyle OP, American Dominican priest, canon lawyer and survivor advocate, similarly expressed the view that even where in practice there has been 'accountability for priests who are answerable to their bishop or their major religious superior, in the matter of sexual abuse this level of accountability has traditionally been significantly ineffective'.[1551]

Inquiries into child sexual abuse in the Catholic Church overseas have also concluded that a lack of managerial oversight in ministry contributed to the occurrence of child sexual abuse.

In its discussion of factors specific to the Catholic Church which might lead to sexual abuse by priests and religious, the research report *Towards understanding: A study of factors specific to the Catholic Church which might lead to sexual abuse by priests and religious (Towards understanding),* commissioned by the Australian Catholic Bishops and the Australian Conference of Leaders of Religious Institutes, commented on the personal and professional accountability of priests and religious.[1552] The report identified two themes relating to supervision in ministry: the 'traditional individual nature of priestly ministry', and an 'almost complete lack of supervision of priests and religious', including a lack of appropriate supervision of perpetrators after instances of abuse were brought to the attention of Church authorities.[1553]

Towards understanding recognised the importance and value of supervision and accountability for all priests and religious, noting that:

> Many respondents claimed the failure to investigate complaints of sexual offences against children is the ultimate expression of lack of accountability on the part of the Church. Lack of supervision in ministry has to be another significant factor contributing to the occurrence of sexual offences against children and also to their continuance.[1554]

Towards understanding called for a review of accountability in ministry, stating that 'Some of the most notorious cases of clerical sexual abuse were perpetrated in situations where accountability was non-existent'.[1555]

The report of the Ferns inquiry in Ireland (Ferns report*)*, highlighted the absence of 'middle management' within the hierarchical structure of the Church. With regard to individual priests, the report noted that, while the parish priest has a 'duty of obedience to and respect for their Bishop', 'in the day to day running of his parish, a priest is not subject to either direct control or monitoring by his Bishop and this has been a crucial factor in the ability of certain priests to apparently continue sexually abusive behaviour undetected for many years'.[1556] The report commented further, that:

> it has been stated to the Inquiry that the practice of curates reporting directly to Bishops as occurs in the Diocese of Ferns has, in the past, left them feeling isolated, unsupported and unsupervised in a role for which many of them felt ill-prepared. Effectively, a Bishop only intervened when a complaint was made about a curate. Priests with free access to children and vulnerable adults operated under a structure with no supervisory provision.[1557]

In 2004 the National Review Board for the Protection of Children and Young People (National Review Board) reported on the causes and context of clergy sexual abuse in the Catholic Church in the United States, observing that bishops who have little contact with their priests will not have sufficient oversight of them to be able to detect and address problems with counselling or other assistance.[1558] It concluded that the combination of 'increased responsibility and decreased oversight' of priests once in ministry, 'increased the risk of sexual misconduct by priests'.[1559]

The report also commented that, 'The lack of oversight is particularly troubling' and that 'many diocesan priests live alone in isolated rectories with little sense of community or oversight' and 'This isolation in some instances may have afforded some priests the freedom to commit acts of abuse without detection'.[1560] The board recommended that bishops should 'meet frequently with their priests to monitor their morale and emotional well-being'.[1561] Given what we have heard about the calls on a diocesan bishop's time, this appears to be an implausible suggestion.

The 2011 John Jay College report concluded that priests in the United States 'have little supervision in their daily lives, and therefore have ample opportunity to commit deviant sexual behaviour'.[1562] It observed that, 'In most dioceses, pastors are not obliged to undergo regular assessment of any substance'.[1563]

Christian Brother Gerald Faulkner's report for the Leadership Conference of the Congregation of Christian Brothers in Rome in 1998, *An initial report on child sexual abuse*, commented that personal and ministerial accountability were important, as 'Closed and/or secretive systems are notoriously places of abuse'.[1564] The report stated that:

> Many of us are used to 'doing our own thing' within the parameters of our particular ministry; we are not generally comfortable with regular assessments of our effectiveness or with some form of professional supervision. I propose that forms of assessment and accountability be established for all ministries, and especially for those which are not 'team' ministries, or which have no systems of accountability to an agency or group … Lack of workable accountability structures is a factor common to many instances of abuse by church ministers. Proper structures in themselves will not necessarily prevent abuse, but they must be in place as one means of prevention.[1565]

It is evident that a lack of formal oversight of priests and religious in their ministry contributed to the risk of child sexual abuse in the Catholic Church in Australia by creating an institutional climate characterised by a lack of accountability, inadequate managerial oversight, and inadequate support processes. This climate made it possible for problematical behaviours to go unnoticed. To the extent that there is a continuing lack of formal managerial and oversight structures today, it is obvious that this risk remains and must be addressed.

Institutional support, including for celibacy

We were told that, between the 1950s and the 1990s, few structured mechanisms of support were available for priests and religious in ministry, including support to live healthy celibate lives. We heard that from the 1990s there were ad hoc improvements.

Father Bourke submitted to us that support for clergy prior to the 1970s was 'informal and largely from other clergy, non-systematic but somewhat evident'.[1566] He said that during this period:

> there was a large body of clergy and there were larger presbyteries, for example, and there were long almost apprenticeships of assistant priests, up to 14, 18 years in some diocese. So there was a degree of some sort of ad hoc, natural accompaniment. That was hit or miss. Sometimes it was marvellous. Other times it was disastrous.[1567]

Inquiries into child sexual abuse in the Catholic Church overseas have commented on the importance of appropriate support for people in religious and pastoral ministry. For example, the 1990 inquiry into clerical sexual abuse in the Archdiocese of Chicago concluded in the *Report to Joseph Cardinal Bernardin* (Bernardin report) that, 'From the moment of his ordination, every priest should be afforded the support and assistance he needs'.[1568]

The 2011 John Jay College report found that many Catholic priests who sexually abused children in the United States between 1950 and 2000 began abusing at times of increased job stress and social isolation.[1569] The report found that, 'Generally, few structures such as psychological and professional counselling were readily available to assist them with the difficulties they experienced'.[1570]

We address celibacy in Section 13.11.7. The Truth, Justice and Healing Council told us in a submission in relation to our *Institutional review of Catholic Church authorities* hearing that 'an individual's ability to live a balanced and mature celibate life, and to be supported in that endeavour, is critical'.[1571] We agree.

We received evidence that there was little or no institutional support for priests and religious in relation to living a celibate life once in ministry, and that no ongoing formation was provided as they aged. Former priest Dr Geraghty told us of his experience in the 1960s:

> Mondays was a clergy day off. You were always advised from seminary days to make sure you went to St Michael's to play golf, because celibacy was going to be a problem and this is how you were going to be able to cure it, by mixing with your fellow priests. Play tennis at Lewisham or golf at St Michael's, go out there and have a few drinks, play a few games of cards and catch up and kind of let your hair down.[1572]

We held a private hearing with Stephen Farrell, who was convicted of child sexual abuse offences committed while he was a Christian Brother in 1973 and 1974.[1573] Farrell told us of his experience with celibacy while a Christian Brother:

> I was sexually frustrated, I was. I was really – you know, I think nowadays, if you are inviting people to go into an order to take those sorts of vows, surely to goodness you would ask – you know, you would have some psychology or some sort of help for these people to make sure that they are able to fulfil those obligations. I was clearly sexually frustrated by the whole process.[1574]

In our *Institutional review of Catholic Church authorities* hearing, Dr Keenan told us that some clergy could adapt to celibacy.[1575] However, she concluded:

> other clergy neither achieved such psycho-sexual maturity nor had adequate relational support to live emotionally and sexually healthy lives. Clerics and former clerics have told me that many of their contemporaries drank or drink heavily to compensate, others gambled, others used their power 'to lord it over people,' and many engaged in physical relationships with 'consenting' adult[s] … these ways of coping to my mind continue.[1576]

In 2004, the National Review Board in the United States reported that few bishops addressed struggles with celibacy with their priests.[1577] It concluded that 'avoiding discussions of this topic contributed to an environment where a priest having difficulty with celibacy was more likely to find an unhealthy (and possibly criminal) outlet for his frustrations, thereby providing fuel for the current crisis, however unwittingly'.[1578]

We consider that a lack of formal institutional support of priests and religious in ministry, including for celibacy, contributed to the problem of child sexual abuse in the Catholic Church in Australia.

Ongoing formation

> In the past, once a priest was ordained, the attitude seemed to be, 'Well, I've made it now. I'm complete and I'm here. That's it.'[1579]
>
> **Dr Gerardine Robinson, clinical psychologist**

> Discipleship is the notion of never stop learning, and that is not part of our clerical mindset, sadly.[1580]
>
> **Father Michael Whelan SM, Marist Father and Director, Aquinas Academy, Sydney**

In most professions, continuing education and development is an accountability mechanism to help ensure that professionals comply with the current standards of their profession, as well as a means of ensuring that professionals are adequately trained for their work and have opportunities to establish peer support networks. We heard that, historically, there was little systematic ongoing formation, education or development generally available to priests and religious in ministry in the Catholic Church.[1581]

In Section 13.11.3, we discuss clericalism and its association with the belief in the permanent ontological change of a priest once they are ordained. During our *Institutional review of Catholic Church authorities* public hearing, Dr Whelan told us that 'deeply embedded in Roman Catholic clergy' is 'a cultural mindset that, having spent eight years in the seminary, you did not need any more training, you had it all'.[1582]

Father Bourke gave evidence that, prior to the 1970s, ongoing formation in the Catholic Church in Australia was limited to gatherings of priests held in the presence of the bishop, where the bishop would give talks and direction to the priests.[1583] From the mid-1970s to mid-1980s, some structured ongoing formation began to be provided at the diocesan level, focused on pastoral formation and parish administration, rather than personal formation and development.[1584] Dr Robinson told us that there is a lack of focus on personal development following ordination.[1585]

We heard that religious institutes may have been more progressive than dioceses in offering opportunities for ongoing formation. Father Thomas McDonough CP, Provincial Superior of the Congregation of the Passion, gave evidence in our *Institutional review of Catholic Church authorities* public hearing. Father McDonough was ordained in 1972, and he told us that after the Second Vatican Council (1962–1965) there was greater emphasis on ongoing development in religious institutes.[1586] He said there were opportunities for all members of religious congregations to pursue further studies in a broad range of areas, rather than just those in leadership.[1587] Nevertheless, he gave evidence that in religious institutes, until approximately the 1990s, 'ongoing formation was primarily left to the initiative of the individual'.[1588]

In Section 13.11.4, 'Organisational structure and governance', we conclude that leaders of Catholic Church authorities received little formation to prepare them for leadership. During our *Institutional review of Catholic Church authorities* hearing, Father Bourke told us that 'Bishops, priests and deacons have not received adequate ongoing formation, support and supervision for good governance and maintenance of professional standards', and that this may have contributed to poor institutional responses to child sexual abuse within the Catholic Church.[1589]

Changing policies in supervision, support and ongoing formation

Since the 1990s, a number of documents have been issued by the Holy See and by the Australian Catholic Bishops Conference (ACBC) and Catholic Religious Australia that are relevant to the supervision, support and ongoing formation of working priests and religious in the Catholic Church in Australia. Those documents include:

- Pope John Paul II's apostolic exhortation *Pastores dabo vobis* (1992)[1590]
- the *Ratio nationalis institutionis sacerdotalis: Programme for priestly formation Australia* (2007, 2014, 2015)[1591]
- *Integrity in ministry: A document of principles and standards for Catholic clergy and religious in Australia* (*Integrity in ministry*) (2004)[1592]
- *The gift of the priestly vocation* (2016).[1593]

Pastores dabo vobis and the *Ratio nationalis institutionis sacerdotalis: Programme for priestly formation Australia*

We heard that ongoing formation of Catholic clergy was not emphasised prior to the 1990s. In March 1992, Pope John Paul II issued an apostolic exhortation, *Pastores dabo vobes* ('I will give you shepherds'), on the initial and ongoing formation of priests in the Catholic Church.[1594] The document was issued following a 1990 synod of bishops in Rome on the subject of priestly formation.[1595]

We discuss the relevance of that document to initial formation in Section 13.11.8. Father Bourke gave evidence that *Pastores dabo vobis* marked a 'significant change' and 'fresh approach' to ongoing formation.[1596]

The importance of ongoing formation is emphasised in *Pastores dabo vobis* in the following statements:

- Ongoing formation 'is demanded by the priestly ministry seen in a general way and taken in common with other professions, that is, as a service directed to others. There is no profession, job or work which does not require constant updating if it is to remain current and effective'.[1597]
- The formation of priests and lifelong care for the 'constant updating of their pastoral commitment is considered by the Church one of the most demanding and important tasks for the future of the evangelization of humanity'.[1598]
- Initial formation and ongoing formation are 'closely linked' and 'as a result they should become one sole organic journey of Christian and priestly living'.[1599]
- 'Every life is a constant path toward maturity, a maturity which cannot be attained except by constant formation'.[1600]

The *Ratio nationalis institutionis sacerdotalis: Programme for priestly formation Australia* was first issued by the ACBC in 2007 and reissued in 2014 and 2015, on the approval of the Congregation for the Clergy of the Holy See.[1601] Using *Pastores dabo vobis* as a 'blueprint', this document sets out the program for formation in the Australian priesthood.[1602]

Nevertheless, the document devotes very limited attention to ongoing formation. It states that, 'As ongoing formation is a permanent feature of priestly life, seminarians should understand this feature and the young priest should receive materials to assist him enter into the life of the diocese'.[1603]

Integrity in ministry (2004)

As we address in Section 13.7, in 1999 the ACBC and Catholic Religious Australia released the first version of *Integrity in ministry: A document of principles and standards for Catholic clergy and religious in Australia (Integrity in ministry)*. A revised version was published in June 2004 and reissued in April 2010, as a code of conduct to apply to all clergy and religious.[1604]

Key aims of the document were to 'support clergy and religious in their efforts to care for themselves and one another', and to 'support religious and clergy in their efforts to be visibly accountable as witnesses and ministers of the Church's mission'.[1605] *Integrity in ministry* also makes statements of principle that clergy and religious must:

- respect physical and emotional boundaries in their relationships with adults and minors[1606]
- be conscious of the power and responsibility that they have in pastoral relationships[1607]
- not establish relationships through abuses of power.[1608]

The document also contains standards relevant to the supervision, support and ongoing formation of priests and religious:

- Bishops and leaders of religious institutes must support clergy and religious for whom they exercise pastoral care, including in providing opportunities for formation, development and renewal; structures that ensure adequate human support; and healthy and safe working and living conditions.[1609]
- Clergy and religious must keep abreast of literature in the area of pastoral care; participate in continuing education programs; undertake regular professional supervision with a competent supervisor or colleague; and establish processes to evaluate the quality of one's work, including assessment by peers and those they serve; implement guided self-appraisal; and implement the outcomes of those reflective and evaluative processes.[1610]
- Clergy and religious must develop and maintain the professional skills which their particular ministry or way of life requires, including regularly undertaking professional development and active membership of relevant professional associations.[1611]

We are of the view that, close to two decades since its publication, *Integrity in ministry* could be revised to make more inclusive reference to lay pastoral workers and other people working in religious and pastoral ministry, including volunteers. We address *Integrity in ministry* in further detail in Part E, 'Creating child safe religious institutions'.

