

The Holy See and the United Nations Convention on the Rights of the Child in Australia

An NGO report

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1. Background Information

1.1 About This Report

In September 2002, *Catholics for a Free Choice* provided a shadow report on “The Holy See and the Convention on the Rights of the Child” to the *Committee on the Rights of the Child*. The submission placed into context the worldwide problem of the criminal sexual assault of children by clergy and religious. The purpose of the report was to provide the Committee with an overview of both the rule of Canon Law and the obligations of the church to respond to allegations of child sexual assault by the clergy and religious.

As a party to the Convention, Australia is obligated to comply fully with the Convention.

This submission focuses on the sexual assault and sexual exploitation of children in Australia by members of the Catholic clergy and religious, and specifically how the laws of the Holy See impact on states’ compliance with the Convention on the Rights of the Child. Much of the material presented suggests that the Catholic bishops of Australia are still failing to act in an appropriate manner in respect of their dealing with offending priests and religious and in the responding in meaningful ways to the victims and survivors.

Bravehearts Inc was invited by Catholics for Free Choice to prepare this submission.

1.2 About Bravehearts Inc

Founded in 1997 by Hetty Johnston, Bravehearts Inc has evolved into an organisation whose purpose is to provide therapy, support and advocacy services to survivors of child sexual assault. Bravehearts is also actively involved in education, prevention, early intervention and research programs relating to child sexual assault.

Bravehearts makes a difference in child protection by:

- Assisting children and their non-offending family members to recover from the trauma of child sexual assault through therapy, advocacy and support;
- Raising awareness via initiatives such as ‘White Balloon Awareness Week’ – a public awareness and child protection initiative;
- Protecting survivors and providing them with avenues of redress through projects like the ‘Sexual Assault Disclosure Scheme’ (SADS) for survivors which is a means for anonymous yet official disclosure of assault;
- Advocating for survivors’ rights through participation in legislative review and reform (successful campaigns include: the introduction in Queensland of Indefinite Sentencing for dangerous paedophiles, the closure of Queensland’s Department of Family Services, the introduction of the Amber Alert system in Australia, the instigation of various formal inquiries and successful amendments to legislation);
- Raising community awareness through participation in public debate and in the accumulation and dissemination of relevant research material; and

- Supporting the work of other agencies/individuals in their work around child sexual assault.

1.3 About Broken Rites

During the past ten years, members of Broken Rites have developed extensive experience and detailed insights into the response of the hierarchy of the Catholic church in Australia towards people who experienced abuse, including sexual assault, as children.

Broken Rites is a voluntary organisation based in Victoria, Australia, that plays an advocacy and advisory role to persons who have or may have experienced physical, psychological and/or sexual abuse by members of the Catholic church, including clergy, religious and church employees. Members of Broken Rites carry out the following activities:

- Receive complaints about alleged instances of sexual, physical or psychological abuse;
- Provide advice to callers about their rights;
- Arrange for victims to make statements to police where it is judged that criminal activity may have taken place;
- Publish a newsletter (1-2 issues per year) which is distributed to about 1200 readers;
- Accompany victims to meetings with solicitors, police and officials of the churches and/or persons working on behalf of any particular church or charitable organisation;
- Act on behalf of victims, as advocates at mediation and in negotiations over compensation;
- Respond to media inquiries;
- Organise and hold 2-3 informal social functions each year for victims to attend;
- Attend court cases;
- Carry out public speaking engagements;
- Liaise with other relevant organisations and persons in other states; and
- Liaise with relevant government agencies and statutory office holders.

During the past ten years, more than 2500 persons have contacted the organisation, about 1500 living in Victoria alone. It has also played a significant role in bringing about 100 paedophiles before the courts to face criminal charges.

1.4 About Catholics for a Free Choice

Catholics for Free Choice (CFFC) is a nongovernmental organization with special consultative status with the Economic and Social Council (ECOSOC) of the United Nations. It shapes and advances sexual and reproductive ethics that are based on justice,

reflect a commitment to women's well being, and respect and affirm the moral capacity of women and men to make sound decisions about their lives. Through discourse, education, and advocacy, CFFC works in the US and internationally to infuse these values into public policy, community life, feminist analysis, and Catholic social thinking and teaching.

