

(from
Wood Royal
Commission)
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CHAPTER 11

THE CHURCHES

11.1 While Churches and religious associations are not 'public authorities' or 'Government departments and agencies' and their leaders and members are not 'public officials' (and therefore do not fall directly within the Commission's terms of reference) very early in its inquiries the Commission uncovered a number of cases where, after preliminary investigations, it appeared that:

- there had been a substantial incidence of sexual abuse involving clergy, members of religious orders, ministers of religion, acolytes, and others involved on a paid or unpaid basis in and around Churches or institutions associated with or conducted by Churches or religious bodies, including schools, residential homes, youth and fellowship groups and the like;
- in very many cases, investigations or prosecutions of these incidences had been suppressed, discontinued, or failed in circumstances suggestive of either protection or failure on the part of the official agencies involved to exercise their powers impartially;
- there was a serious absence of protocols, guidelines, accepted practices or established lines of communication with the Police Service, concerning the way that allegations of this kind should be managed; and that
- there had been a history of ignorance or misunderstanding of the existence of the problem, as well as a pattern of denial and repression of any allegations which happened to be raised.

11.2 Faced with these initial findings, the Commission determined that unless this area of paedophile activity was thoroughly investigated, a substantial part of the problem involving the sexual abuse of children would be left unexamined, and a potential for ongoing abuse and harm, of a significant kind, would remain unchecked. The Commission's inquiry into this area was judged to fall variously within terms of reference (d1), (g) and (j), based on some of the case studies outlined later in this chapter.

11.3 After some initial reticence, the Commission received total support from all Churches and religious organisations with which it dealt. Not only were files and information readily provided, but senior clergy and lay officials appeared keen to assist by fully and frankly admitting past failings, by conscientiously developing protocols for dealing with child sexual abuse, or by the revision of existing protocols and guidelines where, on examination, they were found to be deficient. In a number of cases the Commission was

assured that the Churches or organisations concerned were grateful for the spotlight having been shone on this problem, as it created the impetus for immediate reform. For some this had obviously been needed for a long time but had been difficult to achieve because of institutional inertia, or fear of public scandal and civil liability at the hands of the victims of abuse.

11.4 Without this degree of co-operation, the path of the Royal Commission would have been very difficult. In view of that assistance, and the frank admissions received upon a cross denominational basis, this chapter can be kept, within reasonable bounds, to an examination of:

- the problem;
- the reason for the past failure to deal with it effectively;
- the changes achieved; and
- any residual matters requiring attention;

to ensure that, so far as possible, child sexual abuse within Churches or religious associations and their agencies can be minimised or, where it occurs, detected, prosecuted and managed.

11.5 By reason of the wide range of Churches potentially involved, and the wide range of activities encompassed, there will be no attempt to deal with the matter upon a denominational basis. Nor will there be an attempt to suggest that any one Church, religious body or religious order has performed any better or worse than any other. While a good deal of evidence and assistance was provided by the Catholic Church, it is not the case that the Commission finds particular fault with that Church or its constituent bodies. Indeed, its response to the matters disclosed by the Royal Commission is held up as a model for other Churches and religious organisations to follow, as set out in more detail later in this chapter.

11.6 For convenience, when the context requires, the various bodies and associations loosely co-ordinated by religious bonds will be referred to hereafter as 'the Church', or 'the Churches', in recognition of the common problem they face. However, for clarity and before turning to the substance of the Royal Commission investigations, it may be noted that the cases studied, the information received, and the evidence called, related to the abuse of both boys and girls in settings that included:

- religious congregations, that is, those attending Churches for the purpose of regular worship;
- choirs, bible study groups and youth groups;
- schools conducted by religious bodies;
- residential homes, missions, and similar facilities conducted by religious bodies for orphans, wards of the State or neglected children; and
- various forms of care agency.

A. THE EMERGENCE OF ABUSE WITHIN THE CHURCHES

THE ALLEGATIONS EMERGE

11.7 Revelations of sexual and physical abuse (of an aberrant nature) involving the clergy, members of religious orders and those associated with religious associations, began to emerge in the United States in about 1985. This resulted in some well publicised disclosures and court cases. They were followed by similar public disclosures in Canada during 1988, and then in Australia during 1992. Before this time, 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. Rarely did allegations of this kind reach the public notice, and little existed by way of protocol or guidelines for their management.

11.8 In 1992, two graphic documentaries were screened on ABC Television, 'The Ultimate Betrayal' and 'The Leaving of Liverpool'. Together they highlighted instances of physical and sexual abuse involving members of various religious orders or associations. Considerable media debate followed.¹ There was soon a rising tide of allegations of sexual abuse, from which prosecutions or civil actions for damages ensued. In some but not all cases, the allegations involved offences allegedly committed against children up to 20 and 30 years earlier. The allegations were not confined to the Catholic Church but began to spread to other denominations and religious groups as well.²

11.9 The initial response on the part of all Churches tended to be defensive, and many members and office holders, including very senior clergy, were unprepared to embrace what they considered to be unthinkable. However, as the allegations grew, and as they extended to other Churches and organisations, there was a change from the earlier approach, which has been described as 'tardy, unwilling and over cautious'.³ The process of confrontation and acknowledgment of the problem was hastened by the evidence led in the Royal Commission hearings, and by media pressure, as much as it was by the mounting number of complaints.⁴

¹ eg. *Sydney Morning Herald*, 18/3/92, p. 18; P. Horsfield, 'An analysis of the media debate following the ABC Compass program, 'The Ultimate Betrayal'', *Australian Journalism Review*, 1993, p. 2.

² P. Parkinson, *Child Sexual Abuse and the Churches*, Hodder & Stoughton, London, 1997, p. 176.

³ J. Craney, *Aftermaths: Conflict between the support constituency and the Catholic church about clergy sexual abuse*, Masters thesis, University of Technology, Sydney, 1996, RCPS Exhibit 3258, p. 81.

⁴ *ibid*, p. 83.

11.10 Sexual abuse of children is now recognised as a major problem for Churches around the world. It is something that:

- poses significant pastoral issues;
- exposes the Church and those responsible for the employment or placement of the offender in jeopardy of civil liability; and
- risks the authority and reputation of all religious organisations.⁵

11.11 A number of reasons have been identified for the tardiness of the Churches in acknowledging the problem, and for their adoption of a response which was quick to minimise its extent⁶ or seriousness, or to offer assurances of good intentions and of a change from the past.⁷ They include:⁸

- ignorance of matters of sexuality, and lack of any ability, particularly by older members of the clergy, to comprehend or accept the fact of sexual indiscretion by their brethren;⁹
- ignorance of the fact that paedophile activity is strongly compulsive and recidivist in nature, and that it is impossible to dismiss an apparent indiscretion as a one-off event;¹⁰
- confusion over loyalty to the Church and its community;
- confusion between forgiveness and trust towards offenders, and the duties of protection owed to the wider community, and ignorance concerning the limits of counselling;
- concern to avoid or limit legal liability, in order to protect the Church as a viable institution, which has led to an adversarial approach (for example reliance on limitation statutes to defeat otherwise obviously valid claims, or determined defence against plaintiffs of limited means) rather than a response based on pastoral concern;
- confusion in relation to the limits of confidentiality concerning matters disclosed, or learned outside the confessional; and
- uncertainty as to the appropriate response where the complainant does not wish the matter to proceed to police action.

⁵ Australian Broadcasting Commission (ABC), *Compass - Conduct Unbecoming: Sexual Assault in the Church*, (telecast), 27/6/93.

⁶ J. Crane, 1996, *op cit*, p. 79.

⁷ *ibid*, p. 85.

⁸ P. Parkinson, 1997, *op cit*, p. 177.

⁹ J. Crane, 1996, *op cit*, p. 79.

¹⁰ B. Lucas, RCT, 18/4/96, p. 23796.

REACTIONS TO THE ALLEGATIONS

11.12 Some of these reactions and the reasons for them which emerged during the hearings, call for further mention.

Denial

11.13 Generally speaking the approach of the Churches has been to reject complaints of sexual abuse by clergy,¹¹ accompanied by failure to notify the appropriate authorities. Offenders have similarly exhibited denial, or have attempted to re-explain events or to expect forgiveness.¹² There has been a closure of ranks and a reluctance to accept that an incident of this kind could happen within a good Christian family, or with a well respected priest.¹³

11.14 Investigating police may also find it difficult to believe the allegations,¹⁴ and even more difficult to penetrate the protective cloak of the Church:

The Churches have a tendency to regard themselves as self-regulatory institutions that are 'just' and 'sacred' and therefore not in need of scrutiny. The reluctance of Church leaders to report sexual abuse allegations to law enforcement authorities stems from their misguided, although fierce, loyalty to their institution whose image must never be tarnished.¹⁵

11.15 A priest whose name was suppressed described this very situation when X4's allegations against Brother Evans and Father Comensoli were publicised in the press.¹⁶ The initial response was one of outrage to a 'vicious media attack' designed to destroy the Church's credibility. It was only with increasing evidence and then plea of guilty by the priest that the wrongdoing was finally accepted. It has not been unknown in some of these cases for the immediate response of the Church or of the member of the clergy involved to be the threat of an action for defamation if the complaint was pursued.¹⁷

11.16 The inappropriateness of this almost instinctive reaction is now acknowledged. The Uniting Church has stated:

In the past there has been a tendency for the Church to create a cloak of silence. Often victim/survivors have been unwilling to complain because of the myths which have existed and because of an apprehension that they will not be believed.¹⁸

¹¹ S. M. Foley, RCT, 8/5/96, p. 24868.

¹² P. Parkinson, 1997, op cit, pp. 178-179.

¹³ P. Parkinson, 1997, op cit, p. 178.

¹⁴ B. Lucas, RCT, 18/4/96, p. 23823. This was demonstrated in the Evans/Comensoli case.

¹⁵ Victoria Parliament Crime Prevention Committee, *Combating Child Sexual Assault: An Integrated Model: First Report upon the Inquiry into Sexual Offences Against Children and Adults*, Government Printer, Melbourne, 1995, RCPS Exhibit 1757, p. 312; evidence of C. Wilding, 19/6/94.

¹⁶ Discussed in more detail later in this chapter.

¹⁷ W. S. Skillicorn, RCT, 8/5/96, p. 24910.

¹⁸ Uniting Church in Australia, *Procedures for use when complaints of sexual abuse are made against ministers*, 1994, RCPS Exhibit 3226, p. 4.

11.17 The Catholic Church has stated in its 1993 pastoral statement:

in the past, lacking the knowledge provided by the 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.¹⁹

Minimisation and Avoidance

11.18 Whether the complainant was in fact believed by a Church often depended upon the circumstances in which the complaint came to notice:²⁰

- if the information came second-hand there was a tendency to disbelieve it;²¹ or
- if there was a direct complaint there was a greater likelihood of it being believed although the interpretation of its seriousness was often minimised.²²

11.19 Victims have complained that Church officials often seemed sympathetic and constructive in private discussions, but reneged on the pledges of support when publicly challenged.²³ They were often met with responses such as:

- 'it all happened so long ago - why do you want to stir it all up now?';
- 'what if this causes the man to commit suicide?'; or
- 'he's done a lot of good work for the Church'.²⁴

Sin/Moral Failure

11.20 Sexual abuse has often been regarded by Churches as a problem of 'moral failure'²⁵ rather than a criminal offence, calling for help rather than punishment. Often judged to be an inappropriate reaction to stress, and a temporary aberration,²⁶ the response has been to offer the offender moral and spiritual counselling.²⁷

11.21 Spiritualising the problem is dangerous because it involves the assumption that once confessed and subjected to counselling, the problem has been resolved.²⁸ Brother McDonald, the Provincial²⁹ of the Christian Brothers, acknowledged in his evidence to the Royal Commission that the Christian Brothers' practice was to merely reprimand the person involved, without public disclosure.³⁰ There was an expectation that it would be sufficient

¹⁹ Catholic Church, Pastoral Statement on Child Protection and Child Sexual Abuse, RCPS Exhibit 1803.