The gift of the priestly vocation: Ratio fundamentalis institutionis sacerdotalis

In December 2016, the Vatican Congregation for the Clergy issued *The gift of the priestly vocation: Ratio fundamentalis institutionis sacerdotalis (The gift of the priestly vocation)* on the theme of priestly formation.[1612] Similarly to *Pastores dabo vobis, The gift of the priestly vocation* also emphasises the importance of ongoing formation as 'an indispensable requirement in the life of every priest and in his exercise of the priestly ministry',[1613] and of requiring 'care and attention' at each stage of formation.[1614] *The gift of the priestly vocation* suggests that tools of ongoing formation are fraternal meetings of priests, spiritual direction and confession, retreats, sharing a common table and a common life, and priestly associations.[1615]

Practices in oversight, support and ongoing training

Approaches to support and ongoing training of clergy and people in religious ministry

In comparison to what we learned of historical practices of oversight, support and ongoing formation of priests and religious in active ministry, *Pastores dabo vobes* and *Integrity in ministry* represent a significant and appropriate cultural shift within the Catholic Church in their emphasis on the importance of these principles and practices.

However, we heard that there is a gap between the intention and implementation of these documents. Dr David Leary OFM, Provincial Secretary, Order of Friars Minor (Franciscans) and lecturer at the Yarra Theological Union, University of Divinity, Victoria, told us with regard to formation that 'There is agreement on principles that reflect a new way of seeing formation but change is slow and practices don't appear to match the aspirations'.[1616]

While we received evidence from Catholic Church authorities that they apply *Integrity in ministry*,[1617] it appears that the provisions outlined in *Integrity in ministry* have not been fully implemented in practice. As indicated above, the document requires that priests and religious undertake continuing education, professional development, regular professional supervision, and appraisal. However, the Truth, Justice and Healing Council made a submission to the Royal Commission, that:

> it is important for all priests and religious to participate in ongoing formation, continuous professional development and be provided with ready access to appropriate support and supervision throughout their time in ministry. This is not presently as readily available, or utilised, as it should be.
>
> In 1992 the ACBC established the Australian Council for Clergy Life and Ministry to enhance the ongoing formation and education of priests and to ensure their ongoing support and care. To date, however, on-going education and formation programs for priests and religious have been ad hoc at best. Anecdotally such programs have been taken up more concertedly by religious institutes, and overwhelmingly by female rather than male religious.
>
> At the diocesan level, for example through the Ministry for Priests program in the Archdiocese of Melbourne, various support initiatives and on-going education seminars are offered to priests. However, while bishops and religious leaders increasingly make known their expectation that priests and religious should attend various clergy days and other in-service programs, particularly in relation to current child protection and safeguarding practices, for the most part continuing formation and support of priests and religious is conducted on a voluntary, opt-in basis. There is a lack of a formal requirement for priests and religious to engage in ongoing education and professional supervision in the manner that other professions such as lawyers, accountants and doctors require of their members.[1618]

In its 2014 Activity Report, the Council observed that 'There is a lack of relevant professional development for priests and other religious including ongoing assessment, accreditation and oversight'.[1619]

We received evidence, consistent with that statement, in our *Institutional review of Catholic Church authorities* hearing that, overall, improvements in the areas of supervision, support and ongoing formation have been ad hoc.[1620] We heard, for example, that standards of ongoing formation and professional standards education are not consistent or readily available within Catholic Church authorities.[1621] Father Bourke also gave evidence that, for clergy, 'the drawback is that ongoing formation, the participation in support structures, and supervision of ministry is not mandatory'.[1622]

Some Catholic Church authorities have made periodic performance appraisal mandatory or are in the process of doing so – for example, the Missionaries of the Sacred Heart,[1623] the Congregation of the Passion,[1624] and the Archdiocese of Sydney.[1625] A voluntary performance appraisal system for clergy has also been developed by the ACBC.[1626] However, Father Bourke told us that in the Archdiocese of Melbourne approximately 20 of 200 priests undertook an appraisal over a five-year period.[1627]

Similarly, efforts have been made to introduce practices of professional/pastoral supervision for clergy and religious. Father McDonough told us that, in his experience, nearly all of those in leadership positions in female religious orders are undertaking both group supervision and personal supervision.[1628] Sister Loch gave evidence that 'fairly consistently' all members of her religious institute undertake some form of personal professional supervision.[1629] Father Bourke told us that the Archdiocese of Melbourne had established a voluntary peer supervision program, run by a professional accredited supervisor, which is used by approximately 15 or 18 priests out of a cohort of 200.[1630] Sister Crotty told us about her experience of offering pastoral supervision to priests in the Diocese of Bathurst on a voluntary basis, where only two priests of the diocese took up the offer.[1631]

Father Bourke told us that, in 2017, a more structured program of ongoing formation is available to clergy, through the establishment of the Office for Clergy Life and Ministry, including conferences and speakers as well as sabbatical and long-service programs.[1632]

Nevertheless, Father Bourke told us that, typically, ongoing formation activities are invitational and that there is a 'degree of non-compliance' by the majority of clergy.[1633] Dr Ranson told us that, 'We do provide the occasional seminar and conference, as I say, that seeks to assist professional development', but 'As it is, we ordain people and send them out into ministry and then basically rely very heavily on their own personal responsibility to engage in their professional development'.[1634]

We heard about programs of support for clergy which are available through the Clergy Life and Ministry office in some archdioceses and dioceses.[1635] For example, Father Bourke told us that there is a mentoring program in the Archdiocese of Melbourne for priests experiencing difficulties, under which they might be referred to a psychologist or twinned with an older priest who would meet with them regularly to work through issues and difficulties.[1636]

Nevertheless, it is apparent to us that there remain significant gaps in the supervision, support and ongoing formation practices for priests and religious in pastoral ministry. We discuss proposals for improvement in these areas below.

Oversight of clergy and people in religious ministry

We heard that little has changed in the oversight and management of clergy and people in religious ministry. We heard that priests in particular remain accountable to the bishop alone, and are subject to limited supervision.

Professor Patrick Parkinson AM, a professor of law at the University of Sydney, submitted that 'Below the level of the bishops, there is a lack of structure in the field to maintain the accountability of priests, who are only genuinely accountable to senior clergy'.[1637] Dr Doyle submitted similarly that 'Priests have a high degree of discretion in their behaviour and a very low degree of supervision and actual accountability'.[1638]

Catholics for Renewal submitted that there is a 'lack of adequate supervision of priests who often carry considerable responsibility and authority with limited oversight or direction'.[1639] Mr Peter Johnstone OAM, the President of Catholics for Renewal, told us that, while there have been moves towards parish accountability through the establishment of pastoral councils, 'priests run their parishes the way they want to run them'.[1640]

In our *Institutional review of Catholic Church authorities* public hearing, Archbishop Coleridge told us that, as a bishop, his relationship with a priest is not akin to an employer/employee relationship and that parish priests have a quality of independence.[1641] He explained that, while diocesan priests make a promise of obedience and respect to their bishop, 'the living out of that promise is a very mixed experience. Not everyone understands obedience or respect in the same way'.[1642]

Archbishop Coleridge also gave evidence that, 'As Archbishop, I am not in a position under canon law to supervise Parish Priests'.[1643] When questioned about his evidence, Archbishop Coleridge told us, 'I supervise them, but, again, it's a question of what kind of supervision I'm able to provide. I can't perform the kind of supervision that perhaps … a professional supervisor, would provide'.[1644] He told us his ability to supervise and submit priests to professional review was dependent on the 'willing cooperation' of individual priests.[1645]

During his evidence, Archbishop Coleridge had an exchange with the Chair about his role as bishop in the oversight of the priests in his diocese. The exchange concerned the question of whether, in managing and supervising clergy, it would be appropriate for the Archbishop to make inquiries into the sexual behaviour or personal functioning of his priests:

> THE CHAIR: That's one mechanism by which the Church could come to understand and manage these issues, wouldn't you think?
>
> ARCHBISHOP COLERIDGE: That is certainly possible. But I have no right to go to a priest who is not an employee of mine and say, 'Excuse me, are you in a sexual relationship?' See, at that point I intrude into what's called the internal forum and I have no right, as the bishop, to do that. And the priest would have every right to say, 'It's no business of yours.'
>
> Well, in some ways, of course, it is my business, but it's a delicate matter entering in to that point of a priest's life. I have no right to ask those questions or, if I do, to expect an answer.
>
> THE CHAIR: Archbishop, some would say that that statement of yours there reflects a significant part of the problem in the way the Church is structured and managed. Do you understand why they would say that?
>
> ARCHBISHOP COLERIDGE: But again I can't possess my own clergy. The relationship between a bishop and a priest, or between a bishop and any other human being, is a very delicate one. There are certain things that I am not entitled to know.
>
> …
>
> THE CHAIR: … many that we've looked at, of abusing priests are people who, in many cases, are not functioning well in other ways. You understand that?
>
> ARCHBISHOP COLERIDGE: I absolutely understand that.
>
> THE CHAIR: So when you find a problem with the way someone is functioning, the question maybe should be asked, what is their personal life really all about?
>
> ARCHBISHOP COLERIDGE: That is something that would pertain to someone providing professional supervision or spiritual direction rather than something that would pertain to the bishop.
>
> THE CHAIR: Well, again, those outside the Church might say that reflects a management failure in the Church's structure. You understand that?
>
> ARCHBISHOP COLERIDGE: Yes. I don't agree with it and I think it misunderstands what management structures in the Church, and particularly between a bishop and his priests, really in fact are about.[1646]

Archbishop Coleridge further stated that if his priests want to open their hearts to him at that point in their life, 'that's terrific', but that his 'difficulty is in taking the initiative and calling a priest to account at that point. If it emerges publicly, of course, I deal with it. But a lot of this does not emerge publicly'.[1647]

We understand that the relationship between a bishop and priest in the Catholic Church has a special significance. Nevertheless, we do not agree with Archbishop Coleridge that the bishop has no responsibility to take the initiative by 'calling a priest to account' before a matter emerges publicly.

Archbishop Coleridge's evidence to us suggests that the accountability of priests continues to depend, as Dr Ranson told us it has historically, 'on the strength of the relationship between the two persons involved, and the bishop or superior's own facility in calling others to account for their actions'.[1648]

We heard that while Catholic Church officials such as vicars general and auxiliary bishops play some role in assisting with the oversight of priests, this remains informal.

In our *Institutional review of Catholic Church authorities* public hearing, Archbishop Coleridge told us that in the Archdiocese of Brisbane a vicar general and auxiliary bishops who have oversight of parish priests provided a form of accountability.[1649] He agreed, however, that the structures he described are very informal and rely heavily on individual personalities and capacities.[1650]

During the same public hearing, Archbishop Fisher told us that he personally, along with his assistant bishops and other officials such as the vicar general and the vicar for clergy, provide regular oversight and support to clergy.[1651] He told us that he has introduced 'several layers of middle management', so that he is not the only person involved in the day-to-day supervision of each priest in his archdiocese.[1652] Archbishop Fisher also told us that 'clergy are not employees, and are not under the immediate direction or day-to-day supervision of their superiors',[1653] and that performance reviews of priests remain informal and irregular.[1654] In our view, in the best managed organisations, even volunteers are subject to supervisory processes.