Since 2002, CFFC has partnered with national-level child rights organizations to produce and submit shadow reports to the Committee on the Rights of the Child for the examinations of periodic reports submitted by Canada, Germany, France, Austria, and the Philippines.

2. Child Sexual Assault and the Catholic Church in Australia

In its 2000 publication, *Hypocrites*, the Eros Foundation of Australia stated that during the 1990s, Australian courts dealt with nearly 450 individual child sexual assaults by priests.

In about 40% of the criminal cases brought before the courts in Australia, the accused has submitted a plea of "not guilty". In addition to these cases, there are many more religious and clergy against whom allegations have been made and accepted by the respective church authority (either a bishop or a head of a religious order), and some victims have received relatively small amounts of financial compensation.

During the past decade in Australia, there have been five major government-initiated inquiries into the treatment of children. Three of these inquiries have been by the Australian Federal Parliament or government. The other two have been government-initiated in the states of Queensland and Tasmania. In the course of each inquiry, members of the Catholic church and institutions that were owned and/or are operated by the Catholic church have featured prominently. Alarming and widespread instances of child sexual assault have been identified and reported upon in every inquiry. The six volumes that report the findings of these inquiries are on the public record.

The Inquiries and Reports are:

- The Human Rights and Equal Opportunity Commission (1997). *Bringing them Home, Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families.*
- Commission of Inquiry into Abuse of Children in Queensland Institutions (1999). *Report of the Commission of Inquiry into Abuse of Children in Queensland Institutions.*
- Senate Community Affairs Reference Committee (2001). *Lost Innocents: Righting the Record. Report of the Senate Community Affairs References Committee Inquiry into Child Migration.*
- Senate Community Affairs Reference Committee (2004). *Forgotten Australians. Report of the Senate Community Affairs References Committee Inquiry into Children in Institutions.*

- Tasmanian Government Ombudsman (2004). *Listen to the Children – Review of Claims of Abuse from Adults in State Care as Children*.
- Senate Community Affairs Reference Committee (2005). *Children in Institutional Care*.

As a consequence of the information presented to these inquiries, Australians have become aware of the extent of child sexual assault, predation, drugging of children, criminal assault, exploitation, coercion and victimisation and child slavery by members of the Catholic church. These abuses have been carried out against children as young as three years and up to seventeen or eighteen years of age, and they have been carried out (and have been allowed to be carried out) in parish schools, in Catholic secondary schools, in Catholic churches and ancillary buildings, in the child's residential home, in Catholic-owned and operated hospitals and psychiatric clinics, in orphanages and children's homes, during children's holiday camps, on farms owned and operated by Catholic religious orders and in the residences of priests.

For a list of specific cases of child sexual abuse by clergy and lay leaders of the Catholic church in Australia, please see Appendix A.

3. Church Responses to Child Sexual Assault

3.1 The Holy See and the Code of the Canon Law

In the Catholic church, the tradition was established centuries ago that the church and the state exist as parallel legal systems and structures. Canon Law emerged as a distinct body of law that paralleled the state's jurisdiction. Canon Law was a vast system of law that governed the church and also covered moral and spiritual matters for the population. The church had its own courts, separate from the common law courts. The ecclesiastical courts were not subject to the other courts, and in this sense, the church was not subject to the laws of the state at all, even in relation to such matters as church property. Where the matter was within the jurisdiction of the ecclesiastical courts, the church dealt with the matter in accordance with its own laws and without reference to the civil law or criminal law of the state.

Through Canon Law, the church dealt with its own people. It exercised disciplinary functions over clergy. The legacy of that tradition may be one explanation why in the past the church has neither reported cases of child sexual assault to the police nor encouraged the victim or the victim's parents to do so.

Typically, if the alleged perpetrator denied the allegation, then it was the victim's word against the accused, and usually no further action resulted other than to give a warning to the alleged perpetrator. Such internal investigations were unlikely to be very effectual. If the matter had been seen clearly as one of alleged criminal misconduct, and the police had been called in to investigate, a different result might have been reached.

For a review of the processes relevant to handling of sexual assault allegations against the Catholic church, clergy or religious according to Canon Law, please see Appendix B.

3.2 Toward Healing

The idea that Christians should report sexual assault to the church rather than to the police has often led to failures to protect children. In one case where the leader of a youth group abused children within the group, the minister of the church sent him to a counselling program. The youth group leader participated on a voluntary basis for a while, but he did not complete the program and continued to be involved in youth work. About two years later, he offended again.