²⁰ B. Lucas, RCT, 18/4/96, p. 23795.

²¹ B. Lucas, RCT, 18/4/96, p. 23795.

²² B. Lucas, RCT, 18/4/96, pp. 23795-96.

²³ J. Lundy, 'Devils in disguise: The Catholic Church is coming to grips with clerical sexual abuse', *The Bulletin*, 10/8/93, p. 27.

²⁴ *ibid.*

²⁵ J. McDonald, RCT, 18/4/96, pp. 23889-90; B. Lucas, RCT, 18/4/96, p. 23795; J. J. Usher, RCT, 16/8/96, p. 30806; R. Wyre, RCT (video link to Birmingham, UK), 26/4/96, p. 24233.

²⁶ P. Parkinson, 1997, *op cit*, p. 30.

²⁷ *ibid.*, p. 196.

²⁸ *ibid.*, p. 198.

²⁹ The head of the Christian Brothers in Australia.

³⁰ J. McDonald, RCT, 18/4/96, p. 23889.

if the priest was confronted with his behaviour, shamed and embarrassed by it and provided with a period of psychological and spiritual counselling.³¹

11.22 The typical response in such a case 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,³² and of sending such a person back into an unsuspecting parish, are obvious. Many such priests were not even relocated after a complaint.³³ This response is inappropriate because many such offenders have simply continued to abuse over the years. Sexual abuse is inconsistent with continued ministry. Having offended once, it would only be in the most exceptional circumstances that an offender should be returned to any work in which an opportunity for direct contact with children arose.

Defence of Reputation

11.23 Often Churches reacted with fear, 'for the good name of the diocese or institute, fear of the victim and of the emotional and financial demands that might be made, fear for the financial assets of the diocese or institute, fear of how many other cases might be there to be uncovered.'³⁴ A defensive response of this kind, however, risks doing more damage to the institution than the abuse itself,³⁵ particularly in the light of the public awakening to the problem. It was never appropriate for any Church to place its reputation ahead of its responsibility to the community. It is not appropriate now.

Use of Euphemisms

11.24 The Churches have traditionally used euphemisms when dealing with complaints of sexual abuse and have referred them to bodies such as a 'Professional Standards Committee', or a 'Special Issues Sub-Committee'.³⁶ This is symptomatic of an inability to properly acknowledge the existence of the problem.³⁷ Father Lucas agreed that 'there was a tendency on the part of many people to minimise the description' so that child sexual assault may have been categorised under the vague title of 'improper conduct',³⁸ or a 'matter of conscience'.

³¹ B. Lucas, RCT, 18/4/96, p. 23795.

³² P. Parkinson, 1997, op cit, p. 176.

³³ R. H. Goodhew, RCT, 7/5/96, p. 24797.

³⁴ G. Robinson, 'Abuse and Trust', *Eureka Street*, vol. 6, no. 7, September 1996, pp. 14-16.

³⁵ *ibid.*

³⁶ N. Ormerod, A little breathless and a little late: Catholic policy on sexual abuse, paper presented at 1st Australian and New Zealand Conference on Sexual Exploitation by Health Professionals, Psychotherapists and Clergy, University of Sydney, 12-14 April 1996, RCPS Exhibit 3294C.

³⁷ J. Lundy, 10/8/93, op cit, p. 27.

³⁸ B. Lucas, RCT, 18/4/96, p. 23795.

Christian Isolationism

11.25 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.³⁹

11.26 There are obvious problems with organisations investigating complaints made against their own members. If these matters are investigated and determined by a Church in-house, there is:

- limited accountability;
- a risk of the Church losing credibility in the eyes of the public;⁴⁰
- the possibility of a perception that it is interfering with the police role;⁴¹
- a danger that the inquiry will contaminate the evidence, alert suspects and in other ways jeopardise a police investigation;⁴² and
- invite the suggestion that members of the religious order in question have been placed in a somewhat privileged position compared with the rest of the community.

11.27 Some of the reasons for 'Christian isolationism' can be traced back to aspects of Church history and culture. Historically, Church and State have existed with parallel legal systems and structures.⁴³ Canon law emerged as a distinct body of law, parallel to the State's jurisdiction and the Church had its own ecclesiastical courts, separate from the common law courts. The Church therefore dealt with its own people and exercised disciplinary functions over its own clergy.⁴⁴ In Protestant Churches as with the Catholic Church, there has been a strong tradition of 'telling it to the Church' and resolving matter within the Church.⁴⁵

11.28 Often a complainant, out of concern for the institution, would go straight to the Church with a matter of this kind rather than approaching the Police Service. If reassured that their experience will not happen to anyone else,⁴⁶ they may be satisfied to leave the matter in-house. Often, however, as experience shows, the response was inappropriate and the offender did repeat his behaviour.⁴⁷

³⁹ P. Parkinson, 1997, op cit, p. 186.

⁴⁰ C. Robinson, September 1996, op cit, pp. 14-16.

⁴¹ National Committee for Professional Standards, Submission to RCPS, 20/9/96, RCPS Exhibit 2529/165.

⁴² Victoria Parliament Crime Prevention Committee, *Combating Child Sexual Assault: An Integrated Model: First Report upon Inquiry into Sexual Offences Against Children and Adults*, Government Printer, Melbourne, 1995, RCPS Exhibit 1757, p. 31

⁴³ P. Parkinson, 1997, op cit, p. 187.

⁴⁴ *ibid.*

⁴⁵ *ibid.*, pp. 189-90.

⁴⁶ B. Lucas, RCT, 18/4/96, p. 23798.

⁴⁷ B. Lucas, RCT, 18/4/96, p. 23798.

Confidentiality

11.29 Difficulties arise when the complainant does not wish police to be notified. If the complainant's wishes are respected, then children/adults could continue to be at risk as the Church could be accused of inaction.⁴⁸ On the other hand, if the Church does not act according to the wishes of the victim, it risks putting that victim through the trauma of a court case.⁴⁹

11.30 The law of NSW in this regard requires mention:

- the common law religious confessional privilege is now recognised and preserved under s. 127 of the *Evidence Act 1995*, unless the communication involved in the confession was made for a criminal purpose;
- otherwise no common law privilege attaches to communications to a person in respect of religious vows; and
- the mandatory reporting provisions arising under ss. 22(2) and (3) of the *Children (Care & Protection) Act 1987* exclude ministers of religion from those requirements, although there is no prohibition on them reporting under the permissive provisions of that Section,⁵⁰ with the protection afforded under s. 22(8) of the Act.

11.31 The dilemma which arises for clergy with reporting complaints, particularly when the informant expressed a desire that the matter not be notified to police, was identified by Brother McDonald,⁵¹ and by Father Lucas,⁵² in their evidence to the Commission. In their summary, they noted:

- the general expectation of the community, particularly the Church community that if people confide in a priest or minister, that the confidence will be kept;
- there is a public interest in persons feeling able to discuss freely and in confidence personal matters with a minister of religion or a member of a religious order;
- in the absence of confidentiality, some complainants may prefer not to bring allegations of this kind to light, thereby risking perpetuation of the abuse; and
- similarly, there is an interest in helping a truly penitent offender who wishes to secure assistance with his problem - he may have a real resistance to approaching a superior, or making full disclosure of any past pattern of misbehaviour, again risking an imperfect response and perpetuation of the abuse, if he knows that his disclosure will be reported.

⁴⁸ National Committee for Professional Standards, Submission to RCPS, 20/9/96, RCPS Exhibit 2529/165.

⁴⁹ G. Robinson, September 1996, op cit, pp. 14-16.

⁵⁰ *Children (Care & Protection) Act 1987*, ss. 22(1) & (1A).

⁵¹ J. McDonald, RCT, 18/4/96, pp. 23887-88.

⁵² B. Lucas, RCT, 18/4/96, pp. 23805-09.

11.32 Balanced against these matters Brother McDonald and Father Lucas noted the existence of a public interest in:⁵³

- the investigation and prosecution of the commission of serious offences of a sexual nature by a member of a religious order; and
- the relevant investigation and prosecutorial authorities receiving any information that would promote the protection of children and the welfare of the community.

11.33 The dilemma which arises will be addressed later in this chapter, but for the meantime it may be noted that Brother McDonald,⁵⁴ took the pragmatic approach of:

- informing the complainant or self-reporting perpetrator of the option of reporting the matter to police;
- respecting the informant's wishes, if that person was an adult and did not want the matter reported, or if it concerned old events; and
- making a report through appropriate channels where the complaint involved a recent complaint concerning a minor.

Celibacy

11.34 Any sexual misconduct by a priest or member of the clergy is a clear violation of his or her commitment to celibacy and chastity.⁵⁵ Father Usher acknowledged that there has been a widely held 'belief' that the vow of celibacy is confined to heterosexual relations involving penetration and did not extend, for example, to acts of indecency, or to encounters with boys or adolescent males.⁵⁶ Clergy might see it as a moral wrong but might not define it as a serious sexual offence,⁵⁷ 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.

11.35 Centacare and the Australian Catholic Social Welfare Commission have, in fact, commenced a research project to examine factors such as the vow of celibacy, which may lead to sexual abuse by priests, clergy or other workers within the Catholic Church⁵⁸ and which may form a useful basis both for screening and education in this area.

⁵³ B. Lucas, RCT, 18/4/96, p. 23804; J. McDonald, RCT, 18/4/96, p. 23887.

⁵⁴ J. McDonald, RCT, 18/4/96, pp. 23887-88.

⁵⁵ The Catholic Church's principles in relation to sexual abuse and professional misconduct (draft), 4/11/93, RCPS Exhibit 1713.

⁵⁶ J. J. Usher, RCT, 16/8/96, p. 30806.

⁵⁷ J. J. Usher, RCT, 16/8/96, p. 30806. See also X11, RCT, 16/8/96, p. 30786.

⁵⁸ National Committee for Professional Standards, Submission to RCPS, 20/9/96, RCPS Exhibit 2529/165.

Pastoral Relationship

11.36 Clergy are in a position of trust and authority within the pastoral environment which is characterised by an inequality of power.⁵⁹ As such there is a need to recognise that:

- any sexualisation of the pastoral relationship involves professional misconduct and an abuse of trust and authority,⁶⁰
- failure of a parishioner to reject sexual approaches does not imply consent on his or her part,⁶¹ particularly where that person is young, impressionable and possibly at a vulnerable stage of life; and
- because the Minister has the greater power and pastoral responsibility, it is his duty to guard the boundary against sexual contact.⁶²

Insurance and Liability Concerns

11.37 The Church's position as a potential defendant in a civil action may limit its ability or even its desire to admit liability for abuse out of concern that an admission may:

- prejudice any claim it may make on its policy of insurance, where it contains a condition precluding admissions; or
- lead to a substantial increase in premium,⁶³ or even refusal of further coverage.

11.38 Additionally, where the insurance is inadequate, or subject to a substantial excess, there may be a fear within the Church of the financial consequences and the possible forced sale of schools, residences or other assets.⁶⁴

11.39 It has been suggested that the stand previously taken by the Churches in denying abuse, now at least publicly abandoned, had been even further perpetuated by the Churches resorting to expensive legal procedures to defend claims and thereby seeking to avoid paying compensation.⁶⁵

⁵⁹ Australian Catholic Bishops' Conference, Australian Conference of Leaders of Religious Institutes, National Committee for Professional Standards, *Towards Healing: Principles and Procedures in Responding to Complaints of Sexual Abuse Against Personnel of the Catholic Church in Australia*, Hectorville, 1996, RCPS Exhibit 3051/23.

⁶⁰ *ibid.*

⁶¹ Presbyterian Church in NSW Social Services, *Breaking the Silence: Policy and procedures for protecting against and dealing with sexual abuse within the Church*, November 1995, RCPS Exhibit 1804.