Archbishop Hart told us that, at the time of the *Catholic Archdiocese of Melbourne* public hearing, there was an expectation in the archdiocese that auxiliary bishops would involve themselves and know how the priests in their area were faring,[1655] and that they 'would need to know, would need to keep in touch with what was happening with particular priests'.[1656] He described this role as informal.[1657] In our *Institutional review of Catholic Church authorities* public hearing, Archbishop Hart said that a program of professionally conducted supervision of clergy by accredited supervisors had commenced in the archdiocese in 2000, but that participation remained voluntary.[1658]

The Archbishop of Adelaide, Archbishop Philip Wilson, told us that he has ultimate responsibility for the supervision and oversight of clergy in the Archdiocese of Adelaide. He said that, due to the geographically large area of the archdiocese, he relies on the assistance of other staff, particularly the vicar general and senior staff.[1659] In his written evidence to us, Archbishop Wilson identified pastoral associates and the vicar for religious as playing important supervisory roles.[1660] However, when questioned, he agreed that neither pastoral associates nor the vicar for religious perform the role of supervision or oversight of clergy.[1661]

Archbishop Wilson told us that in the Archdiocese of Adelaide:

> Day-to-day supervision and oversight comes mainly through the office of the vicar general, who is responsible for all of those matters. Also, in the diocese, we have a series of – the diocese is divided into deaneries, and each dean is given the responsibility for caring for the priests who are in that particular region. But we don't have any formal supervisory and evaluation processes. This is something that the vicar general and I and the council of priests have been talking about for some time. We think it is a lack, and we need to do something about it.[1662]

During our *Institutional review of Catholic Church authorities* public hearing, Archbishops Hart, Wilson, Fisher and Coleridge, as well as Archbishop Timothy Costelloe SDB, the Archbishop of Perth, shared their views on whether there are canonical or other impediments to the introduction of further formal structures of oversight and supervision in their archdioceses.

Archbishop Costelloe submitted that there were 'no formal structures for regular performance review or for day-to-day supervision or oversight' in the Archdiocese of Perth.[1663] When asked if he considered there to be any impediment to having such structures in place, he said that he did not think there were any canonical impediments but that there may be a cultural impediment, because such structures are 'not a part of the culture of the archdiocese'. He told us that he imagined there would be some resistance to such structures being put in place,[1664] but he accepted the need for professionalisation of clergy, including performance appraisal, performance review and supervision. Archbishop Costelloe recognised the relationship between such professionalisation and the prevention of further abuse in the future.[1665]

Archbishop Fisher also identified a need for a change of culture in the Archdiocese of Sydney to provide for structured and regular performance reviews.[1666] Similarly, Archbishop Hart told us that he thought there would be challenges involved with the introduction of supervision and regular performance reviews of clergy in the Archdiocese of Melbourne, but he said this did not deter him from wanting to take this step.[1667]

Archbishop Wilson told us that he did not see any impediments to introducing formal supervisory and evaluation processes for clergy. He said that he did not doubt he had the power to require his priests to undergo regular performance reviews, adding:

> I think when you look at the Code of Canon Law, the responsibility given to the bishop in the Code about the supervision of pastoral life gives the bishop plenty of authority and power to actually create standards and to supervise those standards.[1668]

When asked if he saw any impediments to regular oversight and supervision of his priests, including regular performance reviews, Archbishop Coleridge said:

> Only the kinds of impediments that other archbishops have described. It does represent a significant shift in culture. One of the things in the past that has in some ways been a strength, I think, of the diocesan clergy, the parish priests, is the kind of independence that they have been conceded; in other words, Big Brother hasn't been breathing down their neck … So there is nothing that I can see other than cultural impediments.[1669]

Archbishop Coleridge also said he thought there may be a challenge, in that supervision of a priest 'isn't just supervision of professional performance … it is also, in some sense, supervision of a whole life'.[1670]

We note that professional/pastoral supervision is a separate and different process from performance appraisals. We consider that both forms of oversight and support are necessary.

Archbishop Coleridge submitted in written evidence that a program of supervision of parish priests would be contrary to canon law, but he acknowledged during the *Institutional review of Catholic Church authorities* public hearing that this was a formulation he 'would or should revise'.[1671]

Archbishop Coleridge agreed in evidence that it is obvious following the work of the Royal Commission that 'more systematic and more structured forms of supervision and accountability' of priests are needed.[1672] We agree.

Consistent with our recommendations to all religious institutions, we recommend that the Australian Catholic Bishops Conference should ensure that all people in religious or pastoral ministry, including religious leaders, are subject to effective management and oversight and undertake annual performance appraisals (Recommendation 16.44).

Ongoing formation, including professional ethical training and support for celibacy

> In speaking from my situation as a provincial, I think one of my prime responsibilities is to ensure that the religious for whom I am responsible have the appropriate education, formation and compliance as required for them to effectively be ministers to people.[1673]
>
> **Father Thomas McDonough CP, Provincial Superior, Congregation of the Passion**

The importance of ongoing formation as a lifelong experience is recognised in both *Pastores dabo vobis and The gift of the priestly vocation*. The necessity of regular ongoing professional education and development is recognised in *Integrity in ministry.*

Continuing professional education is an important means of accountability in ensuring professionals are up to date with the standards of behaviour required of them and with best practice in their field. Dr Leary, who was formerly a counsellor, gave evidence that continuing education also assists individuals in caring professions to avoid burnout and supports them by ensuring that they are adequately trained to undertake their work and to maintain a healthy work/life balance.[1674]

We note that, in addition to its developmental aspects, ongoing formation and professional education provides priests and religious who may otherwise live and work alone an opportunity for social interaction with and support from their colleagues. The 2011 John Jay College report recommended that 'Providing more opportunities for the development of administrative and financial planning skills and more time to participate in priest support groups would decrease the likelihood of isolation and stress'.[1675] As addressed above, we heard that isolation and stress may have contributed to the problem of child sexual abuse in Catholic Church institutions.

Witnesses in our *Institutional review of Catholic Church authorities* public hearing broadly agreed that regular ongoing formation, professional development and education should be mandatory for those in active ministry in the Catholic Church in Australia. For example, Professor Ormerod told us that, 'Evidence of ongoing education should be a requirement for the granting of faculties in a diocese. Other churches require such education as an annual criterion for ongoing ministry'.[1676] Provincial of the Hospitaller Order of St John of God, Oceania Province Brother Timothy Graham, said that there 'needs to be [a] coherent and national' approach where, to work in their profession, certain standards need to be reached each year.[1677] The Provincial of the Salesians of Don Bosco, Australia Pacific Province, Father Gregory Chambers SDB, agreed.[1678] Dr Ranson said that he would recommend a shorter initial formation process for clergy and religious, in favour of more systematic processes of ongoing formation.[1679]

We heard that a lack of training in pastoral and ethical accountability and the proper exercise of power in ministry may have contributed to the occurrence of child sexual abuse by priests and religious.[1680] As theological ethicist James Keenan has written, other professions require their members to undertake ethical training as a means to hold themselves professionally accountable.[1681] Professor Ormerod suggested that mandatory training for seminaries in the professional ethics of ministry might include case studies of abuse and its consequences, as well as of the Catholic Church's handling of such cases.[1682]

A number of witnesses in our *Institutional review of Catholic Church authorities* hearing told us that ongoing training in professional or ministerial ethics in the Catholic Church, including in relation to issues of power and its misuse in pastoral relationships, should be mandatory.[1683] Dr Robinson also gave evidence that training in relation to professional boundaries is necessary for clergy to successfully navigate the dual professional/personal relationships required of them in ministry.[1684] Further, we heard that ministers in the Uniting Church and Baptist Church must undergo regular professional development in ethics to engage in pastoral ministry.[1685] The Catholic Church in Australia should consider adopting a similar requirement.

In our view, the Catholic Church should ensure that all people in active religious and pastoral ministry should undertake mandatory regular and structured ongoing professional development, of which a part must be training in relation to professional and/or ministerial ethics, including in relation to professional boundaries and child sexual abuse.

In developing programs of ongoing professional development for people in active ministry, it will be particularly important for the Catholic Church to look to what professional development (including the number of compulsory hours and units) is required in caring professions such as psychology and counselling.

In relation to the ongoing formation, education and development of priests and religious in active ministry, we are persuaded that priests and religious need not only to undertake professional development targeted to their needs, but also to undertake professional development together with lay people as a means of reducing the likelihood of clerical silos developing.[1686]

We also heard that it is necessary for priests and religious to be supported to live healthy and balanced celibate lives.[1687] However, it is apparent to us that ongoing institutional support for celibacy in ministry in the Catholic Church in Australia has been poor. The evidence was that struggles with celibacy may have contributed to child sexual abuse by priests and religious.[1688] We consider it necessary that in the Catholic Church in Australia all clergy and religious receive regular ongoing formation and support in relation to celibacy that is appropriate for their stage of life.

We note that in Chapter 20, 'Making religious institutions child safe', we also recommend that each religious institution should require that all its people in religious or pastoral ministry, including religious leaders, should undertake regular training on the institution's child safe policies and procedures. They should also be provided with opportunities for external training on best practice approaches to child safety (see Recommendation 16.47).

Performance appraisal

In most professions, regular performance appraisals serve as a mechanism of personal professional development as well as oversight, as the opinions of colleagues and clients (for example) are sought on an individual's performance.

We considered whether performance appraisals should be introduced as a means of accountability in the Catholic Church in Australia for those in ministry. The 2011 John Jay College report recommended that:

> Dioceses should institute periodic evaluation of the performance of their priests, an established element of most complex organizations. By regularly surveying priests, administrative staff, and parishioners about their responses to, and satisfaction with, the priests with whom they have contact, dioceses are more likely to be alerted to questionable behavior that might have been undetected in the past. By sending a clear signal to all members of a parish community that their responses to individual priests are valuable, diocesan leaders open avenues of communication and gain early notice of problems.[1689]

In our *Institutional review of Catholic Church authorities* hearing, we were also told by a number of witnesses that performance appraisals should be introduced for those in religious and pastoral ministry in the Catholic Church.[1690] Father Bourke told us that he would be in favour of making appraisals mandatory,[1691] and that appraisal 'could well flag anger, alcoholism and other behaviours that we would recognise as red flags' in identifying the risk of child sexual abuse occurring. He said that a professionally trained facilitator would likely be able to pick up those issues.[1692]

Father McDonough told us that he thought appraisals would 'have made a difference' and 'will make a difference' in assisting members of religious congregations with their personal wellbeing and ministry and in identifying signs of distress and distorted thinking.[1693]

Archbishop Fisher told us in February 2017 that in the Archdiocese of Sydney, the 'group of Sydney bishops has just recently agreed that just as we are going to be asking our clergy to have regular appraisal, we will also go through that process of external people commenting on our performance'.[1694] In our view, it is important that bishops and religious superiors are subject to the same support and accountability processes as priests, religious and others in religious and pastoral ministry.

In Chapter 20, we recommend that each religious institution should ensure that all people in religious or pastoral ministry, including religious leaders, undertake annual performance appraisals (see Recommendation 16.44).

In relation to Catholic Church personnel who are engaged in religious or pastoral ministry, this should include bishops, provincials, clergy, religious, and lay personnel. Those appraisals should include feedback from a broad range of sources, including lay people. We consider that a regular performance appraisal would be conducted, as in other professions, annually.

Professional/pastoral supervision

We were told that caring professions such as psychology and counselling use the reflective practice of professional/pastoral supervision as a constructive means of supporting practitioners to better their practice.[1695] Sister Crotty told us that, 'It's an education process. It's about giving you affirmation as well as stretching you in the way that you are actually doing your ministry with people'.[1696] Dr Leary told us about his experience of professional supervision in counselling, in which he had one-to-one supervision in addition to a weekly peer review process with his colleagues:

> So you build up a culture over time of accountability but also support. As time goes on and if those experiences are positive, the vision of the experience is less about accountability and more about support.[1697]

We were told that professional/pastoral supervision also ameliorates the risk of abuse by assisting caring professionals to maintain healthy boundaries in their relationships with clients.[1698] Dr Robinson gave evidence that professional supervision is an essential means of navigating interpersonal and dual relationships in ministry, and of ensuring that clergy are conscious of their internal workings.[1699] Dr Ranson has written similarly. Describing engagement in professional/pastoral supervision as a 'test of priestly professionalism', he has written:

> Supervision, distinct from spiritual direction, is the process by which an individual priest is helped to differentiate what belongs to the personal and what pertains to the public in any given pastoral situation. It aims to endow both the personal and the public dimensions of life with integrity and accountability.[1700]

Sister Crotty told us that where an issue arises in supervision which might require, for example, counselling or therapy, professional/pastoral supervisors are also trained to refer professionals to expert services.[1701]

Integrity in ministry requires that priests and religious in pastoral ministry undertake regular professional supervision. It is apparent that in practice this does not occur,[1702] although we heard from the leaders of religious institutes in our *Institutional review of Catholic Church authorities* hearing that they each have regular professional/pastoral supervision.[1703]

We heard from witnesses and received submissions that regular professional/pastoral

supervision should be implemented as an ongoing requirement of exercising pastoral ministry in the Catholic Church.[1704] Sister Crotty, a founder of the professional/pastoral supervision association Transforming Practices and a trained professional/pastoral supervisor, also told us that the Uniting Church in Australia has introduced mandatory professional supervision for those in ministry.[1705]

Sister Crotty said that a professional/pastoral supervisor has to be trained, registered and recognised as such within an association for the supervision to be appropriate.[1706] Organisational psychologist Dr Michelle Mulvihill, Managing Director and Principal Consultant of Corpsych Australia, agreed that supervision should be conducted by well-trained, professionally registered supervisors.[1707]

Father Bourke gave evidence that, 'I think one of the steps going forward is to have professionally trained supervisors', and 'it's probably best from outside the Church, or certainly with a degree of independence'.[1708] Father Bourke told us that he could see why a priest receiving supervision with another priest would be insufficient, because 'we can see that the depth of expertise required is far greater'.[1709] Dr Whelan told us that in religious community life it can be problematic to speak openly, even if lovingly and caringly, about how the faults of a fellow religious are manifesting.[1710]

In Chapter 20 we recommend that each religious institution should ensure that all people in religious or pastoral ministry, including religious leaders, have professional supervision with a trained professional or pastoral supervisor who has a degree of independence from the institution within which the person is in ministry (see Recommendation 16.45).

In relation to the Catholic Church, this should involve regular reflection on and review of ministry, including the professional, vocational, pastoral, ethical, cultural, personal and self-care dimensions of life and ministry. This should be separate from any spiritual or clinical counselling.