Another common response has been to relocate the offender. There have been numerous cases in Australia and elsewhere of church personnel being relocated following complaints of abuse. It is certainly true that in most cases, church leaders were unaware of the abuse; however, in some cases, church leaders were repeatedly made aware of complaints and they dealt with the issue by moving the offender elsewhere. Typically, further abuse of children has occurred in the next congregation. Frequently, problems have been dealt with by allowing the offender serve in another diocese, perhaps in a remote part of Australia, or as a missionary to another country.

Relocations have not always occurred at the initiative of the authorities. Sometimes it has been the offender who has moved from one congregation to another with the permission of church leaders who failed to take action over allegations of sexual assault. Ministers or youth leaders in Australia have been allowed to resign quietly, citing personal reasons, ill-health or some other cause, and without anything being done about their offending behaviour.

In December 1996, the Catholic church in Australia released a blueprint for the handling of sexual assault allegations within the church developed by the National Committee for Professional Standards, a committee established jointly by the Australian Catholic Bishops Conference and the Australian Conference of Leaders of Religious Institutes. The document, *Towards Healing: Principles and procedures in responding to complaints of sexual abuse against personnel of the Catholic church in Australia*, was revised in 2000 (See Attachment C), as the original document procedures were not fully consistent with Canon Law.

Towards Healing provides a comprehensive outline of the processes and structures that the Catholic church has established to respond to any allegations of sexual assault.

The protocols under *Towards Healing* are a positive step towards public acknowledgement that sexual assault is a criminal offence that needs to be dealt with by the police and of the duty of care and protection of sexual assault survivors and alleged victims.

4. Australian Law on Child Sexual Assault

In Australia, governmental responsibility for matters affecting children is divided between state and territory governments.

Some of the relevant legislation across Australia includes:

Jurisdiction	Relevant Legislation
Commonwealth	<i>Crimes Act 1914</i> , Part IAD & Part IIIA (child sex tourism)
ACT	<i>Crimes Act 1900</i> ; <i>Children and Young People Act 1999</i> , Chap 7
NSW	<i>Child Protection (Prohibited Employment) Act 1998</i> ; <i>Children and Young Persons (Care and Protection) Act 1998</i> ; <i>Crimes Act 1900</i>
NT	<i>Child Protection (Offender Reporting and Registration) Act 2004</i> ; <i>Criminal Code Act</i> , Div 2
Qld	<i>Child Protection Act 1999</i> ; <i>Child Protection (Offender Reporting) Act 2004</i> ; <i>Criminal Law (Sexual Offences) Act 1978</i>
SA	<i>Children's Protection Act 1993</i> ; <i>Criminal Law Consolidation Act 1935</i>
Tas	<i>Criminal Code Act 1924</i>
Vic	<i>Children and Young Persons Act 1989</i> , Part 3; <i>Crimes (Family Violence) Act 1987</i> ; <i>Crimes Act 1958</i>
WA	<i>Criminal Code</i>

Commonwealth (federal) legislation relates to child sex trafficking, while each state and territory has its own Act/s in relation to the protection of children and definitions of child sexual assault.

5. Impact of the Holy See's Laws on Australia's Compliance with the Convention on the Rights of the Child

Throughout their written and oral testimony, victims and survivors reveal common physical and emotional experiences. Broken Rites has found that commonly:

- People speak about being deceived by a religious person whom they had come to respect and who they trusted completely;
- People speak about having been coerced, then abused, then threatened if ever they disclosed the event(s);
- People speak about having been told and then believing that the intended act of abuse was either a wish of God or sanctioned by God;
- People who were sexually assaulted as children speak about their shame and about carrying guilt around for a lifetime, never being able to confide in a family member any detail of these childhood or adolescent experiences;
- People who spent time in institutions speak about being deceived about the existence of their parents;
- People speak about the feeling of isolation and the yearning for close contact with a protective human figure and of longing to be hugged, held and comforted;
- People speak about the common experience of being constantly hungry and of being aware the nuns and brothers in charge of them always had better quality food;
- People speak of resorting to stealing in order to get food to satisfy their hunger;
- People speak about their exile and about their experience of child slavery;
- People speak of a continuing problem of bed-wetting as a child and of the consequences in terms of embarrassment, physical beatings and public humiliation in front of their child peers. A common experience for girls who wet their beds was to be forced to stand in front of a class with the wet sheets placed over their heads. This practise appears to have been a “norm” in several, geographically separated institutions;
- People speak of seldom being able to react spontaneously when in the presence of their adult caregivers. People describe the development of this state of mind after witnessing and experiencing as children outbursts of rage and temper by individual caregivers. They report learning as children to “keep their heads down” to reduce the likelihood of a random beating by a brother, nun or lay caregiver;
- People speak about the childhood experience of extreme pain, fear and of terror as a result of beatings with specially made leather straps, belts, canes and pieces of wood;
- People speak about the childhood experience of extreme pain associated with sexual penetration and rape;
- People speak of becoming totally depersonalised in their childhood as a way of dealing with repeated sexual assault;
- People speak about leaving an institution and being dumped onto the edge of an unfamiliar community, about having poor social skills, no life skills apart from a survival instinct and little in the way of material and financial resources; and
- People speak of life-long problems with uncontrolled anger, clinical depression, alcohol abuse, petty crime and an inability to trust and form intimate relationships.

As a signatory to the Convention on the Rights of the Child (signed by Australia on the 22 August 1990 and ratified on 17 December 1990), the Australian government is obligated to comply with the articles set out by the Convention to ensure the best interest of the child.

The following articles from the Convention on the Rights of the Child are particularly relevant to this current submission:

Article 19:

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 34:

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;*
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;*
- (c) The exploitative use of children in pornographic performances and materials.*

Article 39:

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

The handling of child sexual assault allegations in the Catholic church has negatively impacted the Australian government's ability to effectively comply with the Convention. The *Towards Healing* document, clearly a step in the right direction, is an attempt by the Catholic church to assert direct control over the management of its responsibility to victims of abuse by making admissions and communicating directly with survivors. While *Towards Healing* makes a good start, it contains a number of major weaknesses.

The biggest problems arising out of the current process include a lack of transparency, inadequate accountability and an insufficient focus on prevention and education.

5.1 Church Processes in Australia and Action by the Catholic Bishops of Australia

Public exposure of these issues by the Australian media has been the major force that has driven the Catholic bishops of Australia to respond in terms of process to claims of abuse by a large number of baptised Catholics and non-Catholics.

The Catholic bishops and heads of religious organisations have been forced to respond on three fronts here. Depending upon the individual case, they have had to consider matters in relation to Canon Law, civil law and/or criminal law, and they appear to have passed through at least three phases here – the denial phase, the slow response phase and the “let’s try and move on phase”.

Despite independent investigation of the child migration schemes beginning in the mid-eighties and cases of abuse being consistently reported by the media from about 1987, it was not until 1996 that the Australian Conference of Bishops released its official and public document *Towards Healing* and issued its first apology. Since its initial release, the document has been revised once and it is being looked at again following strong criticism in the Senate Committee Report, *Forgotten Australians*.

The document outlined a process to be immediately followed throughout the Catholic church, according to the bishops, as the standard response to persons making allegations of sexual assault by the church’s members and/or employees.

As a document, *Towards Healing* has been strongly influenced by Canon Law and by legal advice sought and received on considerations of civil law. The document makes very few statements in relation to criminal law.

At the time of its public release, the bishops claimed publicly that *Towards Healing* and the processes outlined were to apply across the whole Catholic church in Australia; they chose not to mention the fact that the Jesuit Order did not agree to be bound by it. Furthermore, even while the Catholic bishops were working through the details of this document and its processes, the then Archbishop of Melbourne (now Cardinal Pell) was setting up his own and a separate process to deal specifically with complaints of sexual assault and misconduct by priests in the Melbourne Diocese.

Broken Rites’ experience of working alongside of victims seeking compensation through the *Towards Healing* process is that the process lacks transparency and it is not always followed. Additionally, there have been cases involving individual bishops and religious orders where those representing the bishop or the particular order have not been compliant with the process. There have been cases in Melbourne where conciliation has occurred and an offer of financial compensation has been made without a single piece of paper ever passing between the parties. Thus there are no records of anything ever having occurred or being responded to.