⁶² Australian Catholic Bishops' Conference, Australian Conference of Leaders of Religious Institutes, National Committee for Professional Standards, *Towards Healing: Principles and procedures in responding to complaints of sexual abuse against personnel of the Catholic Church in Australia*, Hectorville, 1996, RCPS Exhibit 3051/23.

⁶³ ABC, *Compass - Conduct Unbecoming: Sexual Assault in the Church*, (telecast), 27/6/93.

⁶⁴ ABC, *Four Corners - Twice Betrayed*, (telecast), 27/5/96.

⁶⁵ *ibid.*

11.40 Although it is inappropriate for the Royal Commission to comment on any of the many cases currently before the courts, let alone to express any view whether specific cases have been or are being defended unfairly or other than on their merits, anecdotally some commentators suggest that:

- the approach of some Churches has been unco-operative and dependent on technicalities, for example the defence by one religious group that it cannot be sued as it is not a legal entity;⁶⁶ and that
- deliberate attempts have been made to delay proceedings or to make them as expensive as possible to deter claimants.

11.41 Other commentators suggest that while individual Church leaders may express regret for the abuse, this is not translated into acceptance of blame by the Church as the result of legal advice given to the Church.⁶⁷ Within the Catholic Church, 'Pastoral Response Teams' have been implemented to provide counselling and mediation for victims, but it is said that people are encouraged to sign a form acknowledging that the Church accepts no responsibility for the abuse, before they are given counselling.⁶⁸

11.42 As observed earlier, it is no part of the role of this Commission to venture into the area of civil claims, or to come to any conclusions where the merits lie in any case, other than to observe that the Church response to the current body of litigation may be important in:

- restoring the faith of those who have been abused that their complaints will in the future be listened to and appropriately answered;
- determining whether the protocols and guidelines have been adopted in good faith, and that the Churches have been truly listening to the lessons of the past and the disclosures of this Royal Commission; and in
- deciding whether for the future there is to be a shift in the balance between the interests of the offenders and the Church as opposed to the needs and rights of victims, in favour of the latter.

11.43 While the Commission supports entirely the current proposal of the Catholic Church to develop a comprehensive plan for the treatment of clergy who offend in this area,⁶⁹ it wonders why equal facilities are not offered to proven victims of abuse, or why their entitlement to assistance with counselling, rehabilitation and the like should have to depend upon them successfully bringing legal proceedings against the Church in question, or upon them waiving any such claim.

⁶⁶ *ibid.*

⁶⁷ *ibid.*

⁶⁸ *ibid.*

⁶⁹ See below at section C of this chapter.

B. INCIDENCE OF ABUSE WITHIN THE CHURCHES

AN UNCERTAIN ESTIMATE

11.44 It is virtually impossible to make any firm estimate of the incidence of abuse involving members of Churches and religious organisations, having regard to:

- the significant under-reporting and the past practice of denial which has emerged;
- the fact that most of the recently surfaced allegations are yet to be tested in the courts;
- the past practice of 'solving' many of these cases quietly, privately and in ways that moved the offender away, or hid the problem; and
- the closed climate and the naivety within religious congregations concerning matters sexual, and the fear of the impact that disclosure, or voluntary request for treatment, has had on the ministry or vocation of individual members.

11.45 The available information is in effect limited to those who are identified and charged as the result of complaints or who seek admission to Church conducted therapy programs. The Professional Standards Research Project Report 'A National Treatment Program for Priests or Religious with Psycho-sexual Disorders' reviewed various estimates by experts in the field.⁷⁰ While concluding that the prevalence of the rate of sexual abuse or violations of sexual boundaries within the religious community is generally unknown, there were 'soft indications' that the figure was approximately 10%. The Report concluded that there was no firm basis to argue that the figure was disproportionately higher than that found in the population of other professional groups.

11.46 The Commission is not in a position to agree or to disagree with this assessment. However, it notes that during the period of its inquiry there have been a large number of priests, ministers, members of religious orders, choir masters, organists and others associated with Churches, charged and convicted of offences involving the sexual abuse of children in NSW and elsewhere in Australia. They have come from a range of different denominations and beliefs.

11.47 An estimate of 10% of the population represents a significant problem, particularly since any one offender is likely, on past experience, to come into contact with many children, and having abused once to reoffend with a degree of regularity. While the

⁷⁰ Australian Catholic Bishops' Conference, Australian Conference of Leaders of Religious Institutes, Professional Standards Research Project: A national treatment program for priests or religious with psycho-sexual disorders: Final Report, 1996, RCPS Exhibit 2513C, pp. 26-28.

reasons for, and the patterns of, abuse do not differ markedly from other categories of offender, it is instructive for further reference to be made to some selected case studies that they:

- confirm the heterogeneous nature of the paedophile offender;
- underline that paedophile offenders do include people trusted by the community and who, to all outward appearances, are beyond reproach; and
- illustrate a particular problem for law enforcement, arising out of the circumstance that at least in the past there has been a reluctance by the Churches to bring in police, and on the part of the latter a degree of deference shown, due to inherent disbelief in allegations against priests or ministers of religion.

11.48 The cases are dealt with very briefly, and without any attempt at attribution of fault, having regard to the limits of the terms of reference and the frank concessions made by the Churches and religious authorities of all denominations, that:

- paedophiles have existed within their ranks;
- their response has in the past been inadequate; and that
- there is a pressing need for proper protocols to ensure that these cases are not suppressed, nor dealt with inappropriately.

SOME CASE STUDIES

Case Study 1 - AC1

11.49 AC1 was an Anglican minister against whom complaints of an inappropriate sexual relationship involving an adolescent girl, AC2, were made. She informed the Commission that she became involved in a sexual relationship with AC1, the minister of her Church between 1979 and 1983, commencing when she was 14 years old and a student in a confirmation class.⁷¹ She said that she felt flattered and singled out by the attention.⁷²

11.50 She acknowledged that she had a distorted view of the relationship, considering the minister to be her boyfriend and expecting that he would leave his wife and marry her. By January 1983 she realised this would not happen. When she was informed by another girl that AC1 had also 'tried it with her', she terminated the relationship.⁷³

11.51 She sought counselling from AC3, a Presbyterian Minister, in mid-1984, and informed the Commission that he had spoken to AC1, who confirmed the allegations.⁷⁴

⁷¹ AC2, RCT, 7/5/96, pp. 24762-75.

⁷² AC2, RCT, 7/5/96, p. 24770.

⁷³ AC2, RCT, 7/5/96, p. 24773.

⁷⁴ AC3, RCT, 7/5/96, p. 24786.

11.52 After making a statement to police many years later, AC2 was informed by the Office of the Director of Public Prosecutions (ODPP) in January, 1996 that a prosecution was not viable, because of her age at the time, her consent to the relationship and the delay in reporting.⁷⁵

11.53 AC4, the father of AC2, raised his concerns with a Bishop of the Church in 1985,⁷⁶ and both he and AC2 spoke to an Archdeacon in February 1996. They were informed that he had no power to act on his own behalf and that the facts would need to be put before the Archbishop to take whatever action he saw fit.⁷⁷ There was no response to the allegation on the part of the Church, either by way of investigation or otherwise.

11.54 Archbishop Goodhew agreed in evidence that, irrespective of the truth of the matter, it was unacceptable that AC1 had been able to continue in the parish for 10 years after the complaint was made, without any investigation having been conducted.⁷⁸

11.55 An associated matter of concern in this matter was the apparent reluctance of the Anglican Church to pay for the counselling which AC2 sought in response to the alleged abuse.

Case Study 2 - X11

11.56 X11, a Christian Brother and teacher at a number of schools, was, on his own admission involved in sexual assaults on numerous (up to 20) pre-pubescent boys over many years.⁷⁹

11.57 Initially he had been confronted by a school principal in 1984 with allegations of molesting a boy, which he admitted. He sought therapy after disclosing an assault on another boy X17 to the then Provincial, in August 1987.⁸⁰ He was threatened with dismissal but a decision was made that treatment would be more appropriate and this prompted him to begin therapy.⁸¹

11.58 In disclosing his 'difficulties' to Brother McDonald in late 1987, he minimised the extent of the assaults.⁸² Brother McDonald said that he understood that the complaints had been reported to the police and that there had been an investigation but that no charges had been laid.⁸³ X11 was interviewed by detectives in 1988 but had no further contact with police following this.⁸⁴

⁷⁵ AC2, RCT, 7/5/96, p. 24778; Letter from ODPP to NSW Police Service, 29/1/96, RCPS Exhibit 1809C.

⁷⁶ R. H. Goodhew, RCT, 7/5/96, p. 24796.

⁷⁷ AC2, RCT, 7/5/96, p. 24783.

⁷⁸ R. H. Goodhew, RCT, 7/5/96, p. 24796.

⁷⁹ X11, RCT, 16/8/96, pp. 30778-80.

⁸⁰ X11, RCT, 16/8/96, p. 30781.

⁸¹ X11, RCT, 16/8/96, p. 30782.

⁸² X11, RCT, 16/8/96, p. 30780.

⁸³ J. McDonald, RCT, 18/4/96, p. 23875.

⁸⁴ X11, RCT, 16/8/96, p. 30787.

11.59 When Brother McDonald became the Provincial in 1991, he believed that X11 had received counselling but was not convinced that the matter had been dealt with sufficiently. He took it upon himself to make regular checks on X11, ensured that he was in a position where his access to children was minimised, and recommended that he undergo assessment for treatment whilst overseas on a study course, as there was no appropriate treatment in Australia.⁸⁵ X11 was assessed and commenced immediate residential treatment at the Saint Luke Institute, a mental health hospital in Maryland in the United States, in September 1994. He has since returned to Australia where he is receiving therapy in another State, including sessions with a psychiatrist, a psychotherapist, and a spiritual director, along with group work, all of which is funded by the Order. As part of his therapy he admitted to his sexual offences and gave permission for Brother McDonald to be informed of this.⁸⁶

11.60 X11 informed the Royal Commission that it was not until he was threatened with dismissal that he realised his actions were criminal; rather, he had interpreted them as 'positive relationships' with the boys.⁸⁷ He said that he saw the vow of chastity as 'applying primarily to heterosexual relationships' and that sexual conduct had not been the subject of discussion within the Order.⁸⁸ His offending had commenced when he was aged 17, and his victims had included children from various families whom he had befriended (the offences occurring in their homes), as well as boys in a children's home.

11.61 A police investigation is under way as a result of X11's admissions, and evidence to the Commission.

Case Study 3 - Father Peter Comensoli/Brother Michael Evans

11.62 Allegations were made by several boys of sexual assaults by Brother Evans (deceased), an ex member of the Christian Brothers, and by Father Comensoli.

11.63 The first allegations against Brother Michael Evans relate to when he was attached to St Patrick's College, Strathfield in the late 1970s.⁸⁹ He then was appointed Principal of Edmund Rice College in Wollongong where he became a prominent community figure. He wrote a column in the *Illawarra Mercury*, had a radio show, and worked in various charity organisations.⁹⁰

⁸⁵ J. McDonald, RCT, 18/4/96, pp. 23878-79; X11, RCT, 16/8/96, p. 30788.

⁸⁶ J. McDonald, RCT, 18/4/96, pp. 23880-81.

⁸⁷ X11, RCT, 16/8/96, p. 30784.

⁸⁸ X11, RCT, 16/8/96, p. 30786.

⁸⁹ The witness gave evidence of an encounter with Brother Evans when he was on a football camp at St Patrick's College Strathfield; Witness name suppressed, RCT, 17/4/96, pp. 23690-95.

⁹⁰ J. McDonald, RCT, 18/4/96, pp. 23842 & 23858; J. F. Dooley, RCT, 22/4/96, p. 23928.