Ensuring implementation of and compliance with ongoing formation, performance appraisal and professional/pastoral supervision

Many of the mechanisms that we recommend should be introduced are already required by *Integrity in ministry.* However, we heard that they have not been fully implemented by dioceses and religious institutes, for example the requirement that priests and people in pastoral ministry have ongoing professional pastoral supervision.[1711]

The Truth, Justice and Healing Council submitted to us that, as of 2017, 'Moves are afoot to structure formation and support programs within agreed national frameworks for priests and religious', and that, 'Standards need to be established that direct the level of on-going formation clergy and religious are provided throughout the course of their active service life'.[1712] We agree that such structure and support programs need to become a reality and that national standards are also needed. Those standards should also address performance appraisal and professional/pastoral supervision.

In our view, as noted above, the creation of national standards in relation to ongoing formation, performance appraisal and professional/pastoral supervision, and the auditing of their implementation, will be an essential step to ensure that dioceses and religious institutes implement best practice in these areas. In particular, such programs will be important measures in tackling the culture of clericalism through the introduction of a culture of accountability.

In Section 13.11.4, we discuss practices in the oversight and training of staff in Catholic community services. Where the tasks undertaken by clergy or religious are similar to those undertaken in Catholic community services by lay people, those practices may provide a positive model for the oversight and ongoing training of clergy and religious.

In relation to those standards, we received evidence that where professional development, appraisals or professional/pastoral supervision are offered to priests and religious on a voluntary basis, few attend.[1713] It is obvious that participation in ongoing formation, including professional ethical training, performance appraisal and professional/pastoral supervision should be made mandatory for those in active religious and pastoral ministry.

A number of witnesses from the Catholic Church told the Royal Commission that they supported a system where accreditation to undertake pastoral ministry is tied to participation in ongoing formation, professional/pastoral supervision, and regular performance appraisal.[1714] They pointed to analogous caring professions, such as psychology and counselling, in which such a system is compulsory.[1715] In our view, although we make no specific recommendation to this effect, this is something the Catholic Church in Australia will need to consider in its development of national standards in these areas.

In any event, the standards created should provide that dioceses and religious institutes must implement a system to monitor the compliance of persons in religious ministry, with requirements that they undertake professional development, professional/pastoral supervision and performance appraisal.

We heard that some religious institutes and dioceses have elderly religious members and priests who no longer participate in active religious or pastoral ministry.[1716] We do not consider that these recommendations should apply to them.

Recommendation 16.25

The Australian Catholic Bishops Conference and Catholic Religious Australia should develop and each diocese and religious institute should implement mandatory national standards to ensure that all people in religious or pastoral ministry (bishops, provincials, clergy, religious, and lay personnel):

a. undertake mandatory, regular professional development, compulsory components being professional responsibility and boundaries, ethics in ministry, and child safety
b. undertake mandatory professional/pastoral supervision
c. undergo regular performance appraisals.

Priests and religious from overseas

We heard that, as the numbers of priests and members of religious institutes decline in Australia, the Catholic Church in Australia is taking large numbers of clergy from overseas to minister in parishes here.[1717]

Ordained priests and professed religious from overseas may have a different cultural understanding of the rights of children and the problem of child sexual abuse from that prevalent in Australia today. For example, Father McDonough said candidates for religious life and priests from overseas sometimes have no culture of awareness of the risk of child sexual abuse.[1718] Dr Ranson said that priests and religious from overseas may also have a different 'consciousness in respect to professional boundaries'.[1719]

Overseas priests and religious may not have had training in their initial formation and ministry in relation to child protection and the prevention of child sexual abuse. They may also need special support in undertaking their ministry away from their country of origin and their family and friendship networks. As discussed above, we heard that psychological distress, social isolation, and loneliness of priests and religious in ministry may have contributed to child sexual abuse occurring.

The increased number of overseas priests coming into Australia also carries the danger that some are being 'recycled' from their previous dioceses.

We were told that in the Catholic Church in Australia the induction, ongoing formation and support of overseas priests and religious is ad hoc and even 'weak'.[1720] Dr Ranson said that the Catholic Church nationally has not sought to address the issue sufficiently.[1721] Bishop Anthony Randazzo, an auxiliary bishop of the Archdiocese of Sydney and former rector of Holy Spirit Seminary, Queensland, agreed that overseas priests must be given a more thorough program of ongoing formation.[1722]

The Catholic Church in Australia should develop targeted programs for the induction and ongoing support of clergy and religious from overseas, which should address child sexual abuse and professional ethics.

In Chapter 20, we consider issues arising in relation to religious organisations recruiting employees from overseas, including candidates for and people in religious and pastoral ministry. In that chapter, we recommend that religious institutions which receive people from overseas to work in religious or pastoral ministry, or otherwise within their institutions, should have targeted programs for the screening, initial training and professional supervision and development of those people. We further recommend that these programs should include material covering professional responsibility and boundaries, ethics in ministry, and child safety (see Recommendation 16.46).

Conclusions about oversight, support and ongoing training of people in ministry

> The point I'm trying to make is that services benefit from a wide range and comprehensive sense of being held both accountable and supported in order that their work, their ministry and their professionalism, grows and is enhanced. At the end of the day, that's for the benefit of people who are most vulnerable and most at risk, and it's not just young people, but it's vulnerable adults as well.[1723]
>
> **Dr David Leary OFM, Provincial Secretary, Order of Friars Minor (Franciscans) and Lecturer, Yarra Theological Union, University of Divinity, Victoria**

We are satisfied that inadequate accountability and support of priests and religious in their working ministry has contributed to the historical problem of child sexual abuse in the Catholic Church in Australia. It is apparent that Catholic clergy and religious have received inadequate training in relation to professional responsibility, the maintenance of healthy boundaries, and ministerial and professional ethics. Processes for the management and oversight of clergy and religious in their working ministry have been poor. Bishops and religious superiors have limited capacity to personally oversee the activities of clergy or religious, and especially within dioceses, 'middle management' structures have been inadequate.

This suggests that the absence of a clear managerial structure is a significant contributory factor in the Catholic Church's poor response to child sexual abuse. Clearly a diocesan bishop cannot effectively supervise all of his priests. There needs to be a more complex managerial structure.

We heard that there has been a view, particularly on the part of some Catholic clergy, that following ordination they do not need ongoing training. We also heard that although the Catholic Church in Australia has developed a code of conduct for clergy and religious which includes standards in relation to professional development, professional supervision, and appraisal, most clergy do not fully comply with ongoing formation activities.

Improved and updated policies and practices in the oversight, support and ongoing training of all people in religious and pastoral ministry in the Catholic Church are essential to reducing the risk of child sexual abuse in Catholic institutions and ensuring better institutional responses to abuse.

We also consider that the introduction of mechanisms of accountability to the ministry of priests and religious is essential to reducing the problem of clericalism in the Catholic Church in Australia, which we address in Section 13.11.3. The hallmark of clericalism is a lack of accountability.

We recommend measures that will ensure greater accountability in the exercise of religious and pastoral ministry within the Catholic Church in Australia. Specifically, we recommend mandatory national standards to ensure that all people in religious and pastoral ministry in the Catholic Church undertake professional development, one-on-one professional/pastoral supervision, and regular performance appraisals. These are measures that we are satisfied will contribute to child safety within Catholic Church institutions.

We acknowledge that in order to be successful such programs will need to be supported by bishops and religious superiors, and that they will need to be all-inclusive (that is, there should not be anyone involved in active ministry who is not engaged in some form of professional pastoral consultation or supervision as a part of the necessary accountability processes that should operate in the Catholic Church after the Royal Commission). These programs will also need to be carefully designed so that clergy, religious and those in pastoral ministry are gradually introduced and trained into a new way of thinking about ministerial accountability. Above all, it will be important that participation in pastoral supervision is not seen as a sign of weakness or inadequacy in the life of a priest or religious, but as a sign of healthy professional functioning and growth.

Finally, we recommend that there should be targeted programs for the screening, induction and professional support and supervision of priests and religious recruited from overseas.

13.11.10 The sacrament of reconciliation

> For the Christian community, there is a long history of forgiveness given too easily. When abuse came to light, it was treated as a sexual sin, so that, if the man repented, he was forgiven and restored to his position or moved to another parish, where all too often he promptly offended again.
>
> This attitude harmed the victim because it denied the effects of abuse, harmed the Christian community because it led to further abuse, and harmed the offender because it did nothing to help him to break out of his cycle of offences. It failed to realise that sexual abuse is more than a sexual sin, it is a pathological condition.[1724]
>
> **Bishop Geoffrey Robinson, retired Auxiliary Bishop, Archdiocese of Sydney**

We consider the sacrament of reconciliation in this section, because, as will be set out below, we heard evidence in our public hearings that both victims and perpetrators have made disclosures about child sexual abuse in the context of religious confession, and that some children have been abused during confession. As discussed in Part C of this volume, we also heard from survivors in private sessions about experiencing sexual abuse as children in the confessional; about ways in which religious confession was used by perpetrators to manipulate and control their victims; and about survivors who disclosed sexual abuse during confession as children and were dismissed, blamed for the abuse or punished. We also heard evidence that children continue to participate in the sacrament of reconciliation in Catholic parishes and schools.

What is the sacrament of reconciliation?

Confession, penance, forgiveness, and reconciliation are different names for the sacrament by which Christians believe the sins they have committed are forgiven through God's mercy and they are reconciled with God and the rest of the believing community.[1725]

'Confession' is the popular name for this sacrament. However, the Truth, Justice and Healing Council (the Council) told us that the Catholic Church refers to it as the sacrament of reconciliation (and/or the sacrament of penance), as confession is only one element of the sacrament.[1726] The Council explained that 'the celebration of the sacrament of reconciliation is a religious ritual which for the believer both symbolises and effects an experience of God's grace, here the grace of forgiveness'.[1727]

The Catholic Church recognises seven sacraments: baptism, confirmation, eucharist, penance, anointing of the sick, holy orders, and matrimony.[1728] A number of other Christian churches have a rite of religious confession, including the Anglican, Orthodox and Lutheran churches.[1729] The approach of the Anglican Church to religious confession is discussed in Section 12.6, 'Contributing factors in the Anglican Church'.

American Dominican priest, canon lawyer and survivor advocate Dr Thomas P Doyle OP gave evidence in *Case Study 50: Institutional review of Catholic Church authorities (Institutional review of Catholic Church authorities)* that:

> The life of the Catholic Church is built around a *sacramental system* … A sacrament is a ceremony or ritual that results in an invisible expression of Divine Power for the recipient. The seven sacraments of the Catholic Church all are related to key moments of life such as birth, death, advancement to adulthood, propagation, leadership and forgiveness. The Church teaches that the sacraments are necessary for salvation. They are also a necessary part of membership and participation in the Church community.[1730]

The sacrament of reconciliation is made up of four elements: three actions on the part of the penitent (the person confessing), and the final action carried out by the priest (who is often referred to as the confessor). These are:[1731]

- contrition: sorrow for one's sin and the resolution not to sin again
- confession: the (oral) disclosure to the confessor of one's sin
- satisfaction (also called penance): acts imposed by the confessor on the penitent to 'repair the harm' and 'make amends' for the sin, which may include 'prayer, an offering, works of mercy, service of neighbour, or voluntary self-denial'
- absolution: the confessor pronounces God's forgiveness of the penitent's sin.

The power to forgive sins in God's name is one that is conferred at ordination and therefore belongs exclusively to bishops and priests.[1732] Irish psychologist and researcher Dr Marie Keenan gave evidence that she considers that it is one of the powers that sets priests apart from lay people in the Catholic Church, and is part of a theology of priesthood that has contributed to a culture of clericalism.[1733] We discuss the culture of clericalism in Section 13.11.3.

The Council told us that the actions of the penitent and the priest-confessor (in granting absolution) together constitute the sacramental event. The Council told us that:

> a genuine desire for forgiveness and an intention to amend one's life are essential to the integrity of the sacrament and a prerequisite for the priest's words of 'absolution' and with the appointing of a suitable 'penance' – which should include restitution for any injustice that has been done (which, in turn, might require surrendering oneself to the police).[1734]

Bishop Terence Curtin, Auxiliary Bishop of the Archdiocese of Melbourne and Chair of the Australian Catholic Bishops Conference Commission for Doctrine and Morals, told us that absolution:

> would be withheld where in the priest-confessor's judgement something is lacking in any one of the first three essential parts of the sacrament, namely a lack of sorrow for sin, a refusal to admit what has been done, and no evidence of a change of heart with the resolve to amend the harm caused.[1735]

However, the Council emphasised that in the sacrament of reconciliation, 'the penitent is effectively speaking to God', and it is God and not the priest who is forgiving sin.[1736]

The Council told us that there are three different rites of reconciliation that may be used, and the priest can choose which rite will be offered.[1737] The three rites are:

- The rite for reconciliation of individual penitents (the first rite) – it is celebrated by an individual in the presence of the priest, usually in a reconciliation room (previously called a 'confessional'), where the person may choose to sit facing the priest or to sit behind a screen and remain anonymous.
- The rite for reconciliation of several penitents with individual confession and absolution (the second rite) – celebrated in a communal setting, it starts with the community 'listening to the word of God'. During the 'examination of conscience, the assembly reflects together on where and how they have fallen short of their baptismal commitment to follow Christ'. It then includes individual confession and absolution with the priest. However, the Council stated that 'The individual confession and absolution that follows is communal too in that the penitents approach the confessors in full view of all present. The priests stand at appropriate points around the worship space in such a way that penitents can be seen but not heard by others'.
- The rite for reconciliation of several penitents with general confession and absolution (the third rite) – it 'follows the same pattern as the Second Rite, but does not include individual confession and reconciliation. Instead, there is a communal prayer of confession and general absolution'.[1738]

The Council stated that the first and second rites are usually used in the school context, and that most dioceses note that the second rite 'best meets the needs and abilities of the young child'.[1739]

Canon law provides that: 'Individual and integral confession and absolution constitute the only ordinary means by which a member of the faithful conscious of grave sin is reconciled with God and the Church'.[1740] For this reason, in 1999 the Holy See's Congregation for Divine Worship and the Discipline of the Sacraments issued a document on the administration of the sacrament of reconciliation which made clear that the third rite, which provides for general absolution without individual confession, was of an 'altogether exceptional character' and could not be used except in two circumstances which involved either 'imminent danger of death' or 'grave necessity'.[1741] According to the Council, the third rite 'is restricted to emergencies and other special circumstances'.[1742]

As we noted in our *Criminal justice* report, we heard evidence that the practice of attending religious confession has declined in the Catholic Church in Australia.[1743] For example, Professor Francis Moloney SDB AM, Senior Professorial Fellow at the Catholic Theological College, University of Divinity, Victoria, told us that confession is an institution 'that has all but disappeared from the life of the Australian Catholic Church. In my past 20 years as a priest, I may have heard about 10 confessions'.[1744]

However, it is apparent that religious confession continues to be used by Australian Catholics.[1745] The Council told us that children continue to participate in the sacrament of reconciliation in Catholic parishes and schools.[1746]

Previous work regarding religious confession

We discussed the practice of religious confession (with a particular focus on the Catholic sacrament of reconciliation) in our *Criminal justice* report.[1747] The context for that discussion was consideration of whether there should be an exemption or privilege from a legal obligation under a 'failure to report' offence relating to the reporting of information regarding child sexual abuse, for persons who received the information during religious confession.

In that report, we considered the evidence we received of disclosures of child sexual abuse in religious confessions. We then analysed the arguments for and against exempting or privileging communications of child sexual abuse made in religious confessions that had been put to us in consultations and public hearings.[1748] We concluded that the arguments in support of exempting these communications were insufficient to outweigh the risk to children if an exemption from the 'failure to report' offence were granted.[1749]

We concluded that, where the elements of the reporting obligation under our recommended 'failure to report' offence were met, there should be no exemption, excuse, protection or privilege from the offence granted to clergy for failing to report information disclosed in or in connection with a religious confession (see Recommendation 35).[1750]

In Volume 7, *Improving institutional responding and reporting*, we include a similar discussion in relation to exemptions from laws requiring mandatory reporting to child protection authorities. We conclude and recommend that there also should be no exemption from laws concerning mandatory reporting to child protection authorities for people in religious ministry who have knowledge or suspicions formed, in whole or in part, on the basis of information disclosed in, or in connection with, a religious confession (see Recommendation 7.4).

In this section we discuss to what extent the practice of the sacrament of reconciliation may have contributed to both the occurrence of child sexual abuse in the Catholic Church and the Catholic Church's inadequate response to this abuse.

Disclosures of child sexual abuse during confession

As we noted in our *Criminal justice* report, we received submissions to the effect that perpetrators of child sexual abuse are unlikely to attend confession.[1751] We also heard evidence from clergy that they had never heard a confession in which a penitent confessed that they had sexually abused a child, or in which a child disclosed that they had been sexually abused.[1752]

However, as we noted in that report, we received evidence during a number of case studies that victims had disclosed child sexual abuse to Catholic priests during confession.[1753] For example:

- In *Case Study 11: Congregation of Christian Brothers in Western Australia response to child sexual abuse at Castledare Junior Orphanage, St Vincent's Orphanage Clontarf, St Mary's Agricultural School Tardun and Bindoon Farm School*, a survivor gave evidence that as a child he told two priests in confession of the sexual abuse he was subjected to by a religious brother, and that one of those priests subsequently told the man who abused him.[1754]
- In *Case Study 26: The response of the Sisters of Mercy, the Catholic Diocese of Rockhampton and the Queensland Government to allegations of child sexual abuse at St Joseph's Orphanage, Neerkol*, a survivor gave evidence that as a child she told a priest, who had been regularly sexually abusing her, in confession of the sexual abuse she was subjected to by another priest, and that her confessor said the other priest 'was a bad man'. She gave evidence that her confessor continued to sexually abuse her.[1755]
- In *Case Study 28: Catholic Church authorities in Ballarat (Catholic Church authorities in Ballarat)*, a survivor gave evidence that as a child he told a priest during confession of the abuse he was subjected to by a religious brother, and that the priest responded, 'That didn't happen'.[1756]

In Chapter 11, 'Disclosure of child sexual abuse in religious institutions', we outline cases we heard about from survivors who disclosed sexual abuse in confession and were dismissed, blamed for the abuse, or punished for disclosing.

We also heard that perpetrators have disclosed that they sexually abused children during confession. For example, in *Case Study 35: Catholic Archdiocese of Melbourne*, a priest gave evidence that a priest (who was later convicted) came to him and 'went into the confessional mode', and the confessor priest 'felt totally entrapped by that situation'.[1757]

We also received evidence from two psychologists who have worked with clergy perpetrators of child sexual abuse, Dr Keenan and Dr Gerardine Robinson, clinical psychologist and former Clinical Director of Encompass Australasia. Eight of the nine clergy who were the subject of Dr Keenan's study of Irish Catholic Church clergy offenders disclosed their acts of child sexual abuse in religious confession.[1758] Based on her research, Dr Keenan found that:

> The anonymity and confidentiality of the confessional became an important avenue for disclosure of sexual and emotional distress and ultimately for disclosure of sexual offending.[1759]

Dr Robinson is a psychologist who treated 60 to 70 Catholic clergy perpetrators of child sexual abuse, as well as clergy who had committed sexual offences against adults, at Encompass Australasia. She said she thought that the proportion of clerical perpetrators she had seen who had disclosed sexual abuse of children in religious confession 'probably would be substantial'.[1760] She said that she had 'most definitely' seen the pattern that Dr Keenan described, particularly in older clergy, where 'an offender would offend against a child victim, go to confession and feel absolved, and do exactly the same thing again'.[1761]

During our *Institutional review of Catholic Church authorities* hearing, Jesuit priest and Chief Executive Officer of Catholic Social Services Australia, Father Frank Brennan SJ AO, gave evidence about a woman who had contacted him and told him that her father, who had been a serial abuser, 'regarded himself as Catholic and went to confession regularly and went to priests who very readily forgave him'.[1762]

Operation of the confessional seal

To understand why a priest-confessor to whom a disclosure of child sexual abuse was made in confession would not report that information to a superior in the Catholic Church or to the civil authorities, it is necessary to understand the 'seal of confession'. The seal of confession is the obligation of a confessor not to reveal what a penitent tells them during confession.[1763] This obligation is absolutely binding and, if directly breached by a confessor, even in the face of a civil obligation to disclose information learned in confession, would attract a penalty of automatic excommunication which can only be lifted by the pope.[1764]

The Council told us that the exchange between the penitent and confessor, 'under the seal', is sometimes referred to as belonging to the 'internal forum', which is contrasted with the 'public, external forum'.[1765]

The 1983 Code of Canon Law states that the sacramental seal is 'inviolable', and therefore the confessor is 'prohibited completely from using knowledge acquired in confession to the detriment of the penitent even when any danger of revelation is excluded'.[1766] Bishop Curtin gave evidence that this obligation:

> comes from the nature of the sacrament. The seal assures the penitent of absolute secrecy and so encourages the penitent in telling his/her sins. The priest-confessor is not free to share with another what has been confessed by the penitent. Direct violation of the seal incurs immediate excommunication of the confessor and forgiveness of this penalty is reserved to the Holy See.[1767]

The Council told us that the seal of confession is so fundamental to Catholics because of the belief that during confession the penitent 'is effectively speaking to God', and so disclosure of the content of a confession would amount to 'disclosure of the inner thoughts of a person, their private communication with God'.[1768]

We provide a brief overview of the history of the inviolability of the confessional seal in the Catholic Church in the *Criminal justice* report.[1769] Key points include:

- According to New Zealand priest and sacramental theologian Dr Joseph Grayland, in the early Christian Church, penance and absolution for serious sin was a public ritual involving the church community, not a private ritual.[1770]
- Historians note that the practice of private, secret confession was spread by Irish monks in the 6th century, but it may have earlier origins.[1771]
- Bertrand Kurtscheid, in his history of the sacramental seal, suggested that a decree of Pope Leo I in 459 AD represents 'the first papal decretal safeguarding the secret of confession'.[1772]
- In 1215, the Fourth Lateran Council decreed that all Catholics who had 'reached the years of discretion' were required to confess their sins to a priest at least once a year on pain of excommunication,[1773] and also that any priest breaking the sacramental seal in any way was liable to be laicised and imprisoned for life.[1774]
- Kurtscheid referred to theological opinions in early modern France that it was permitted to break the seal in relation to information regarding plots against the king or the state, and gave several examples where the seal was broken for these reasons.[1775]

Dr Keenan has argued that the application of the seal of confession may have contributed to the failure of leaders in the Catholic Church to respond appropriately to child sexual abuse. In her study of Irish Catholic Church clergy offenders, Dr Keenan concluded that:

> within the walls of confession, the problem of sexual abuse of children was contained … no pathway existed for this important information of abuse by clergy, which was emerging in the confessional, to flow back into the system, to alert the Church hierarchy to a growing problem. The fact that the problem was individualised at the level of the confessional is an important feature of abuse by clergy.[1776]

In 2010 Archbishop Mark Coleridge, then archbishop of Canberra and Goulburn, noted, in a public letter titled 'Seeing the faces, hearing the voices: A Pentecost letter on sexual abuse of the young in the Catholic Church' ('Seeing the Faces'), that the culture of the Catholic Church 'favours a certain discretion', which in the case of confession 'becomes an absolute confidentiality'.[1777] He noted that this culture 'play[ed] its part' in contributing to the problem of child sexual abuse, as 'this culture of discretion turned dark when it was used to conceal crime and to protect the reputation of the Church'.[1778]

Dr Grayland has also written that the secrecy aspect of the sacrament of confession may have contributed to the development of a broader culture of secrecy within the Catholic Church in relation to its governance practices.[1779]

We discuss the culture of secrecy in the Catholic Church further in Section 13.11.3.

Understanding child sexual abuse as a sin or moral failure

> The theology and practice of the reconciliation is oriented towards actions as sinful, not criminal. The theological view of sin is that sin can be forgiven through the process of confession, absolution and penance. There is no theology of crime.[1780]
>
> **Dr Joseph Grayland, New Zealand priest and sacramental theologian**

We heard that the theology of sin and forgiveness underpinning the sacrament of reconciliation contributed to a broader culture within the Catholic Church in relation to how Catholic Church personnel responded to what was characterised as the 'sin' of child sexual abuse.

Dr Grayland has written that the current liturgical practice of the sacrament of reconciliation plays a crucial role in how Catholics understand sin, reconciliation and restitution, and therefore 'contributes to the overall shape of our response to issues of grave public sin, especially when that sin is committed by a minister, religious or church employee'.[1781]

Dr Michael Whelan SM, Marist Father and Director, Aquinas Academy, Sydney, gave evidence that sin is seen as the 'failure' of the 'struggle of will power against one's emotional life and any conflicts there'.[1782] Dr Whelan stated that 'if the failure is in the area of sexuality, it is [regarded as] a "mortal sin"'.[1783] He told us that:

> As a consequence, many 'failures' that we would today understand as psychopathologies or manifestations of serious inner conflicts, were seen as moral problems and the way to deal with a moral problem is to get the individual to exercise better self-mastery and the way to achieve that is through prayer and reflection. Typically, rather than dealing with the problem, this exacerbated it.[1784]

A number of witnesses gave evidence that, historically, Catholic bishops and priests viewed engaging in child sexual abuse as a moral failing (that is, a sin) rather than a crime, with the result that they considered that an appropriate remedy was confession and the resolution not to sin again.[1785]

This is consistent with the findings in previous reports. In the 2011 report produced by John Jay College, *The causes and context of sexual abuse of minors by Catholic priests in the United States, 1950–2010* (the 2011 John Jay College report), the authors noted that the findings of their research into bishops' management of sexual abuse allegations mirrored those of researcher Barbara Balboni, 10 years earlier, namely, 'the act of abuse was perceived as a sin, and the appropriate response was confession and prayer'.[1786]

In 1997 the Royal Commission into the New South Wales Police Service stated in its final report that, 'Sexual abuse has often been regarded by Churches as a problem of "moral failure" rather than a criminal offence, calling for help rather than punishment'.[1787] It commented that, 'Spiritualising the problem is dangerous because it involves the assumption that once confessed and subjected to counselling, the problem has been resolved'.[1788]

Retired judge of the District Court of New South Wales, former priest, and seminary lecturer Dr Christopher Geraghty told us in a submission that, historically, the Catholic Church 'has tended to extend exponentially the number and categories of sins, especially mortal sins …' while at the same time promoting the practice of frequent confession.[1789] Dr Geraghty said the effect of this has been that:

> the Church has tended to trivialize the religious experience of guilt and forgiveness, mixing eating meat on Fridays and missing Sunday Mass with treason, murder and paedophilia, and cancelling all with a sacramental wave of the hand … Easy to sin mortally, easy to confess secretly, and easy to be forgiven often. Not a very good pastoral practice in the long term.[1790]

Archbishop Coleridge wrote in his pastoral letter 'Seeing the Faces' of the Catholic Church's 'culture of forgiveness which tends to view things in terms of sin and forgiveness rather than crime and punishment'. He stated that:

> in the case of clerical abuse of the young, we are dealing with crime, and the Church has struggled to find the point of convergence between sin and forgiveness on the one hand and crime and punishment on the other. True, sin must be forgiven, but so too must crime be punished. Both mercy and justice must run their course, and do so in a way that converges. This relates to larger questions of how the Church sees her relationship with society more generally. We are 'in the world but not of it': but what precisely does that mean in the here and now? There is also the large question of the relationship between divine and human judgement. The Church insists that it is to God, not to human beings, that final judgement belongs. Yet how does that fit with the need for human judgement when we move within the logic of crime and punishment? We have been slow and clumsy, even at times culpable, in shaping our answer to such questions.[1791]

Archbishop Coleridge gave evidence during our *Institutional review of Catholic Church authorities* hearing that, while the Catholic Church's culture of forgiveness was (otherwise) one of 'our greatest strengths', in the area of child sexual abuse it 'became negligent in the extreme'.[1792]

Archbishop Coleridge told us that the weaknesses of the Catholic Church's theology and culture of forgiveness were apparent when it came to repeated behaviour that is the product of compulsion:

> As a confessor, I have often been in a situation where I'm faced with someone who confesses sin, which is the fruit of compulsion. Now, I don't withhold forgiveness by saying to the person, 'Well, until you have broken free of your compulsion, I can't help you'.
>
> The fact is that according to the teaching and practice of the Church, grounded biblically, the mercy of God is offered again and again and again, 70 times 7. But this is perhaps an understanding and practice that has failed to understand fully the power of compulsion.[1793]

The Catholic Church's culture of forgiveness is also linked to an emphasis in canon law on taking a 'pastoral approach' to clergy and religious who are alleged to have committed child sexual abuse, which we consider in Section 13.11.6, 'Canon Law'. This pastoral approach saw bishops and religious superiors giving priests and religious ministry assignments that would afford them access to children, when allegations of child sexual abuse had been made against them and even where the perpetrator had admitted child sexual abuse, as we discuss in Section 13.5, 'Catholic Church responses to alleged perpetrators before the development of national procedures'.