11.64 Father Comensoli was a well known and popular parish priest in Wollongong, the time. The principal complainant, X4, gave evidence that Father Comensoli provided him with alcohol, showed him pornographic movies, and indecently assaulted him at the presbytery.⁹¹

11.65 On one occasion in 1984, when X4 was staying at the parish presbytery, Brother Evans had gone up to his room and indecently assaulted him.⁹² About a month later X4 informed Bishop Murray of the incident.⁹³ Although he was assured that his complaint would be treated seriously and the matter looked into, he heard no more about it.

11.66 Bishop Murray acknowledged speaking to X4 concerning Brother Evans and Father Comensoli in 1984, but said that no action was taken at that stage as he had not understood X4 to be making a formal complaint and had not wanted to disturb Brother Evans' planned preparation for the seminary.⁹⁴

11.67 In 1989, concerned at the inaction, and having heard that two other boys, X5 and X6, had suffered similar experiences with Brother Evans, X4 made a complaint to a priest whose name is suppressed.⁹⁵

11.68 The priest whose name is suppressed encouraged X4 to report the complaint to Wollongong Police, after which he and two other victims provided statements.

11.69 Following investigations a decision was made by the Police Service not to charge Brother Evans.⁹⁶

11.70 On taking office as Provincial in July 1991, Brother McDonald was briefed by his predecessor as to the allegations against Brother Evans. He was told that Brother Needham had dealt with the matter and that the police and the ODPP had determined that the matter would go no further.⁹⁷

11.71 In 1991 the mother of X4 contacted Brother McDonald, as a result of which he concluded that the allegations should be investigated further.⁹⁸ Having first gained the approval of Bishop Murray he informed Centacare, sought advice from the police chaplain, spoke to the school counsellor at Edmund Rice College, and indicated to police that he would like the matter re-investigated.⁹⁹

⁹¹ X4, RCT, 17/4/96, pp. 23717-18.

⁹² X4, RCT, 17/4/96, pp. 23718-20.

⁹³ X4, RCT, 17/4/96, p. 23720.

⁹⁴ W. E. Murray, RCT, 24/4/96, pp. 24123-24 & 24129-30.

⁹⁵ X4, RCT, 17/4/96, pp. 23722-23; Witness name suppressed, RCT, 16/4/96, pp. 23669-70.

⁹⁶ D. J. Ainsworth, RCT, 23/4/96, p. 24043; J. McDonald, RCT, 18/4/96, p. 23874.

⁹⁷ J. McDonald, RCT, 18/4/96, pp. 23837-38.

⁹⁸ J. McDonald, RCT, 18/4/96, p. 23839.

⁹⁹ J. McDonald, RCT, 18/4/96, p. 23851.

11.72 Brother McDonald questioned both Brother Evans and another priest, Brother Hocking, concerning allegations of sexual abuse of boys at 'Eddy's Place', a youth refuge in Wollongong in which they were both involved.¹⁰⁰ They both denied the allegations although Brother Hocking later confessed to sexual abuse of a boy at the premises and was subsequently convicted of indecent assault.¹⁰¹

11.73 Brother McDonald was sufficiently concerned about Brother Evans to withdraw him from the principalship of Edmund Rice College¹⁰² and advised him that he would have difficulty recommending him for any further teaching positions.¹⁰³ He informed the Commission that he had hoped at the time that any person contacting him as a referee for Brother Evans would 'read between the lines'.¹⁰⁴ Thereafter, Brother McDonald sought to supervise Brother Evans by requiring regular meetings and contact with his psychologist.¹⁰⁵

11.74 Brother Evans went on leave and was subsequently offered a position with the Department of Juvenile Justice, and later with a college of Technical and Further Education (TAFE) in an administrative position. Brother McDonald was not asked for any reference for these positions.¹⁰⁶ In a personal letter to Brother McDonald dated 19 October 1993 Brother Evans revealed directly for the first time that he had sexual problems.¹⁰⁷

11.75 In August 1992 Operation Paradox¹⁰⁸ received an anonymous call that Father Comensoli and Brother Evans were suspected of interfering with young children. A report was subsequently sent to Wollongong detectives.¹⁰⁹ Inexplicably, the Patrol Commander at Wollongong was provided with a report to the effect that nothing adverse was known about either man.¹¹⁰

11.76 The author of this report admitted in evidence that no check had been made of an intelligence reports, nor had the file on the earlier matter been obtained.¹¹¹

11.77 The matter became public when the priest whose name is suppressed informed reporter of the complaints and a number of boys, including X4, X5 and X6 related the stories to the *Illawarra Mercury*.¹¹² An article appeared on 27 October 1993.¹¹³

¹⁰⁰ J. McDonald, RCT, 18/4/96, pp. 23851-52.

¹⁰¹ J. McDonald, RCT, 18/4/96, pp. 23854-56; *Illawarra Mercury*, 1/9/92, p. 1, RCPS Exhibit 1819C/122.

¹⁰² J. McDonald, RCT, 18/4/96, p. 23858.

¹⁰³ J. McDonald, RCT, 18/4/96, p. 23863.

¹⁰⁴ J. McDonald, RCT, 18/4/96, pp. 23863-64.

¹⁰⁵ J. McDonald, RCT, 18/4/96, p. 23870.

¹⁰⁶ J. McDonald, RCT, 18/4/96, p. 23875.

¹⁰⁷ J. McDonald, RCT, 18/4/96, p. 23875.

¹⁰⁸ Operation Paradox is referred to in Chapter 18 of Volume.

¹⁰⁹ B. Lawson, RCT, 22/4/96, pp. 23977-82; Report by State Intelligence Group re Operation Paradox-1992, 1/9/92, RCPS Exh 1747C, at Doc. 1090637-40.

¹¹⁰ Report from J. H. McGrath to Patrol Commander, Wollongong, 13/10/92, RCPS Exhibit 1747C, at Doc. 1090636.

¹¹¹ J. H. McGrath, RCT, 23/4/96, p. 24094.

¹¹² Witness name suppressed, RCT, 16/4/96, pp. 23677-78.

¹¹³ B. Martin, 'Brother, parish priest molested us', *Illawarra Mercury*, 27/10/93, pp. 1-4, RCPS Exhibit 1720/1.

11.78 Later that day police interviewed Brother Evans about the allegations. He declined to take part in a recorded interview but denied the allegations.

11.79 Following the publication of the article in the *Illawarra Mercury*, additional allegations were made to the police, this time by X9 and X14, which led to Father Comensoli being interviewed and charged.

11.80 Father Lucas acknowledged that he and Brother McDonald met with the complainants shortly after the *Illawarra Mercury* article appeared. He agreed that he told them that he would have preferred them not to have gone to the media. He said he had believed at the time that they wanted the Church to deal with the complaints.¹¹⁴ He denied that he had sought to dissuade the boys from going to the police. Father Lucas said in evidence that there was some closing of ranks in this situation because many of the priests, particularly the older ones, could not countenance the possibility of such behaviour by Father Comensoli and they were distressed by what they considered to be inflammatory reporting by the *Illawarra Mercury*.¹¹⁵

11.81 Bishop Murray told the Commission that he offered counselling to the complainants and asked for Father Comensoli's resignation.¹¹⁶ In June 1994 Father Comensoli pleaded guilty to two charges of indecent assault.¹¹⁷

11.82 Further inquiries in relation to Brother Evans led to a decision to charge him, but before that could occur he committed suicide.¹¹⁸ He had earlier applied for and been granted dispensation from his vows.¹¹⁹

C. CHURCH PROTOCOLS FOR DEALING WITH ALLEGATIONS OF SEXUAL ABUSE

CATHOLIC CHURCH

Development of Protocol

11.83 It has been acknowledged by the Catholic Church that it did not begin to address the problem of sexual abuse until about 1988. In November/December 1988 the Australian Catholic Bishops Conference established a Special Issues Committee, including people with relevant experience in dealing with child sexual abuse,¹²⁰ to consider the implications of allegations of criminal behaviour, especially relating to children, made

¹¹⁴ B. Lucas, RCT, 18/4/96, pp. 23812-15.

¹¹⁵ B. Lucas, RCT, 18/4/96, pp. 23822-23; Witness name suppressed, RCT, 16/4/96, pp. 23678-79 & 23684-85.

¹¹⁶ W. E. Murray, RCT, 24/4/96, pp. 24138-39.

¹¹⁷ Certificate of Committal on Plea of Guilty, 2/6/97, RCPS Exhibit 3260; B. Martin, 'Sex charges: priest pleads guilty' and 'Guilty plea vindicated going public', *Illawarra Mercury*, 3/6/94, RCPS Exhibit 3261, pp. 1 & 5.

¹¹⁸ A. Beck, RCT, 23/4/96, pp. 24111-12.

¹¹⁹ A. Beck, RCT, 23/4/96, pp. 24111-12.

¹²⁰ 'Statement on abuse of children', *The Catholic Weekly*, 30/6/93.

against members of the clergy. The Committee was required to develop a protocol to be observed if an accusation was made, and to advise on its implementation.

11.84 A draft of the 'Protocol for dealing with allegations of criminal behaviour' was completed in April 1991, and was revised the following year. The Protocol was circulated to all bishops,¹²¹ and to diocesan priests in late 1991 early 1992.¹²² In his evidence Father Lucas said that he was unsure whether it was implemented in all dioceses and acknowledged that it was not binding in an enforceable way.¹²³ Each of the dioceses and religious orders was free to determine its own response to official protocol of this kind.

11.85 In January 1993, the Australian Bishops Conference issued the 'Pastoral Statement on Child Protection and Child Sexual Abuse'.¹²⁴ The Statement acknowledged that some clergy had been offenders and that the Church may not have treated these incidents as seriously as they deserved. A statement of principles for dealing with sexual abuse was released by the Church in April 1994.¹²⁵

11.86 In December 1996, the Catholic Church released a new protocol 'Towards Healing',¹²⁶ which sets out the basic principles for the Church's response to complaints of sexual abuse and the procedures for dealing with such complaints. They became operational on 31 March 1997. The guidelines were developed by the National Committee for Professional Standards, a Committee jointly established by the Australian Catholic Bishops Conference and by the Australian Conference of Leaders of Religious Institutes.¹²⁷ The Committee continues as the national body overseeing the implementation of policies and procedures across Australia.

Key Developments

11.87 The Church has established a Professional Standards Resource Group (PSRG) in each of the five provinces, consisting of at least one priest and one 'religious', and up to 10 other suitable persons with experience in child protection, social sciences, civil and Church law and/or industrial relations. Such groups are to act as advisers to Church bodies within their province, and are to provide Contact Persons, Assessors, Victims' Support Persons, Accused's Support Persons, Facilitators and Reviewers.¹²⁸

¹²¹ B. Lucas, RCT, 18/4/96, pp. 23801-02.

¹²² B. Lucas, RCT, 18/4/96, p. 23802.

¹²³ B. Lucas, RCT, 18/4/96, p. 23802.

¹²⁴ Catholic Church, Pastoral Statement on Child Protection and Child Sexual Abuse, RCPS Exhibit 1803.

¹²⁵ The Catholic Church's principles in relation to sexual abuse and professional misconduct within the Church (draft), 4/11/93, RCPS Exhibit 1713.

¹²⁶ Australian Catholic Bishops' Conference, Australian Conference of Leaders of Religious Institutes, National Committee for Professional Standards, *Towards Healing: Principles and Procedures in Responding to Complaints of Sexual Abuse Against Personnel of the Catholic Church of Australia*, Hectorville, 1996, RCPS Exhibit 3051/23. See also Volume VI, Appendix P15.

¹²⁷ *ibid*, p. 7.

¹²⁸ *ibid*, p. 9.

11.88 Although initially formed with a mandate confined to matters concerning sexual abuse by people working for the Church, this has been widened to incorporate allegations of physical, emotional and psychological abuse, as well as other failures to meet accepted professional standards.¹²⁹

11.89 The Professional Standards Office is the operating arm of PSRG, and has a role similar to that of an internal ombudsman, to monitor the process and ensure that mechanisms are in place so that allegations of abuse are:

- recorded promptly;
- notified to the relevant Church authority;
- pursued sensitively and effectively; and
- notified to the relevant civil authority, where the allegation relates to a criminal act.