Bishop Geoffrey Robinson, retired Auxiliary Bishop of the Archdiocese of Sydney, identified in his book *Confronting power and sex in the Catholic Church: Reclaiming the spirit of Jesus* the way in which the Catholic Church's theology and culture of forgiveness may have inappropriately influenced bishops' responses to clergy perpetrators of child sexual abuse. He wrote:

> When the question of a new assignment is raised within the Catholic Church, an appeal is often made to the essential Christian virtues of forgiveness and compassion. Forgiveness and a new assignment to ministry, however, are two quite different things, to be judged by quite different criteria.[1794]

Bishop Robinson stated that 'A new assignment is far from being the only form of forgiveness and is not essential to forgiveness. A person can be forgiven by God and the community for past wrong, even repeatedly, but not given a new assignment because of the danger this would pose to innocent potential victims'.[1795] He concluded that the theology of sin and forgiveness underpinned the Catholic Church's response to child sexual abuse, in that:

> this confusion between forgiveness and reinstatement to ministry was caused in part by seeing the offence as primarily a sexual sin against God, to be responded to according to the normal rules governing all sexual sins.[1796]

Granting absolution for child sexual abuse

As we discussed in the *Criminal justice* report, Dr Keenan has argued that the availability of God's forgiveness through the sacrament of reconciliation, with the guarantee that nothing admitted during confession would be disclosed, was an important factor in understanding clergy offending, and particularly reoffending.[1797] Dr Keenan found that the confessional acted as 'a secret conversational space, not only of forgiveness but also of "externalising" the issues "in safety"'.[1798]

One of Dr Keenan's subjects stated that:

> After each abusive occurrence I felt full of guilt and at the earliest opportunity I sought to confess and receive absolution … it effected a degree of relief and a feeling of a new beginning. There was always a resolution that it would not occur again – and yet experience should have told me that that was an unrealistic purpose of amendment given my awareness of my inclinations and that opportunity was frequently presented … There were times of guilt, shame, and fear that I would get caught but I used confession to clean the slate … it seemed to ease my conscience that I was truly making an effort to change and to stop.[1799]

Dr Keenan concluded that:

> Receiving confession played a role in easing the men's consciences in coping with the moral dilemmas following episodes of abusing, and it provided a site of respite from guilt. For some of the men, it also helped them think they were making an effort to change.[1800]

Dr Keenan noted that:

> God was always available in confession … It is notable that only one confessor on one occasion, among the many times that the men disclosed their abusive behaviour in confession, pointed out the criminal nature of the sexual abuse.[1801]

Dr Keenan concluded that, given the way the men had 'used the secrecy and safety of the confessional space to resolve the issues of guilt', the 'very process of confession itself might therefore be seen as having enabled the abuse to continue'.[1802]

In our *Institutional review of Catholic Church authorities* hearing, Dr Robinson was asked whether, in her clinical experience, she had encountered the phenomenon described by Dr Keenan – that is, that the act of religious confession was an important aspect of clergy child sex offenders continuing to offend because they felt a degree of absolution. Dr Robinson gave evidence that this was the case 'most definitely, particularly in older clergy, not so much now, in younger clergy'.[1803] Dr Robinson had 'seen that pattern, that an offender would offend against a child victim, go to confession and feel absolved, and do exactly the same thing again'.[1804]

Dr Keenan's and Dr Robinson's evidence is consistent with the account given by Father Brennan of a woman whose father was a serial abuser. Father Brennan gave evidence that she had told him that her father went to confession regularly and 'went to priests who very readily forgave him, with what we might call very cheap grace', and that her father 'somehow felt vindicated in that and then went on to further abuse children in that family'.[1805]

The 2011 John Jay College report also provides some support for Dr Keenan's conclusion. The authors of that report found that:

> One way in which the abusive priests rationalized their behavior was by calling upon their relationship with God, particularly through the process of reconciliation. The priests may have already been absolved, as sinners who participate in the sacrament of reconciliation can be, and therefore the slate would have been wiped clean of sin.[1806]

Conversely, the Council told us that 'there is no basis for the view that the seal of confession has contributed in any way to the occurrence of child sexual abuse'.[1807] The Council stated that:

> Confession is not a licence for a child sex abuser to continue to abuse children. In confession … a penitent must be truly penitent to obtain the forgiveness of sins by God offered by the sacrament … The penitent must also have the definite intention not to sin again in order to gain forgiveness through the sacrament … all the Catholic versions of the sacrament of confession include the requirement that the person confessing forsake the sin and make reparation.[1808]

The Council stated that:

> In the case of the sin of child sexual abuse which is also a crime, if the penitent had confessed to that sin there are few priests who would not include the strongest of encouragement to the penitent to go to the police as a part of the reparation process … Priests hearing confession are not required or expected to be silent sponges. On the contrary. Where a penitent has committed sins which have injured another confession is not enough, satisfaction is required. As the Catechism states: 'Many sins wrong our neighbour. One must do what is possible in order to repair the harm'. [1809]

However, what is notable from the above accounts of priests disclosing their sexual abuse of children during confession is that generally there appears to have been no mention during the sacrament of withholding absolution unless or until the penitent reported to the police, or the imposition of any penance that involved any other acts to provide restitution to the victims.

Only one of Dr Keenan's subjects stated that, on one occasion, he attended confession and the confessor said to him, 'you know what you are doing is not alone morally wrong, but it is a criminal act'.[1810] He stated that:

> In all the times I have confessed to abusing a minor I can remember only one occasion when I got reprimanded or advice not to do this thing. In a strange way the sacramental confession let us off the hook rather lightly and allowed us to minimise what was really happening … Not confronted adequately we experienced only a short duration of guilt and no sense of responsibility for how we hurt others, only the alleviation of our own guilt and shame.[1811]

The failure of priest-confessors to confront penitents who confessed to child sexual abuse with the criminal nature of their actions, and the need to make amends with the victim, may be partly explained by what Dr Grayland has described as the 'critically underdeveloped theology of sacramental restitution' underpinning the Catholic Church's present rites of reconciliation.[1812]

Dr Grayland has written that, in the early Christian Church, penance and absolution for serious sin was a public ritual involving the church community, rather than a private ritual, and it 'addressed the effects of the sin'.[1813] However, over time, 'the centrality of confessing sins, which had not been the central element of the ancient rites, evolved into a *quasi* act of penance in itself'.[1814] Dr Grayland (quoting historian of the sacrament of reconciliation Antonio Santantoni) stated that 'confession was [then] "no longer the means by which the confessor-judge discerned the just punishment; rather confession itself was the punishment for sin and the correct reparation for guilt"'.[1815] He argued that 'private confession became a convenient way of ridding oneself of grave public sin privately without incurring just public reparation', and absolution became 'a ritualised declaration of quasi-innocence that removed any further obligation from the penitent'.[1816]

Dr Grayland has suggested that the strong emphasis on the private and 'utterly secret' nature of the rite of confession, and of the role of the confessor in providing 'quasi-automatic' absolution, has contributed to 'the loss of the distinction between public serious sin and private sin' in the Catholic Church, and 'the demise of public forgiveness of public sins and public restoration of the penitent'.[1817] He has written that the sacrament tends to emphasise the view that the sinner is 'privately indebted to God … while on the other hand there is an almost total lack of being indebted to the one sinned against'.[1818] He has pointed to an 'overemphasis on God as the '"sole" victim of sin', and noted that the 'almost exclusive reliance on obtaining God's forgiveness tends to leave the human victim out of the equation, reduces the restitution of the "lack of order" the sin has created in the church to a secondary consideration and forgets entirely any sense of restitution owed to society in general'.[1819]

Dr Whelan made a similar point to us, stating that the Catholic Church's understanding of sin:

> was legalistic, focused on act rather than person, an offense that could be dealt with in confession because it was largely about our relationship with God. There was too little emphasis on the social dimensions of sin and the damage done – eg the hurt done to another person – and too little understanding of what was actually going on in and with the person. As a result, sacramental absolution could hide some profound human needs and destructive behaviours.[1820]

Dr Grayland gave evidence that the need for restitution and to address the cause of the sinful behaviour can be part of the sacrament of reconciliation:

> in a much more substantial form of the sacrament where time is taken and the liturgical rite is used not as a ritual but as a way of investigating the salvation needed by that person or the experience of grace that they need … I think what you have to do is both educate the Catholic populace for that and, probably equally importantly, educate the seminarians for it as well.[1821]

Child sexual abuse committed during confession

In Chapter 3, 'Child sexual abuse in the global Catholic Church: early history and previous inquiries', we discuss the evidence regarding the history in the worldwide Catholic Church of complaints being made and concerns being raised about sexual abuse and solicitation occurring during confession. We note that serious concerns have been raised for centuries. As addressed in Chapter 3, numerous papal documents condemning solicitation in confession and outlining disciplinary measures were issued between the 16th and the 20th centuries, the confessional box was introduced in the 16th century as a barrier to solicitation and sexual abuse in confession, and the Inquisition investigated and tried cases of solicitation for over 250 years.[1822] However, in 1910, Pope Pius X lowered the age for children to make their first confession to seven years.[1823]

In Chapter 8, 'Common contexts where child sexual abuse occurred in religious institutions', we discuss what survivors told us about experiencing sexual abuse as children in the confessional at their Catholic Church, or in some cases while participating in confession in other locations.

In Chapter 9, 'Characteristics of child sexual abuse specific to religious institutions', we discuss the ways in which religious confession was sometimes used by perpetrators to manipulate and control their victims – both in making them feel responsible for the abuse and in preventing them from disclosing it.

Earlier in this section we considered the different forms (or rites) of reconciliation used by the Christian Church. A number of authors have noted that private confession was not the practice in the early Catholic Church.[1824] Political and educational philosopher and former priest Dr Michael Leahy told us in a submission that 'the form of the sacrament of Penance has always been a matter of contingent pastoral practice and not of doctrine'.[1825]

The 1983 Code of Canon Law provides that the 'proper place to hear sacramental confessions is a church or oratory'.[1826] It also requires that confessionals are to be 'in an open place' and have a 'fixed grate between the penitent and the confessor'.[1827] It stipulates that confessions 'are not to be heard outside a confessional without a just cause'.[1828]

However, the Council told us that the practice now varies across the Catholic Church in terms of the physical environment in which the sacrament of reconciliation takes place, especially in relation to children.[1829]

We discuss the evidence we received from the Council and Catholic Church authorities about the current policies and practices regarding children's participation in the sacrament of reconciliation, and our recommendation to ensure child safety during the sacrament that it should only be conducted in an open space within the clear line of sight of another adult, in Chapter 20, 'Making religious institutions child safe'. In that chapter we note that the Catholic Church in Australia has no specific national policy on how the sacrament should be conducted for children, however, some general guidance is provided in the code of conduct protocol *Integrity in ministry: A document of principles and standards for Catholic clergy and religious in Australia*, and some dioceses have developed their own policies.

Confessors' responses when child sexual abuse is disclosed during confession

Given that Catholics, including children, continue to participate in the sacrament of reconciliation, it is important that there be clarity around how a priest-confessor should respond if a person in confession discloses that they are either the victim or the perpetrator of child sexual abuse.