11.90 One of the main functions is to ensure open liaison with police and other relevant authorities. For this purpose liaison arrangements have been made and a memorandum of understanding between the PSRG and the Police Service is in preparation, which will deal with the procedures for communications between the two bodies.

11.91 A report prepared for the Royal Commission by the Professional Standards Office outlines further developments under way, including:

- advice to Church officials and personnel of their obligations under the law and of the procedures required of them in receiving and handling allegations of abuse, whether from a victim, third party or self confessed perpetrator;
- the appointment of contact persons to cover all key areas in the States;
- the development of a system for services to support victims, including harm assessment and financial assistance for counselling;
- the establishment of Encompass Australia by the Church in association with the University of New South Wales to provide treatment facilities for offenders - a program discussed later in this chapter;
- the development of a comprehensive computerised reporting and data collection system, to enable monitoring of case progress, the development of reports and the analysis of trends, with suitable security;
- a review of the protocol document Towards Healing, for possible improvement and extension to other areas of alleged criminal activity; and

¹²⁹

Bishops and Leaders of Religious Institutes for the Catholic Church in NSW and ACT, Professional Standards Office, Report for the Wood Royal Commission, Fax to RCPS on 16/7/97, RCPS Exhibit 3229, p. 1.

- the development by the NSW Catholic Education Commission, working on behalf of the 600 systemic and independent Catholic schools in the State, of policies and procedures to be implemented by school authorities in cases of allegations of sexual abuse of children by school personnel, in harmony with but probably extending beyond 'Towards Healing'.¹³⁰

11.92 The Report closes with the following observation:

The Church in New South Wales is now much more aware of its past deficiencies and failures in dealing with allegations of sexual abuse brought against its members. The Church offers no excuse for this and is indebted to the Royal Commission for drawing its attention to those deficiencies in its processes that were thought to be addressing whatever problems there were. The Church has been faced with a crisis; it is now seeking to address the matters constructively by establishing appropriate policies and procedures that demand openness and transparency throughout.

The Church in New South Wales is committed to act justly and with compassion in respect to its pastoral, moral and legal responsibilities to all parties wronged by any criminal activity involving its members. The Church will also pursue the responsibilities defined in its own law to assess and determine the present and future status of, and sanctions against offenders within the Church, irrespective of the outcomes of any criminal proceedings.¹³¹

11.93 The Commission commends these developments. For the assistance of other Churches or religious organisations which have not yet progressed as far, the key points of the 'Towards Healing' protocol are outlined below.

Principles for dealing with Allegations of Sexual Abuse

11.94 The relevant principles are defined as follows:

- the clergy are in a position of trust and authority within the pastoral environment and any sexualisation of the pastoral relationship is professional misconduct and an abuse of trust and authority;
- a failure to reject such approaches does not imply consent and clergy should at all times take responsibility to guard against sexual contact (even if initiated by a parishioner);
- any sexual behaviour with a minor is immoral and criminal and sexual approaches to adults may also be subject to provisions of civil or criminal law;¹³²
- the Church makes a firm commitment to principles of 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;

¹³⁰ Bishops and Leaders of Religious Institutes for the Catholic Church in NSW and ACT, Professional Standards Office, Report for the Wood Royal Commission, Fax to RCPS on 16/7/97, RCPS Exhibit 3229.

¹³¹ *ibid*, pp. 5-6.

¹³² Australian Catholic Bishops' Conference, Australian Conference of Leaders of Religious Institutes, National Committee for Professional Standards, *Towards Healing: Principles and Procedures in Responding to Complaints of Sexual Abuse Against Personnel of the Catholic Church of Australia*, December 1996, RCPS Exhibit 3051/23, p. 2.

the procedures apply to all Church personnel (clerics, religious personnel, lay employees and volunteers); and

the Church will not interfere with or jeopardise a police or other investigation.

Procedures for dealing with Allegations of Sexual Abuse

These provide for the following:

Complaints

- complaints received are to be referred to the PSRG Contact Person within 24 hours in accordance with the reporting procedures circulated through the Church community;
- Church personnel are to comply fully with mandatory reporting requirements;
- the person receiving a complaint is to make a written note of the information provided which is to be signed by the complainant and forwarded to the Contact Person who is to forward a report to the appropriate Church authority;

Assessment

- the Contact Person is to make a recommendation as to whether the case warrants a full formal assessment;
- where a criminal act is involved, the Contact Person should encourage a report to the police and assist the complainant to do so if necessary;
- any decision not to inform the police must be noted and confirmed by the complainant;
- any State law concerning reporting must be observed;
- the PSRG is to liaise with authorities;
- if a matter is later revealed to be criminal, the Church assessment procedures are to cease and the complainant is to be informed of the right to take the matter to the police;

Assessment Procedures

- the Church authority is to appoint two independent assessors to conduct an assessment within 24 hours of the receipt of the Contact Person's report during which time the person accused can be asked to stand aside;
- this must be done if there is a risk of further sexual assault;
- the assessors are to liaise with the Contact Person before interviewing the victim, who is to be invited to have a support person present during the interview;
- the assessors, who must be qualified child interviewers, are not to interview the child if this would interfere with legal interview/investigation, or if the parent or guardian has not given consent;

- the accused who is to be informed of the complaint and interviewed by both assessors, is to be afforded rights as follows:
 - assumption of innocence;
 - opportunity to make admission;
 - a right to independent legal advice; and
 - a right to have another person present at interview;
- a written record is to be made of any interviews;
- Support Persons should have access to the assessors and keep both parties informed of developments;
- the assessors are to produce a report, with any recommendations, at the conclusion of assessment and supply a copy to the Church Authority, PSRG and Support Persons;
- the Church Authority must act on the recommendations as soon as possible and consult with PSRG as to their implementation;
- the process of assessment is to be as quick and efficient as possible and transparent to all;
- during the process no comment is to be made on the issue of guilt, innocence or liability;

Outcomes

- post-assessment, one convenor is to meet with the complainant to discuss the findings;
- if the finding is one of guilt, the victim and Church Authority are to agree on a facilitator who will then organise and moderate a meeting between the Church Authority and victim to discuss the ongoing needs of the victim and his or her family, to identify and confront any outstanding issues, and to draw up a record of agreement between the parties (explaining reasons for any disagreement) which is to be provided to the PSRG;
- the victim may call for a review of the process if he or she is dissatisfied with the Church's actions;

Review of Process

- this may be requested in writing by the complainant or by the accused;
- if the request for a review is accepted, the convenor is to name a reviewer from Resource Group (who can be objected to by complainant) who is to undertake an independent evaluation as to whether the procedures and general principles set out have been adhered to;
- the reviewer may interview all Church personnel concerned and have access to all relevant documentation;

- the reviewer is to complete the review within three months, and provide the convenor with a written report and recommendations;
- copies are to be provided to those involved and to the Church Authority;

Outcomes re Accused

- if there is a risk of further abuse or 'scandal' the accused is to be suspended on full pay (clerics and religious personnel will be put on administrative leave) and not allowed to take part in public ministry until the matter is resolved;
- if there is a finding of guilt the accused can be dismissed, banned from Church involvement, removed from public ministry, requested to return to lay status or the canonical penal process can be commenced;
- if an admission is made, a Church representative will meet with the offender and discuss future options;
- if found not guilty, the Church will take necessary steps to vindicate the accused, informing of the steps taken;

Preventative Strategies

- all Church personnel are to be made aware of the seriousness of sexual abuse, inappropriate behaviour and inappropriate conduct;
- if a member of the clergy requests a transfer they will be asked for a signed statement that they know of no circumstance which may lead to a complaint of sexual abuse;
- local Church Authority will also be asked for such a statement;
- candidates for religious institutions must make a similar statement prior to acceptance;
- it is to be made generally known that any proven incident of sexual abuse is to result in dismissal or removal;
- Church bodies are to have procedures in place for obtaining police checks and references and for verifying the suitability of applicants;
- Church authorities must be honest and frank in any references given; and
- In-Service programs should be run by Church authorities to inform them of the principles and procedures contained in Towards Healing.

1.96 The protocol has undergone considerable improvement since the 1992 version. It attempts to balance the rights of the victim and the accused fairly and it has lost the damage control element of previous protocols where the emphasis was on protecting the reputation

of the Church. Commendably it deals with prevention and screening of potential clergy. Generally it appears that Church policies are becoming more constructive.¹³³

11.97 The development of this protocol and the other steps outlined earlier indicate 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. As with all policies and plans, the proof will lie in their implementation.

ANGLICAN CHURCH

Development of Protocol

11.98 A Sexual Abuse Committee was established following a resolution of the Standing Committee in 1993, to develop a set of guidelines, policies and procedures for detecting and investigating sexual misconduct.¹³⁴ The Committee instituted a Working Party which reported in May 1994,¹³⁵ after a lengthy examination of protocols in use elsewhere, and consultation with clergy, social workers, counsellors and lawyers.

11.99 The system proposed a structure that would provide information and support to complainants, and establish a series of committees to deal with complaints, research, education and prevention processes, and protect the rights and interests of both the victim and accused.

11.100 One member of the Working Party, Justice Peter Young, put forward a dissenting report arguing that the Working Party's Report was too victim oriented, that there were limited resources to be devoted to the care of victims, that police should be informed of allegations rather than the Church dealing with them alone, and that a system dealing with the rights of the victim and accused alike may lead to conflict to the detriment of the accused.¹³⁶

11.101 The Working Party's Report led, in June 1996, to the creation of a Protocol for dealing with sexual misconduct by Church workers in the Diocese of Sydney.¹³⁷

¹³³ N. Ormerod, A little breathless and a little late: Catholic policy on sexual abuse, paper presented at 1st Australian and New Zealand Conference on Sexual Exploitation by Health Professionals, Psychotherapists and Clergy, University of Sydney, 12-14 April 1996, RCPS Exhibit 3294C.

¹³⁴ The terms of reference of the Committee were: 'To report to the Archbishop as soon as possible on the prevention, detection and investigation of complaints of sexual misconduct by clergy, employees of parishes and diocesan organisations and persons who hold appointments in parishes and diocesan organisations, and to consider subsequent counselling procedures for all persons involved'.

¹³⁵ R. H. Goodhew, RCT, 7/5/96, p. 24798; Report to the Archbishop of Sydney on the prevention, detection & investigation of sexual abuse within the Church, May 1994, RCPS Exhibit 1811/1.

¹³⁶ P. Young, Diocese of Sydney, Sexual Abuse Report, March 1994, RCPS Exhibit 1811/2.

¹³⁷ Anglican Church Diocese of Sydney, Protocol for Dealing with Sexual Misconduct by Church Workers in the Anglican Church Diocese of Sydney, June 1996, RCPS Exhibit 3230.

1.102 The stated purpose of the protocol is to assist the Church to confront the problem of sexual misconduct by Church workers whether lay or ordained) by setting down procedures for the making of complaints and for dealing with those complaints:

Complaints

- The protocol stipulates that:
 - a complaint is to be investigated expeditiously and fairly (to the parties concerned);
 - the aggrieved person is to be informed of the outcome of the complaint; and that
 - the parties concerned are to be treated appropriately and with respect.¹³⁸
- Five contact persons have been appointed to receive complaints from the aggrieved person themselves or from any person who suspects or becomes aware of sexual misconduct.¹³⁹ Their role is specified as follows:
 - where there is reasonable evidence of sexual misconduct involving a minor, they are to report it to the police and relevant government agencies 'if required to do so by applicable law';
 - they are to provide the aggrieved person with information about support services, legal advice and advice concerning the possible need to report the complaint to appropriate authorities;
 - they are to record the complaint in writing if so required by the complainant, and to provide a copy to the Archbishop, and to his confidential advisers who may include 'persons with expertise in dealing with sexual misconduct matters and persons with expertise in the law';¹⁴⁰ and
 - they may provide a copy of the written complaint to the alleged offender, after consultation with the complainant.