If a child discloses during confession that he or she has been abused

During our *Institutional review of Catholic Church authorities* hearing, we asked the Council, several individual witnesses, and each of the metropolitan Catholic archbishops whether, in the event that a child discloses during confession that he or she has been the victim of sexual abuse, the priest hearing the confession could and should report that disclosure to civil authorities. The various responses we received revealed a significant level of confusion and disagreement about whether the disclosure of abuse by a victim is covered by the seal of confession

The Council stated in its submission that if a child 'entered a confessional with no intention of confessing sins but merely to seek counselling or advice from the priest', this counselling would not fall under the seal of confession. The priest should then 'counsel the child to notify the required civil authority', and could 'offer to accompany the child to make that report, or even offer to do this on the child's behalf'.[1830]

However, the Council stated that if, during the course of a sacramental confession, a person discloses that they have suffered abuse:

> The priest is unable to disclose this information due to the seal of the sacrament. All he can do is to urge the penitent to go to the police or to someone who can help them, such as a parent or teacher, or arrange to discuss the matter outside of the confession. It is also important to note that the penitent might not be telling the truth, so that in any case, the priest ought not to act on this information.[1831]

The Council stated that the same approach should be followed if, during confession, a person provides information that a third person has been the victim or perpetrator of child sexual abuse.[1832]

The belief behind the Council's position is that 'the priest/confessor may under no circumstances divulge information learned under the seal of the sacrament'.[1833] Therefore, the only appropriate course of action if a victim, including a child, discloses abuse is:

> the penitent should be urged to bring this information into the external forum, e.g. by arranging to speak about it outside the sacrament. At the meeting in the external forum following on the sacrament of confession the penitent must outline the matter before the confessor can engage in discussion. To do otherwise is to infringe the sacramental seal. For this reason, it is better the person is encouraged to speak with someone else, other than the priest, in order to preserve the integrity of the seal of confession.[1834]

However, other witnesses gave evidence that they had a different understanding of how the seal of confession applies in this circumstance.

Father Brennan gave evidence that if a child in confession says they have been violated, the child is not confessing a sin but rather is providing information. His view was that the seal of confession does not operate to prevent disclosure of that information.[1835] Bishop Curtin agreed with this interpretation of the application of the seal, and with Father Brennan's position.[1836] Canon lawyer and priest Professor Ian Waters also gave evidence that, in the case of a child disclosing during confession that he or she had been sexually abused, he would 'have no problem myself going and bringing that to the public authorities', because 'the seal applies only to the sins of the penitent'.[1837] Sacramental theologian Dr Frank O'Loughlin gave evidence that the 'confessional seal applies only to the confessing person's own sins', and 'Not to those of anyone else'.[1838]

The Bishop of Ballarat, Bishop Paul Bird CSsR, gave evidence during our *Catholic Church authorities in Ballarat* hearing that he also considered that the seal of confession would not apply to a child's disclosure that they had been sexually abused, and that he would want the priest to report the name of the alleged abuser. His reasoning was that:

> It's not the case where a person has come to confession presumably with a confidence that this will be confidential, confessed their sins and then the priest talks about that; it's a child who's alerting the priest to an offence, that it's not actually being confessed in the confessional.[1839]

The evidence given by the metropolitan Catholic archbishops on this point during our *Institutional review of Catholic Church authorities* hearing revealed inconsistencies in their understanding and approach.

Archbishop Coleridge gave evidence that his understanding was that, from a theological viewpoint, 'the seal applies only to the confession of sins within the sacrament and its celebration'.[1840] He gave evidence that, accordingly, his position was that:

> I would regard things other than the confession of sin that happen in the confessional as kind of an entrusted secret, not unlike professional confidentiality, which is a solemn obligation, but it doesn't have quite the utter solemnity of the seal of the confessional.[1841]

When Senior Counsel Assisting asked him whether he would 'feel able to go to the police' if a child disclosed during confession that they had been abused, Archbishop Coleridge said that if he 'handled it as a skilled and sensitive pastor working with the child', then the seal would not make him hesitate to go to the police in that particular case.[1842]

The Archbishop of Adelaide, Archbishop Philip Wilson, and the Archbishop of Perth, Archbishop Timothy Costelloe SDB, gave evidence that they were open to considering the suggestion put by other witnesses that the seal of confession only covers the confession of the penitent's own sin, and therefore abuse disclosed by a victim may be able to be reported.[1843] Both archbishops gave evidence that, as a matter of practice, if a child disclosed to them during confession that he or she had suffered abuse, they would immediately bring the confession to a close and then try to talk to the child outside of the confession about what had happened, so that they could help them.[1844]

Archbishop Costelloe stated that he would presume that, 'if a child comes and tells me that, it's more than likely that he or she is looking for some help'. However, he concluded that if, in the end, the child said to him, 'I don't want you to tell anybody', then 'my hands would then be tied because of the seal'.[1845]

The Archbishop of Melbourne and President of the Australian Catholic Bishops Conference (ACBC), Archbishop Denis Hart, and the Archbishop of Sydney, Archbishop Anthony Fisher OP, both gave evidence that if a child disclosed to them during confession that she was being abused, they would try to persuade the child to talk to them about it outside the confession, so that they could act upon it. However, they both said that if they could not get the child to discuss the abuse outside of confession, they would feel unable to report the information they received in confession to anyone.[1846]

The reason given by both archbishops for this position is that the person who comes to a priest to make a confession believes that they are talking directly to God, and that the priest is merely facilitating that.[1847] Archbishop Fisher gave evidence that:

> For a priest to repeat anything that has occurred during that confession would be a very serious breach of trust with them and contrary to our understanding of the sacrament … to us, it would be like bugging the confessional to say the priest can go and repeat some parts of it to some people but other parts he can't. It's between that penitent and God.[1848]

If a perpetrator admits to child sexual abuse during confession

As mentioned earlier, the sacrament of reconciliation is made up of four elements: contrition, confession, satisfaction/penance and absolution. As discussed in this section, we heard evidence from different sources that in the past, priest-confessors provided absolution to people who admitted to child sexual abuse during confession, without imposing any penance that involved going to the police or any other acts to provide restitution to the victims.

Professor Waters gave evidence in the *Institutional review of Catholic Church authorities* hearing that, under canon law, priests always have the possibility of deferring the granting of absolution, or indeed refusing it.[1849] He gave evidence that a priest can defer granting absolution until the act of satisfaction, for example reporting to the police, has been carried out.[1850] Professor Waters explained that through doing so the priest is 'testing the person's disposition as to whether he or she is genuinely remorseful, sorrowful and prepared to amend his or her life'.[1851]

Dr Leahy similarly told us that:

> before giving absolution, a confessor has always been required to have at least 'moral certitude' of the penitent's contrition and purpose of amendment before granting absolution … In cases where the confessor has reason to doubt the presence of these dispositions, he can grant *conditional* absolution … In the case of acts of paedophilia, presumably this teaching would always have authorised confessors to make disclosure to state authorities a condition of absolution.[1852]

The Council told us that if a person begins to confess that they have committed child sexual abuse, if possible the priest should:

> immediately halt the confession and establish whether the person is repentant and willing to go to the police, preferably accompanied by the priest. If they are, this should occur before the sacrament is continued (i.e. Absolution is postponed). If the priest has not been able to halt the confession, and the abuse has been disclosed, he should make it a condition of continuing the sacrament and concluding with the prayer of forgiveness, that the person will surrender to the police as soon as possible. Without this promise, absolution should be withheld ...[1853]

In a media release issued by the Council in response to the release of our *Criminal justice* report on 14 August 2017, Mr Francis Sullivan, Chief Executive Officer of the Council, stated that:

> If a child sex-abuser is genuinely seeking forgiveness through the sacrament of confession they will need to be prepared to do what it takes to demonstrate their repentance. Part of this forgiveness process, certainly in the case of a child sex-abuser, would normally require they turn themselves in to the police. In fact the priest can insist that this is done before dispensing absolution.[1854]

During our case studies, we asked a number of representatives from Catholic Church authorities and other witnesses whether a priest could and should withhold absolution from, or only grant conditional absolution to, a person who admitted during confession that they had sexually abused a child, until after the person had reported themselves to the police.

Archbishop Wilson and Archbishop Costelloe told us that, in order for a priest to grant absolution to a penitent, he must be satisfied that the penitent has a 'firm purpose of amendment'[1855] – that is, that they have committed themselves 'to doing something to make sure they stop that behaviour',[1856] which they have confessed to. They gave evidence that the priest should therefore require the person confessing to child sexual abuse to report themselves to civil authorities and provide evidence that they had done so, before the priest would grant absolution.[1857]

Archbishop Costelloe said:

> I think particularly now, we have a much better understanding of the pathology around child sexual abuse, the compulsive nature of child sexual abuse … and so it wouldn't be enough for me that someone who had confessed to that assured me that he would do his best never to do this again, because of the compulsive nature … I think it could well be argued that the only way to be sure that the person is determined never to do it again is that he is prepared to hand himself in to the authorities.[1858]

Archbishop Hart and Archbishop Coleridge gave evidence that they would be willing to withhold absolution from a person who disclosed that they had abused a child.[1859] A number of other representatives of Catholic Church authorities and other witnesses gave evidence to the effect that they would, and/or priests should, require a penitent who confessed to child sexual abuse to report themselves to civil authorities before granting them absolution.[1860]

However, Archbishop Fisher gave evidence that, 'I don't think I can make a condition of absolution that a person incriminate themselves'.[1861] Also, Father John Hogan, the Rector of the Holy Spirit Seminary, Parramatta, told us that a canon lawyer he consulted had advised that:

> if the perpetrator is sincerely sorry and is intending never to do anything like that again, you can't withhold the absolution … because the absolution is a pronouncement of God's forgiveness, and God's forgiveness is always there. So you can't make it dependent on him doing something.
>
> One can encourage him to go and hand himself in. I certainly would, because what you are trying to do is – if somebody is already doing something like that, there is a chance of him doing it again, even if he doesn't intend to or doesn't want to, because we have to protect future victims.[1862]

This led to the following exchange:

> THE CHAIR: What happens if absolution is given and then, within a few weeks, the same priest turns up to confession again to confess the same sort of behaviour? What happens then?
>
> FATHER HOGAN: We need to deal with them according to the rules and regulations of confession, because, you know, we understand it as God's court and we're only acting on God's behalf.
>
> THE CHAIR: So you grant absolution again?
>
> FATHER HOGAN: If the person is sorry and has a firm purpose of amendment, yes.
>
> THE CHAIR: Do you reach the point where you wouldn't accept that they were sorry and had a real purpose of amendment?
>
> FATHER HOGAN: If you had a doubt that they were sorry, then you could withhold absolution.[1863]

In the case of a penitent who confesses and does not report themselves to the civil authorities, the question then is whether the priest-confessor can, and should, report the matter.

In our *Institutional review of Catholic Church authorities* hearing, Archbishop Costelloe gave evidence that the obligation upon a priest to uphold the confessional seal is solemn, and that because of its operation, he would feel bound never to break the seal and report to civil authorities someone's confession that they were abusing a child.[1864] Archbishop Hart gave evidence that he would feel similarly bound.[1865]

Some clergy witnesses gave evidence that even if they had granted absolution on the condition that the penitent report themselves to civil authorities, and the penitent failed to do so, they would not consider themselves free to break the seal of confession and report the matter.[1866]

However, we also received evidence of the opposite perspective. For example, Father Adrian McInerney, parish priest of St Alipius Parish, Ballarat East, gave evidence in our *Catholic Church authorities in Ballarat* hearing that he had come to the conclusion that, if he heard a confession of a crime, he would feel obliged to report it to the police even if the penitent did not give him permission to do so. He acknowledged that this position was inconsistent with the current teaching of the Catholic Church.[1867]

Acknowledgement of the need for greater clarity in the Catholic Church's position

As the discussion above demonstrates, during the *Institutional review of Catholic Church authorities* hearing it became evident that there is a lack of common understanding within the Catholic Church in Australia regarding how priest-confessors can and should respond when there is a disclosure of child sexual abuse during confession, and in particular as to whether a child's disclosure of their experience of abuse by an adult is covered by the confessional seal. Archbishop Costelloe gave evidence that:

> both in terms of … whether or not the seal covers only the sins confessed, and in terms of this question of withholding absolution, these are two very specific issues where the Church must do more work at clarifying its own position so that those of us who are responsible for the formation of priests can make sure that our priests are properly educated in these matters.
>
> … this has emerged as a major, major problem and that there is a certain level, perhaps a high level, of confusion in the Church about these matters, it needs to be clarified for everybody's sake.[1868]

In relation to the question of whether the seal of confession applies only to the sins of the confessor, Archbishop Coleridge stated that, 'the fact that there are different shades of interpretation evident among us here suggests that the Church has never officially declared its position on this question we're discussing'.[1869]

Archbishop Wilson told us that: 'What we should do now is to immediately prepare some material and send it to the Holy See raising these very questions … and asking for some guidance'.[1870] He further stated that what the Catholic bishops of Australia 'ought to do' is 'get together and prepare material about this with these questions that have been raised and actually send a delegation of bishops to Rome to see the Pope … We can do that efficiently and quickly'.[1871] Archbishop Wilson stated that they would need to talk to all the bishops in the ACBC, which met in May 2017, and then arrange to send a delegation to the Holy See.[1872]

However, it has been reported that, following the conclusion of our *Institutional review of Catholic Church authorities* hearing, at the ACBC plenary meeting in May 2017, the bishops did not make any commitment to send a delegation to Rome to seek clarification on these issues as proposed by Archbishop Wilson.[1873] While issues such as whether the seal of confession covers a child's disclosure of being abused were discussed at the meeting, the ACBC is reported to have said that the discussion 'was pastoral rather than tactical', and that it focused on 'how to help and support our priests and our people to reassure them about the practical application of the Sacrament of Penance at times when the seal of the confessional comes up'.[1874]

Conclusions about the sacrament of reconciliation

We are satisfied that the practice of the sacrament of reconciliation was a factor that contributed both to the occurrence of child sexual abuse in the Catholic Church and to the Catholic Church's inadequate response to the abuse. In light of the evidence we have received, we are persuaded that it contributed in the following ways:

- It functioned as a forum for disclosures of child sexual abuse by both victims and perpetrators but, because of the seal of confession, these disclosures were not reported to civil authorities or otherwise acted upon to minimise the risk of further abuse to children.
- In line with the theology of sin and forgiveness that underpinned the sacrament:
    - child sexual abuse was viewed by priests and Catholic Church leaders as a sin or moral failing rather than a crime, with the consequence that disclosures were not reported to the police
    - when disclosures were made, insufficient attention was paid to the need to consider either the impact that child sexual abuse has on the victim or the risk that the perpetrator would continue to sexually abuse children.
- It provided a mechanism through which perpetrators could and did relieve their sense of guilt by confessing and being offered absolution, without fear of being reported or being required to take action to address the underlying causes of their sexual abuse of children. In effect, the operation of the sacrament of reconciliation played a role in their ability to, in their own mind, minimise the impacts of their abuse.
- It created a situation in which children participating in the sacrament of reconciliation were left alone with priests, and in which child sexual abuse could take place either in the confessional or associated with confession.

In Chapter 20, we address concerns about the physical safety of children during their participation in the sacrament of reconciliation. In that chapter we recommend that any religious organisation which has a rite of religious confession should implement a policy requiring that confession for children be conducted in an open space within the clear line of sight of another adult (Recommendation 16.48).

In relation to the possibility of future disclosures of child sexual abuse during confession, we note that in our *Criminal justice* report and Volume 7, *Improving institutional responding and reporting*, we make the following recommendations:

- In relation to voluntary reporting: Any person associated with an institution who knows or suspects that a child is being or has been sexually abused in an institutional context should report the abuse to police (*Criminal justice* report, Recommendation 32).[1875]
- In relation to a 'failure to report' offence: The offence should apply if a person (including a person in religious ministry) fails to report to police in circumstances where they know, suspect, or should have suspected (on the basis that a reasonable person in their circumstances would have suspected and it was criminally negligent for the person not to suspect), that an adult associated with the institution was sexually abusing or had sexually abused a child (*Criminal justice* report, Recommendation 33).[1876]
- In relation to mandatory reporting to child protection authorities: State and territory governments should amend laws concerning mandatory reporting to child protection authorities to ensure that people in religious ministry are included as a mandatory reporter group in every jurisdiction (Volume 7, Recommendation 7.3).

In the *Criminal justice* report and Volume 7, we also recommend that there should be no exemption to obligations to report under mandatory reporting laws or the proposed 'failure to report' offence, in circumstances where knowledge or suspicions of child sexual abuse are formed on the basis of information received in, or in connection with, religious confession.[1877] These recommendations will help to ensure that risks to the safety of children are minimised by requiring disclosures of child sexual abuse in confession to be reported to civil authorities, to address the chance of the sexual abuse of further children.

We note that the proposed 'failure to report' offence (and the recommendation in relation to voluntary reporting) is limited to reporting of information in relation to child sexual abuse *committed by a person associated with the institution* to which the person in religious ministry belongs. These recommendations therefore would not necessarily require reporting of abuse of a child by, for example, a parent or family member.

By contrast, the obligations to report to child protection authorities under mandatory reporting laws are not limited to abuse by adults associated with any particular institution. However, there are differences between the jurisdictions regarding the thresholds for reporting – for example, the level of certainty the reporter should have about whether a child has been abused before the obligation to report arises; whether the reporting duty applies to past abuse, currently occurring abuse and/or risk of future abuse; and the age of the child involved.[1878]

We consider that if our recommendations in relation to mandatory reporting to child protection authorities are adopted by all state and territory governments, a priest will have a legal obligation to report the disclosure to civil authorities in most, if not all, of the scenarios in which a disclosure of child sexual abuse is made during confession.

However, as we noted in our *Criminal justice* report, we were told that some Catholic priests will not report disclosures of child sexual abuse, even if they are under a legal obligation to report, if they consider that to do so would break the confessional seal.[1879]

Given the unclear position within the Catholic Church in Australia as to whether the seal of confession applies to a disclosure by a victim that he or she has suffered child sexual abuse, combined with the possibility that priests will not comply with a civil law reporting obligation because they (correctly or incorrectly) assume that the seal precludes them from reporting such disclosures, we consider it important that the ACBC consult with the Holy See to clarify this issue.

If it is the case, as a number of canon lawyers have suggested, that the seal does not apply to such disclosures, the Catholic Church should ensure that all priests are educated about this fact. If the Holy See's position on the scope of the seal is that it is not in fact a barrier to reporting disclosures of child sexual abuse by victims, it will be important to publicise this. This will reduce the risk of any conscientious non-compliance by priests with their reporting obligations.

However, even if the Holy See's position is that the seal does cover such disclosures, our recommendation remains that there should be no exemption from civil law or other reporting obligations on this basis.

Furthermore, we consider that there is utility in the ACBC consulting with the Holy See to clarify how the sacrament of reconciliation should operate in the case of a person who confesses that they have committed child sexual abuse. If the Holy See's position is that the priest-confessor can and should require the person to report themselves to civil authorities before granting them absolution, awareness of this may contribute to priests ensuring that perpetrators cannot use the sacrament of reconciliation to assuage their guilt without action being taken to stop them sexually abusing children.

Irrespective of whether this advice is sought or received, the primary obligation of any person associated with an institution who knows or suspects that a child is being or has been sexually abused in an institutional context is to report that abuse to the police.

Recommendation 16.26

The Australian Catholic Bishops Conference should consult with the Holy See, and make public any advice received, in order to clarify whether:

a. information received from a child during the sacrament of reconciliation that they have been sexually abused is covered by the seal of confession

b. if a person confesses during the sacrament of reconciliation to perpetrating child sexual abuse, absolution can and should be withheld until they report themselves to civil authorities.

Endnotes

1 Transcript of D Ranson, Case Study 50, 6 February 2017 at 24780:14–28.
2 John Jay College Research Team, *The causes and context of sexual abuse of minors by Catholic priests in the United States, 1950–2010,* United States Conference of Catholic Bishops, Washington, 2011, p 2–3.
3 Transcript of G Pell, Case Study 28, 29 February 2016 at 16186:26–28.
4 E Conway, 'Operative theologies of priesthood: Have they contributed to child sexual abuse?' in R Ammicht-Quinn, H Haker & M Junker-Kenny (eds), *The structural betrayal of trust: Concilium*, 2004, SCM Press, London, p 72.
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591 Exhibit 50-0009, 'Statement of Brother Peter Clinch – Education Statement', Case Study 50, CTJH.500.90001.0652 at 0652; Transcript of P Clinch, Case Study 50, 22 February 2017 at 25841:2–11; Edmund Rice Education Australia, *Public juridic person (PJP)*, 2017, www.erea.edu.au/about-us/our-story/public-juridic-person (viewed 29 March 2017).
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593 Transcript of P Carroll, Case Study 50, 22 February 2017 at 25865:27–30. Note that MSA co-governs one Marist school with the Diocese of Sale.
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595 Transcript of P Carroll, Case Study 50, 22 February 2017 at 25865:33–41.
596 Transcript of B Loch, Case Study 50, 22 February 2017 at 25827:40–47; Exhibit 50-0009, 'Statement of Sister Berneice Loch – Education Statement', Case Study 50, CTJH.500.90001.0527 at 0528.
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617 Exhibit 50-0009, 'Statement of Bishop Paul Bird – Education Statement', Case Study 50, CTJH.500.90001.0418_R at 0421_R; Exhibit 50-0009, 'Statement of Bishop Michael Kennedy – Education Statement', Case Study 50, CTJH.500.90001.0251 at 0255; Exhibit 50-0009, 'Statement of Archbishop Christopher Prowse – Education Statement', Case Study 50, CTJH.500.90001.0462 at 0464; Exhibit 50-0009, 'Statement of Bishop Michael McCarthy – Education Statement', Case Study 50, CTJH.500.90001.0300 at 0305; Exhibit 50-0009, 'Statement of Bishop Robert McGuckin – Education Statement', Case Study 50, CTJH.500.90001.0307_R at 0314_R; Exhibit 50-0009, 'Statement of Bishop Columba Macbeth-Green – Education Statement', Case Study 50, CTJH.500.90001.0405 at 0408.
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621 Exhibit 50-0009, 'Statement of Bishop Paul Bird – Education Statement', Case Study 50, CTJH.500.90001.0418_R at 0421_R; Exhibit 50-0009, 'Statement of Archbishop Julian Porteous – Education Statement', Case Study 50, CTJH.500.90001.0658 at 0662; Exhibit 50-0009, 'Statement of Bishop William Wright – Education Statement', Case Study 50, CTJH.500.90001.0487 at 0489; Exhibit 50-0009, 'Statement of Bishop Columba Macbeth-Green – Education Statement', Case Study 50, CTJH.500.90001.0405 at 0407; Exhibit 50-0009, 'Statement of Bishop Peter Ingham – Education Statement', Case Study 50, CTJH.500.90001.0423 at 0432.
622 Exhibit 50-0009, 'Statement of Archbishop Anthony Fisher – Education Statement', Case Study 50, CTJH.500.90001.0581 at 0584; Exhibit 50-0009, 'Statement of Bishop James Foley – General/Education Statement', Case Study 50, CTJH.500.90001.0626 at 0011; Exhibit 50-0009, 'Statement of Bishop Michael Kennedy – Education Statement', Case Study 50, CTJH.500.90001.0251 at 0254.

623 Transcript of S Elder, Case Study 50, 16 February 2017 at 25554:34–42.
624 Transcript of T McDonald, Case Study 50, 16 February 2017 at 25544:1–4.
625 Transcript of T McDonald, Case Study 50, 16 February 2017 at 25560:21–25561:28.
626 Transcript of P Hill, Case Study 50, 16 February 2017 at 25550:9–13.
627 Transcript of P Hill, Case Study 50, 16 February 2017 at 25550:15–19.
628 Exhibit 50-0009, 'Statement of Bishop Peter Ingham – Education Statement', Case Study 50, CTJH.500.90001.0423 at 0436; Exhibit 50-0009, 'Statement of Bishop Michael Kennedy – Education Statement', Case Study 50, CTJH.500.90001.0251 at 0256; Exhibit 50-0009, 'Statement of Archbishop Anthony Fisher – Education Statement', Case Study 50, CTJH.500.90001.0581 at 0585.
629 Exhibit 50-0009, 'Statement of Bishop Peter Ingham – Education Statement', Case Study 50, CTJH.500.90001.0423 at 0436; Exhibit 50-0009, 'Statement of Bishop Michael Kennedy – Education Statement', Case Study 50, CTJH.500.90001.0251 at 0256.
630 Note that for Marist Brothers working in a school in 2017 the same standards and protocols apply as those that apply to lay staff, but the provincial has the authority to stand a brother aside from ministry. See: Transcript of P Carroll, Case Study 50, 22 February 2017 at 25869:12–22, 25869:47–25870:9; Exhibit 50-0009, 'Statement of Brother Peter Clinch – Education Statement', Case Study 50, CTJH.500.90001.0652 at 0656; Exhibit 50-0009, 'Statement of Sister Berneice Loch – Education Statement', Case Study 50, CTJH.500.90001.0527 at 0534; Exhibit 50-0011, 'Marist Brothers Province of Australia, Child Protection Policy: Keeping Children Safe', Case Study 50, CTJH.053.90001.0063 at 0071; Exhibit 50-0009, 'Statement of Archbishop Anthony Fisher – Education Statement', Case Study 50, CTJH.500.90001.0581 at 0585; Exhibit 50-0009, 'Statement of Father Brian McCoy – General/Education Statement', Case Study 50, CTJH.500.90001.0668_R at 0691_R.
631 Transcript of T McDonald, Case Study 50, 16 February 2017 at 25536:9–15.
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642 *Child Wellbeing and Safety Act 2005* (Vic) s 3(1), definition of 'employee', para (c).
643 In the Diocese of Ballarat, the School Governing Authority is in most cases the parish priest. The School Governing Authority appoints the principal. The principal appoints school staff on behalf of the School Governing Authority. See Exhibit 50-0009, 'Statement of Bishop Paul Bird – Education Statement', Case Study 50, CTJH.500.90001.0418_R at 0420_R. In the Diocese of Sandhurst the parish priest or responsible congregational leader is the employing authority for the parish school principal, the deputy principal and other school staff. See Exhibit 50-0009, 'Statement of Bishop Leslie Tomlinson – Education Statement', Case Study 50, CTJH.500.90001.0341_R at 0343_R–0344_R. In the Diocese of Sale the parish priest or canonical administrator is the employer of the principal of the parish school and delegates the appointment of the deputy principal and school staff to the principal. See: Exhibit 50-0009, 'Statement of Bishop Patrick O'Regan – Education Statement', Case Study 50, CTJH.500.90001.0383 at 0387. In the Archdiocese of Melbourne the parish priest is the employer of principals and staff of parish primary schools and may be a member of the Association of Canonical Administrators or Delegated Canonical Administrators that employs secondary school principals in schools in the region. See: Exhibit 50-0009, 'Statement of Archbishop Denis Hart – Education Statement', Case Study 50, CTJH.500.90001.0535 at 0540–0541; Transcript of S Elder, Case Study 50, 16 February 2017 at 25556:39–44.

644 Exhibit 50-0009, 'Statement of Archbishop Coleridge – Education Statement', Case Study 50, CTJH.500.90001.0801 at 0803; Exhibit 50-0009, 'Statement of Archbishop Julian Porteous – Education Statement', Case Study 50, CTJH.500.90001.0658 at 0662; Exhibit 50-0009, 'Statement of Archbishop Christopher Prowse – Education Statement', Case Study 50, CTJH.500.90001.0462 at 0463; Exhibit 50-0009, 'Statement of Michael Lowcock – Education Statement', Case Study 50, CTJH.500.90001.0493 at 0496; Exhibit 50-0009, 'Statement of Bishop William Wright – Education Statement', Case Study 50, CTJH.500.90001.0487 at 0488.
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