If the complainant commences legal proceedings, the complaint may cease to be dealt with under the Protocol.¹⁴¹

Assessment

- The Archbishop is to determine, with the help of his advisers, how the complaint should be dealt with, including the scope of any investigation. Factors to be considered include:
 - the nature of the alleged sexual misconduct;
 - the confidentiality required by the complainant;
 - whether the alleged offender is currently working in the Diocese; and

11.102 p. 2.
11.102 p. 4.
11.102 p. 5.
11.102 pp. 4-5.

- other relevant circumstances, such as the existence of other persons who may be affected by the complaint.¹⁴²

Outcomes

- Possible outcomes include one or more of the following:
 - complaint reported to police or other authorities;
 - written response or apology to the aggrieved person;
 - aggrieved person referred to further resources and/or counselling;
 - Church worker warned or employment terminated;
 - if the offender is a member of the clergy, formal disciplinary proceedings commenced;
 - any licence or authority from the Archbishop that the Church worker holds revoked.¹⁴³

Church Disciplinary Procedures

- If a charge laid against a member of the clergy is not admitted, the charge is investigated by a Board of Enquiry. If it is found that a prima facie case exists, the matter is referred to the Diocesan Tribunal for hearing and determination. If found guilty the member of the clergy may be admonished, suspended or expelled from office, deprived of the rights and emoluments of office, or deposed from Holy Orders.¹⁴⁴

Draft Code of Conduct

11.103 In July 1997 the Church provided the Commission with a Draft Code of Conduct for Clergy.¹⁴⁵ The stated purpose is 'to map out the boundaries of acceptable behaviour' and to 'set the standards of behaviour required by Clergy'.¹⁴⁶

11.104 The Code outlines:

- the Christian view of sexual activity and the avenues for its proper expression;¹⁴⁷
- the manner in which the clergy should conduct themselves with children and with others, so as to eliminate the possibility of harassment,¹⁴⁸ recognising the position of power which clergy occupy, and warning of the abuse of this power;

¹⁴² *ibid.*, p. 6.

¹⁴³ *ibid.*

¹⁴⁴ *ibid.*, p. 7.

¹⁴⁵ Anglican Church Diocese of Sydney, Code of conduct for clergy (draft), RCPS Exhibit 3231.

¹⁴⁶ *ibid.*, p. 5.

¹⁴⁷ *ibid.*, p. 6.

¹⁴⁸ *ibid.*

- the importance of confidentiality in the pastoral relationship,¹⁴⁹ recognising that where there is a legal or other obligation for disclosure, compliance with it is permissible;
- definitions of unwanted sexual behaviour, including sexual harassment, sexual assault and child sexual abuse;¹⁵⁰
- guidelines regarding the personal and organisational life of members of the clergy, including the need for an awareness of appropriate leadership styles;¹⁵¹
- procedures for conducting personal interviews;¹⁵²
- guidelines regarding the conduct of Leaders (Clergy and lay) ministering to children and young people, for example, not being with a child or young person unaccompanied, and respecting privacy; and
- the requirement for leaders to complete an application form in order to undertake child/youth work which includes questions about previous criminal charges and investigations by police and the Department of Community Services (DCS).¹⁵³

UNITING CHURCH

Development of Protocol

11.105 The Uniting Church's 'Procedures for use when complaints of sexual abuse are made against Ministers' was published in 1994.¹⁵⁴ The Procedures were prepared by the Commission on Women and Men, in consultation with the Assembly Legal Reference Committee, Assembly Standing Committee, Synod General Secretaries, the Anti-Discrimination Board of NSW and other interested parties.

11.106 At its 8th National Assembly in July, 1997 the Church took further steps to improve its response to allegations of sexual misconduct including approval of:¹⁵⁵

- significant amendments to the Discipline Regulations,¹⁵⁶ to be presented to the Assembly Standing Committee in late August 1997 for final endorsement;
- the development of guidelines to implement the Regulations;
- immediate implementation of an Interim Code of Ethics,¹⁵⁷ followed by continuing consultation with ministers as to the final content of the Code;

¹⁴⁹ *ibid*, p. 8.

¹⁵⁰ *ibid*, pp. 9-10.

¹⁵¹ *ibid*, pp. 14-15.

¹⁵² *ibid*, p. 16.

¹⁵³ *ibid*, pp. 17-18.

¹⁵⁴ Uniting Church in Australia, *Procedures for use when complaints of sexual abuse are made against ministers*, 1994, RCPS Exhibit 3226, p. 1.

¹⁵⁵ Uniting Church in Australia, Letter to RCPS, 28/7/97, RCPS Exhibit 3233; Uniting Church in Australia, Letter to RCPS, 29/7/97, RCPS Exhibit 3232/1.

¹⁵⁶ Uniting Church in Australia, *Discipline Regulations as agreed at 8th Assembly, Amendment to the constitution and amendments to regulations - Discipline*, July 1997, RCPS Exhibit 3232/2.

- continued development by the Assembly Standing Committee of policy statements for the prevention of sexual misconduct (currently in draft form);¹⁵⁸ and
- a requirement that all Ministers of the Word, Deacons, Deaconesses, Youth Workers, Community Ministers and Lay Pastors in active service complete basic education in the implementation of the discipline processes, (particularly that part concerning sexual misconduct) and the Code of Ethics.

Amendments to Disciplinary Regulations¹⁵⁹

11.107 The amendments to the Discipline Regulations provide, in broad summary, for:

Complaints

- the appointment of a Synod Sexual Misconduct Complaints Committee¹⁶⁰ consisting of a panel of members including one with expertise in sexual abuse issues, one with legal expertise, and other members skilled in mediation and conciliation, with general knowledge of sexual abuse issues, knowledge and understanding of pastoral ethics and appropriate behaviours for Ministers;¹⁶¹
- the Committee to appoint a panel of contact persons and advisers;
- allocation of a panel member to be an adviser to a complainant or a Minister;
- appointment of a contact person to provide assistance including listening to a complainant, discussing the nature of the conduct, informing the complainant of the rights and responsibilities that arise, providing information about the Church's complaints and disciplinary processes and of other options available, and assisting the complainant to choose the appropriate option, including making a formal complaint (in writing);
- referral of the complaint to the chairperson of the Committee who is to notify the Minister and convenor of the panel of advisers.

Assessment

- the investigation of complaints of sexual misconduct by the Committee 'with a view to facilitating a response that takes into account the interest of the complainant, the Minister, and the values by which the Church lives';¹⁶²

¹⁵⁷ Uniting Church in Australia, Interim code of ethics for community ministers, deacons, deaconesses, and lay pastors, ministers of the word and youth workers in the Uniting Church in Australia, 29/7/97, RCPS Exhibit 3232/3. The full Code is to be presented at the 9th National Assembly.

¹⁵⁸ Uniting Church in Australia, Policy and Procedures for dealing with a complaints of sexual misconduct by members, adherents or volunteers of the Uniting Church in Australia and for providing a safe faith community (draft), 22/7/97, RCPS Exhibit 3232/4; Uniting Church in Australia, Policy and procedures for dealing with a complaint of sexual misconduct against lay staff employed by the Uniting Church in Australia and its agencies (draft), 22/7/97, RCPS Exhibit 3232/5.

¹⁵⁹ Uniting Church in Australia, Discipline Regulations as agreed at 8th Assembly, Amendment to the constitution and amendments to regulations - Discipline, July 1997, RCPS Exhibit 3232/2.

¹⁶⁰ *ibid*, p. 4.

¹⁶¹ *ibid*, p. 5.

¹⁶² *ibid*, p. 7.

- appointment by the chairperson of a person or person to investigate complaints and to report to the Committee - such investigation to be inquisitorial not adversarial, in nature.

Outcome

- determination by the Committee that the complaint:
 - warrants no further action;
 - should be referred for conciliation;
 - should be referred to the Synod Committee for Discipline;
 - should be referred to the Presbytery Pastoral Relations Committee or to the Moderator, with recommendations for counselling, supervision, or training;
- suspension of further action until criminal or civil legal proceedings commenced against the Minister are concluded.¹⁶³

Interim Code of Ethics

11.108 The Interim Code of Ethics covers issues such as:

- the Pastoral relationship;
- professional conduct, including:
 - relationships with colleagues;
 - teaching;
 - relationships with Church Councils;
 - competence;
 - professionalism; and
 - confidentiality (relevantly for present purposes, providing that information received in the context of a pastoral relationship is to remain confidential unless that would result in significant physical, emotional or sexual harm to another person or persons; or unless disclosure is required by law);
- guidelines for the conduct of 'particular relationships', (a 'particular' relationship' being a close personal relationship between the Minister and another person, only possible where the Minister is not in a pastoral relationship with the other person);
- acceptance of gifts;
- declaration of legal action; and
- working with another institution.

¹⁶³ Ibid, p. 10.

Policies and Procedures for Members and for Lay Staff

11.109 As referred to above, the Church has developed draft policies and procedures for dealing with complaints of sexual misconduct by 'members, adherents or volunteers'¹⁶⁴ and against 'lay staff',¹⁶⁵ which deal with:

- prevention issues such as the display of information concerning the complaint, and education for Church leaders in providing safe worship and community and boundary setting within the pastoral relationship;
- the responsibility of the Church to ensure that it does not interfere with due legal process;
- operational guidelines for:
 - responding to a complainant;
 - supporting the complainant;
 - supporting the respondent; and
- privacy principles.

PRESBYTERIAN CHURCH

11.110 In 1995 the Presbyterian Church appointed a Committee to promote the implementation of policies and procedures to be adopted when dealing with sexual misconduct within the Church, and to further develop its policies and procedures document *Breaking the Silence - policies and procedures for protecting against and dealing with sexual abuse within the Church*.¹⁶⁶ In 1997, as part of the implementation process the Committee developed:¹⁶⁷

- a policy to Prevent or Report Sexual Abuse of Minors, and
- a suggested Voluntary Code of Conduct for Church Workers.

11.111 At the 1997 General Assembly, approval was given for the Committee to:¹⁶⁸

- prepare policies and procedures for ministers and elders as to the appropriate response to a complaint, particularly in those instances where the police are not involved;
- prepare an information and training package to present to Presbyteries.

¹⁶⁴ Uniting Church in Australia, Policy and procedures for dealing with a complaint of sexual misconduct by members, adherents or volunteers of the Uniting Church in Australia and for providing a safe faith community (draft), 22/7/97, RCPS Exhibit 3232/4.

¹⁶⁵ Uniting Church in Australia, Policy and procedures for dealing with a complaint of sexual misconduct against lay staff employed by the Uniting Church in Australia and its agencies (draft), 29/7/97, RCPS Exhibit 3232/5.

¹⁶⁶ Presbyterian Church in NSW Social Services, Paper presented to the 1997 General Assembly, 1997, RCPS Exhibit 3234; Presbyterian Church in NSW Social Services, *Breaking the Silence: policies and procedures for protecting against and dealing with sexual abuse within the Church*, November 1995, RCPS Exhibit 1804.

¹⁶⁷ Presbyterian Church in NSW Social Services, Paper presented to the 1997 General Assembly, 1997, RCPS Exhibit 3234.

¹⁶⁸ Presbyterian Church in NSW Social Services, 1997 General Assembly 'Breaking the Silence', Resolutions, RCPS Exhibit 3234.

Voluntary Code of Conduct

11.112 The draft voluntary code¹⁶⁹ notes that:

- Churches need to recognise the problem of child abuse openly and the fact that ministers and other Church workers may sin in this way;
- Churches need to have a clear and specific child protection policy in place including screening of all Church workers;
- all members should be made aware of the policies and all Church workers should agree to abide by them;
- all employees and volunteers of the Church should be required to sign a statement declaring that they have no criminal convictions 'or done anything to endanger the safety of a child';¹⁷⁰
- information confided to a Leader by a child or youth that he or she is the victim of abuse is to be reported to the Minister;
- all credible allegations of child sex abuse should be reported to DCS and the Police Service as are any cases where a Church worker became aware of the sexual abuse of a minor;
- Churches must treat complaints seriously, ensure they are properly investigated and that the approach is 'victim friendly';
- Church workers should not be on their own with youths/children or drive them home from Church functions unaccompanied;
- the child's right to privacy and personal space should be respected; and that
- in relation to the investigation of complaints about child sexual abuse:
 - Churches should not investigate complaints on their own but co-operate fully with the Police Service and other civil authorities;
 - independent investigation and action are required to ensure that justice is done and is seen to be done;
 - the alleged offender should either be suspended from duties or placed on restricted duties during the investigation, and if convicted they should be disqualified from pastoral ministry; and
 - the complainant is to be kept informed of the investigative process.

¹⁶⁹ Presbyterian Church in NSW Social Services, Voluntary Code of Conduct, 1997, RCPS Exhibit 3234.
¹⁷⁰ *ibid*, p. 4.

Breaking the Silence

11.113 In this document comprehensive procedures are outlined for:

- the notification of disclosure of child sexual assault,¹⁷¹ including:
 - immediate contact with the Minister and DCS,
 - the preparation of a written report of the disclosure;
 - the assignment of a contact person for the child; and
 - practical instructions as to the steps to be taken, and matters to be avoided, so as not to interfere with an official investigation;
- protective advice,¹⁷² including the need to:
 - maintain a level of professional behaviour;
 - avoid situations that may be open to misinterpretation, and to
 - remain open with supervisors concerning any difficult situations;
- the procedures applicable¹⁷³ following an allegation of assault, including:
 - suspension from duties pending investigation, or hearing where a charge has been laid by Police;
 - internal investigation where there is insufficient evidence for a criminal prosecution, but where DCS considers that the child should be separated from the worker, followed by appropriate disciplinary proceedings in keeping with industrial legislation and unfair dismissal laws.
- recommended policy practices for adoption by local Churches,¹⁷⁴ including:
 - respect by youth leaders of privacy, and avoidance of situations where they might be alone in the company of a child;
 - the preparation of a statement of duties for those who hold positions of responsibility;
 - the selection of appropriate camp parents; and
 - segregation and supervision of dormitories on camps and the like;
- screening of all office holders and applicants,¹⁷⁵ including:
 - completion of an appropriate declaration;
 - check of identify; and

¹⁷¹ Presbyterian Church in NSW Social Services, *Breaking the Silence: policies and procedures for protecting against and dealing with sexual abuse within the Church*, November 1995, RCPS Exhibit 1804, pp. 6-7.

¹⁷² *ibid*, p. 8.

¹⁷³ *ibid*, pp. 8-9.

¹⁷⁴ *ibid*, p. 10.

¹⁷⁵ *ibid*, p. 13.

- contact with referees and previous Churches where the applicant has performed youth work.

11.114 These documents go a long way towards managing complaints of sexual abuse of children and establishing a protective regime.

11.115 The Church acknowledges that in relation to its response to sexual misconduct it still has much to achieve, particularly in the way of education. It has advised the Commission of its intention to pursue these issues over coming months.¹⁷⁶

SALVATION ARMY

11.116 The Salvation Army's 'Procedures for Complaints of Sexual and Other Abuse Against Salvationists and Workers'¹⁷⁷ outlines the procedures to be followed in making a complaint and in dealing with it.

Making a Complaint

11.117 Relevantly this document provides for:

- an independent contact person (from an approved list) to be contacted;
- the independent contact person to notify authorities of sexual misconduct involving a minor as required;
- the independent contact person to inform the complainant of his or her rights, and of the Salvation Army's procedures and support service, and also to advise the complainant that a copy of the statement will be provided to the Chief Secretary, and to the alleged offender with the complainant's approval; and
- the contact person (on request from the Chief Secretary) to contact and offer to meet with the alleged offender, and to deal with him or her as with the complainant.

Dealing with the Complaint

11.118 The procedures:

- specify that the Chief Secretary or his representative will determine with the assistance of his confidential advisors how the complaint is to be dealt with, including the scope of any investigation; and
- permit the delivery of a copy of the statement, with the complainant's consent, to the alleged offender.

¹⁷⁶

C. Llewellyn, Presbyterian Church in NSW Social Services, Letter to RCPS, 31/7/97, RCPS Exhibit 3234.

¹⁷⁷

The Salvation Army, *Procedures for Complaints of Sexual and Other Abuse Against Salvationists and Workers*, supplied to the Commission on 5/8/97, RCPS Exhibit 3235.

Outcomes

11.119 The procedures contemplate that:

- if appropriate, the complaint will be reported to the Police Service or other authorities in accordance with applicable law;
- the complainant and/or the alleged offender may be directed to counselling or further resources for help;
- mediation (although not at the expense of the Salvation Army in the absence of special arrangement) and reconciliation may be sought through the independent contact person; and that
- the alleged offender, if an employee, may be warned, suspended or dismissed.

In the case of an officer, local officer or soldier, formal disciplinary proceedings may be commenced under the Orders and Regulations of the Salvation Army.

CONCLUSION

11.120 The development of the various protocols by the Churches mentioned, and the revision of past inappropriate procedures, is highly encouraging. It will, however, remain important for the Churches to recognise the serious criminality involved in child sexual abuse, and to ensure that prompt police intervention is made possible. It is simply impermissible for the Churches to deal with offending priests or members of the clergy privately, or in a way that may allow them to continue to offend.

D. TREATMENT FOR OFFENDERS

11.121 For a number of years, overseas institutions have been offering therapeutic treatment for member of the clergy, including Southdown in Toronto, Canada and Saint Luke's Institute in Maryland, to which X11 was sent.

11.122 The latter is a 'mental health facility for the treatment of alcohol and drug addiction and psychological and psychiatric problems such as depression, anxiety and sexual problems.'¹⁷⁸ It began operations in 1981 to treat clergy of all faiths, and has a three-fold mission - to treat, research and educate. It is a 32 bed hospital providing in-patient as well as out-patient treatment. Treatment programs are followed by a continuing care program for 2-5 years which includes monitoring of progress, local psychological supervision and regularly scheduled maintenance visits to Saint Luke.

11.123 In April 1996 the National Committee for Professional Standards, a joint committee of the Australian Catholic Bishops' Conference and the Australian Conference of Leaders of Religious Institutes, released a report: 'A National Treatment Program for Priests

¹⁷⁸ Saint Luke Institute: A Mental Health Hospital (brochure), RCMP Exhibit 2414.

or Religious with Psycho-sexual Disorders'.¹⁷⁹ It proposed the formation of a 'National Therapy Program Unit'. In November 1996 this treatment program was approved by the Australian Council of Bishops. A decision was made to fund the unit and a Board of Management has been appointed. This is said to be the first such specific and comprehensive treatment program for sex offenders within Australia, outside the limited programs established within the Corrections systems.¹⁸⁰

11.124 As established it is independent of, but accountable to the Catholic Church, in its management of offenders.¹⁸¹ The Commission has been informally advised that the treatment program will be available to ministers from other denominations as well as Catholic clergy and in due course will be offered to groups other than clergy.¹⁸² Treatment will be offered for psychosexual disorders, boundary violation disorders, compulsive behaviour, paedophile behaviour and the full range of psychosexual disorders. Its first patient was accepted in July 1997.

11.125 In a very broad compass, the Program provides for four therapy options,¹⁸³ the selection of which is the most appropriate is to be made by the National Program Unit Director in collaboration with the PSRG which has had contact with the member involved. These options comprise:

- therapy under supervision of the PSRG, applicable where:
 - the nature of the disorder is such that it can be dealt with using the resources of the PSRG's network of clinical practitioners; or
 - the continued presence of the individual in the community is not problematic.

In this case the individual would continue to reside in the local community, and the National Program Unit would be kept informed of his progress.

- therapy under supervision of the National Program Unit - community residence, applicable where:
 - the nature of the disorder is such that it cannot be dealt with using the resources available to the PSRG; or
 - the continued presence of the individual in the community is problematic.

In this case the individual would reside in the local community within the vicinity of the National Program Unit, which would provide 'out-patient' therapy and

¹⁷⁹ Australian Catholic Bishops' Conference, Australian Conference of Leaders of Religious Institutes, Professional Standards Research Project: A national treatment program for priests or religious with psycho-sexual disorders: Final Report, 1996, RCPS Exhibit 2513C.

¹⁸⁰ *ibid*, p. 8.

¹⁸¹ *ibid*, p. 101.

¹⁸² Information provided to the Commission by Professor Blaszczyński, Director of the National Therapy Program Unit, on 5/2/97, RCPS Exhibit 3279.

¹⁸³ Australian Catholic Bishops' Conference, Australian Conference of Leaders of Religious Institutes, Professional Standards Research Project: A national treatment program for priests or religious with psycho-sexual disorders: Final Report, 1996, RCPS Exhibit 2513C, pp. 61-64.

- report to the PSRG on progress. The individual would be given a clinical therapist to act as a case manager;
- therapy provided by the National Program Unit - residential setting (for example, religious community) - applicable where:
 - the individual requests to live in such a setting;
 - the individual requests a level of support not available if living independently in the community;
 - this option is in the best interests of the individual, or
 - it is a condition of the individual's involvement in the therapy program;
 - therapy under supervision of the National Program Unit - institutional setting, applicable where:
 - there is a risk that the individual may do some harm to himself;
 - there is a grave risk of the individual committing further offences if he remains in the community;
 - the individual displays some other neurosis; or
 - the nature of the disorder requires some medical intervention to stabilise the individual.

11.126 With each option, once an individual is accepted into a therapy program, all subsequent contact with the relevant Church authority is to be conducted through the contact person designated by the PSRG. At the end of the treatment a Discharge Report and Program are to be provided which will address re-entry to the original Church community, or where clinical intervention is unsuccessful, the offender will not be re-admitted to the ministry and canonical penal process to reduce the individual to lay state will be implemented.¹⁸⁴

11.127 The Report emphasises that therapeutic intervention is not to be used as a means of avoiding or minimising any criminal action against the offender. Rather it encourages deferment of treatment and risk assessment until all court matters are finalised, otherwise offenders will deny/minimise the offence, report excellent progress for any intervention, and deny risk for further offences with the hope of influencing the courts to impose more lenient penalties.¹⁸⁵ An exception was noted where there was a high risk of reoffending.

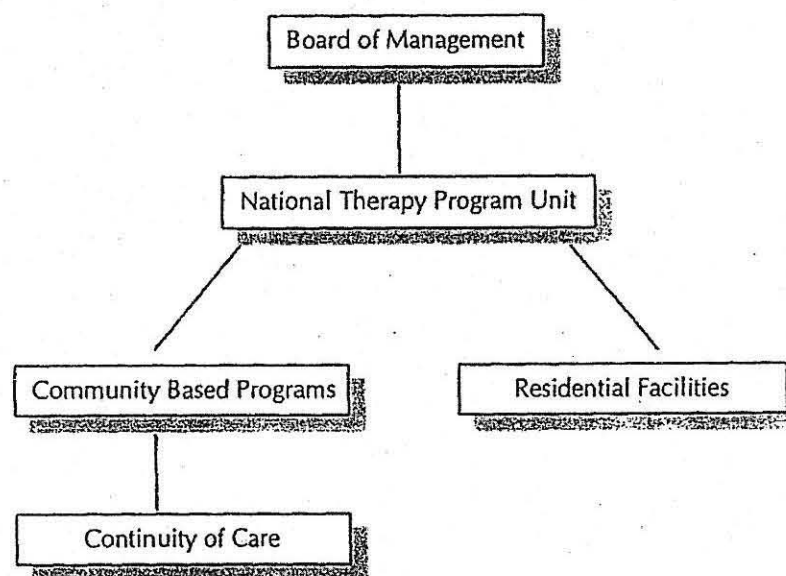
¹⁸⁴ Australian Catholic Bishops' Conference, Australian Conference of Leaders of Religious Institutes, Professional Standards Research Project: A national treatment program for priests or religious with psycho-sexual disorders: Final Report, 1996, RCPS Exhibit 2513C, p. 65.

¹⁸⁵ *ibid*, p. 68.

11.128 The structure created has, effectively, three tiers:

- the first of which involves a small residential facility;
- the second of which revolves around the delivery of community-based counselling and care services;¹⁸⁶ and
- the third of which comprise a Board of Management to oversight the research and education activities of the Unit.¹⁸⁷

Diagrammatically it is represented as follows:



11.129 The Board of Management is to include representatives of some or all of the existing Professional Standards Resource Groups, independent clinicians and legal representatives. It is to be responsible for overseeing, supervising and monitoring all aspects of the operation of the program.¹⁸⁸ An independent but accountable Resource/Research Unit is to be appointed by the Board to monitor individual programs, to carry out research and provide information to assist the Board in policy decision making.¹⁸⁹ The recommendation of the Report that there be an affiliation with a university or teaching hospital has been implemented, the University of New South Wales having been selected for the purpose. Professor Alex Blaszczyński has been appointed National Director of the Unit.

¹⁸⁶ *ibid*, p. 87.

¹⁸⁷ *ibid*, p. 88.

¹⁸⁸ *ibid*, p. 102.

¹⁸⁹ *ibid*, p. 89.

11.130 The primary goals of the Unit in treating offenders are to:

- stop any further continuation of abusive behaviour and to ensure that no child remains in a position of risk by removing the offender from any environment that allows contact with children;
- motivate offenders to admit to the full extent of their sexual proclivities;
- secure offenders' recognition of the child as a victim traumatised by the behaviour rather than a willing consenting partner;
- correct errors in cognition, for example the belief that sexual molestation is an expression of intimacy or care; and to
- teach techniques that will modify the intensity of aberrant urges, and control behaviours, so that the probability of acting on urges is reduced.¹⁹⁰

11.131 The program recognises that no regime can claim to 'cure' paedophilia but assumes that a reduction in behaviour, following increased control over urges is possible. The treatment for religious persons is designed to separate the sexual component from any religious or spiritual aspect. The former is to remain the province of properly qualified mental health professionals,¹⁹¹ while the latter will also be addressed, but by a suitably qualified Spiritual Director.

11.132 Treatment is to focus on cognitive behavioural and relapse prevention strategies combined with anger and stress management procedures, sexual education and external supervision.¹⁹²

11.133 In relation to screening, the Report concluded that there is no instrument that can reliably detect paedophilia, nor is voluntary frank disclosure on the part of a candidate for religious vows likely. Additionally, it identifies the dangers and unfairness of false labelling.¹⁹³ The approach favoured, by way of a preventative strategy, was accordingly the encouragement of open and comprehensive sex education on sexual paraphilic disorders for such candidates. This would include information which highlights the need for people to recognise the existence of any aberrant urges, and to understand the way in which they can respond to these urges by seeking appropriate help.¹⁹⁴

¹⁹⁰ *ibid*, p. 34.

¹⁹¹ *ibid*, p. 68.

¹⁹² *ibid*, p. 94.

¹⁹³ *ibid*, pp. 51-52.

¹⁹⁴ *ibid*, p. 52.

11.134 The program also recognises the need for caution in relation to re-admission to the ministry which is only to occur:

- after a long period of successful non-offending;
- in a situation absolutely removed from children and young people; and
- with a clear awareness, acceptance and supervision by a welcoming community.¹⁹⁵

11.135 The model developed is, on any view, comprehensive, impressive and innovative. It would be highly desirable if other Churches could establish similar programs, or alternatively join up with this program through suitable funding arrangements.

E. SUPPORT FOR VICTIMS

11.136 This is an area where the Churches have provided a response which at best has been patchy, and at worse uncaring. In part the absence of any consistent policy to repair the harm done to victims of sexual abuse has been a product of the climate of denial and cover up. For the remainder, it has been due to fear of the consequences of civil litigation, and in particular the possibility that an offer of assistance might be regarded as an admission of liability.

11.137 The limitations upon the availability of benefits or services for the victims of abuse are noted later in this Report.¹⁹⁶ In summary, without any particular scheme for counselling or support provided by an individual Church, a victim who needs counselling, medical assistance or other support is confined to:

- access to the limited services available in the community for much of which bulk billing or financial recoupment is unavailable;
- a claim for compensation under the scheme for criminal compensation;
- an action for civil damages which in the light of the limited legal aid available, may be an unacceptably expensive option; or
- an *ex gratia* payment without admission of any liability.

11.138 The Commission has been informed that in some cases assistance was offered only on condition of the victim waiving any claim to damages.

11.139 Some of the problems which arise in this respect were illustrated by AC2 (Case Study 1 above) who faced very great difficulty in procuring counselling through the Anglican Counselling Centre. When the circumstances in this case were brought to the notice of Archbishop Goodhew, he acknowledged that it had been poorly dealt with.¹⁹⁷

¹⁹⁵ *ibid*, p. 36.

¹⁹⁶ See Volume V, Chapter 17 of this Report.

¹⁹⁷ R. H. Goodhew, RCT, 7/5/96, pp. 24795-97.

AVAILABLE SERVICES

11.140 On paper some of the Churches have a program for assistance which, if properly funded and committed to the objective of caring for the victim, could fill the gap mentioned. They may be briefly mentioned:

- **The Catholic Church**

- the Pastoral Response office is tasked, *inter alia*, with providing therapeutic counselling and crisis care generally, although not specifically for the victims of child sexual assault;
- Centacare Catholic Community Services - the Catholic family welfare agency, which deals with all matters concerning child and family welfare, has a capacity to provide professional counselling facilities, but, at least in the past, seems to have lacked any specific program or focus applicable to this area;
- 'Towards Healing'¹⁹⁸ acknowledges the need to 'enter into dialogue with victims concerning their needs and ensure that they are given such assistance as is demanded by justice and compassion', wherever it is established 'either by admission or by proof, that sexual abuse did in fact take place'. This is to be achieved through the services of the Facilitator.¹⁹⁹ The document is, however, silent as to the means by which the needs of the victim are to be met, or the extent of the assistance provided;

- **The Anglican Church**

- in the protocol developed by the Standing Committee of Synod²⁰⁰ it recommends that Synod should 'consider making funds available to enable payment, in appropriate circumstances, of certain (undefined) 'crisis' costs in dealing with misconduct' - such costs may include the costs of counselling for a person aggrieved. The legal ramifications were foreshadowed in the caution 'consideration must also be given to how such payments can be made without prejudicing the Church's legal position';
- Care Force, the Welfare division of the Anglican Home Mission Society, should be well placed to provide assistance of this kind.²⁰¹

¹⁹⁸ Australian Catholic Bishops' Conference, Australian Conference of Leaders of Religious Institutes, National Committee for Professional Standards, *Towards Healing: Principles and Procedures in Responding to Complaints of Sexual Abuse Against Personnel of the Catholic Church of Australia*, Hectorville, 1996, RCPS Exhibit 3051/23, paras. 14-17.

¹⁹⁹ *ibid*, para. 7.

²⁰⁰ Anglican Church Diocese of Sydney, Protocol for Dealing with Sexual Misconduct by Church Workers in the Anglican Church Diocese of Sydney, June 1996, RCPS Exhibit 3230.

²⁰¹ S. M. Foley, RCT, 7/5/96, p. 24819 and 8/5/96, p. 24875.

- The Presbyterian Church

- in the protocol document 'Breaking the Silence',²⁰² the Minister or Person in Authority is to liaise with DCS concerning referral of a victim to counselling at a Sexual Assault Unit. The impression given by this provision is that any such assistance is to be provided at community expense rather than by the Church.

11.141 It is beyond the role of the Commission, in this area, to do any more than to identify the circumstance that, without prompt and genuine assistance for the victims of child sexual abuse at the hands of ministers, priests and other members of the clergy, the Churches will have only addressed part of a very serious problem that has been of their own making.

11.142 This needs to be taken into account in the way that they approach civil litigation brought by victims of abuse, and in the way that they respond to requests for counselling and assistance and to cases where, after investigation, they find it necessary to discipline one of their own. Their task is incomplete if they leave it to victims to find their own way back from abuse.

F. CONCLUSION

11.143 There can be little doubt that the Churches have owed and continue to owe a duty of care, ethical if not legal, to ensure that all appropriate steps are taken to reduce the risk of harm to children within their communities, using their schools, living in their homes, and otherwise falling within their sphere of responsibility. It is equally beyond question that expelling members from a congregation or order, quietly removing them from office, transferring them to other localities, ignoring or minimising the complaints of victims, placing moral pressure on victims to allow the matter to be dealt with comfortably for the Church or the member, denying victims the support and assistance they need, or placing unreasonable impediments in the way of any police investigation or civil claims for compensation, do not meet the requirements for that duty of care.

11.144 No Church can today responsibly exist without a protocol that suitably addresses, at least:

- a procedure for receiving and dealing with allegations of sexual abuse, whether raised by the victim, a third party or self confessed perpetrator, to ensure that matters involving criminality are referred to the police for investigation, and that the remainder are suitably investigated and resolved internally;

²⁰²

Presbyterian Church in NSW Social Services, *Breaking the Silence: policies and procedures for protecting against and dealing with sexual abuse within the Church*, November 1995, RCPS Exhibit 1804, p. 6.

- the provision of support for and assistance of victims of such abuse at the hands of clergy and others holding official office within the Church, either as employees or volunteers;
- the provision of treatment, where assessed worthwhile and consented to by the offending member;
- the delivery of education and counselling concerning the risks of sexual abuse and the procedures/facilities earlier outlined, to all members of the Church, and particularly to those who are having difficulties with their own sexual urges, before they fall prey to them;
- the removal of those members for whom an unreasonable risk of harm to children is assessed to exist, from any positions placing them into contact with children and young people; and that
- independent and effective oversight and monitoring of the operation of the protocols, guidelines and programs developed in this area.

11.145 Their work in this area does not stop with the development of a protocol. Such a document is of no value unless carried into practical application, and applied bona fide.

11.146 As this chapter notes, there has been a dramatic change in the attitude of the Churches, and a shift of focus from damage control towards assumption of responsibility, in discouraging child sexual abuse and making its perpetrators accountable to justice.

11.147 The developments so far have been directed more towards the management of complaints, than towards rehabilitation and assistance of the victim or the development of preventative strategies. Within a broad compass, it is important that the Churches look towards the development of:

- education of those involved in the ministry and delivery of pastoral and allied services, as well as members of congregations, schools and the like who receive those services, in areas of responsibility, sexuality, sexual abuse, and child protection;
- screening (so far as practicable) of those received into the ministry or religious orders, or otherwise providing services bringing them into contact with children; and of
- work practices, which reduce the opportunity for offending, or provide greater security for children.

11.148 Beyond noting these matters, and encouraging the Churches to adopt procedures which promote reporting and facilitate police investigation of child sexual abuse, it is inappropriate for any formal recommendations to accompany this chapter. The issues which arise concerning the notification of suspected or reported child sexual abuse, and the

proposals for establishing a system under which a certificate may be issued stating that a particular person poses an unacceptable risk to be allowed to occupy any position involving the care or supervision of children, and for pre-appointment inquiry to the Children's Commission, are further considered later in this Report.²⁰³ The past record of serious sexual abuse of children by the clergy, youth workers and those associated with church schools, homes and other religious institutions is such that, notwithstanding the protocols outlined, they should be subject to the regime proposed in Volume V, Chapter 20; no relevant distinction in this regard exists between them and other members of the community having the care or supervision of children.

See Chapter 20 of this Volume.