Another major deficiency is the fact that these processes continue to be essentially internal ones. This means that persons who are both known to and appointed by the Catholic church are invariably carrying out the administration of and operations of the process. Thus the power relationship between the church and a victim is being maintained. This has often been further exacerbated by the fact that those representing the church will often have been briefed by a lawyer or will bring a lawyer to the negotiating table. Victims have seldom been able to personally afford similar provisions. Where a settlement has not been reached, the victim has been faced with two options: either cease with the attempt to seek compensation or move towards making a claim in the courts.

To date, there has not been a single case in Australia where a final judgment and determination has been brought down in a court. The practise of the church has been to defend these cases by every means possible and try to wear the claimant down. Subsequently, cases are often settled before getting to a court.

In this respect, considerations by the church of fairness, “corporate” obligation, responsibility and morality appear to be suspended, and the church authorities choose to see each case as a straight litigious matter.

A number of survivors have commented on this situation, observing that rather than attempting to meet the genuine needs of survivors in a realistic way, the various arms of the church have been prepared to pay massive legal costs in order to prevent any case ever going to a judgment.

From time to time there have been signals that a minority of bishops hold real concerns about the church’s processes and responses to these issues. Speaking at the Synod of Oceania in Rome in 1998, Bishop Geoffrey Robinson, an auxiliary bishop in the Diocese of Sydney, appealed to the Vatican to act on the matter of sexual assault by clergy and religious and to review all attitudes to power and authority within the church. To date, there is no evidence that direct appeal to the late pope yielded any results.

5.2 Lack of Confidence in Church Processes

There is great public cynicism among Catholics and survivor groups about the Catholic church’s internal processes and policies used to deal with allegations of child sexual assault. There is certainly reluctance on the part of victims to trust the internal procedures of the church, which has in the past shown to only act when made accountable in a legal sense. This distrust is evident every time there is further disclosure of covered up sexual assault in the church institution. There is also a perception among sectors of the community that church interests are more focused on the public relations and legal liability aspects of allegations against clergy or religious rather than in seeking to achieve healing, restoration and just settlements for survivors.

This deep cynicism will ensure that when sexual assault allegations arise, public attention will be aroused.

5.3 Responses of the Church Hierarchy to Criminal Matters

As indicated already, of the one hundred or so persons who have been convicted of criminal offence(s), approximately forty percent of these pleaded not guilty at the time of trial. In the matter of defence in a criminal case, the hierarchy has always supported the alleged offender. In “not guilty” pleas, all costs incurred during the criminal trial are met by the church. This is in striking contrast to the support offered to victims and the amounts of financial compensation which, in most cases, are just token amounts.

5.4 Internal versus External Processes

Child sexual assault is both a private and a public problem. For the survivors, alleged perpetrators and the institutions involved, there are quite obvious and legitimate private interests in ensuring that the processes are private and confidential. Processes such as *Towards Healing* provide for confidentiality (e.g. paragraph 40.15). However, the private interest in confidentiality needs to be balanced with the public interest in transparency and accountability.

Transparency and accountability are closely linked with education and prevention. Each allegation of sexual assault is yet another opportunity to educate a sometimes unbelieving community about the extent and consequences of child sexual assault and how it may be prevented. The horrific crime of child sexual assault is effectively hidden when allegations are dealt with internally and privately.

The community has an interest in ensuring that the internal processes of the Catholic church are sufficiently rigorous, appropriate and fair. As it stands today there is no external review of cases investigated by the church. Every day in Australia, far less serious matters go before the court, and these proceedings and processes are open to the public, making those involved accountable for their actions.

While *Towards Healing* makes it clear that the whenever a complaint of sexual assault is made, the first response is to be to encourage the complainant to go to the police. Proceedings that do not go to the police are conducted in private and are confidential.

The *Towards Healing* process toward reconciliation states:

- 37.1 *When the complaint concerns an alleged crime or reportable child abuse, the Contact Person shall tell the complainant of the complainant’s right to take the matter to the police or other civil authority and, if desired, provide assistance to do so. The Contact Person should also explain the requirements of the law of mandatory reporting.*
- 37.2 *In all cases other than those in which reporting is mandatory, if the complainant indicates an intention not to take the matter to the police or other civil authority, this should be recorded by the Contact Person and confirmed by the signature of the complainant.*

5.5 Focus on Alleged Perpetrator

One of the biggest concerns about the handling of child sexual assault allegations by the church is that the processes seek to address the interests of certain stakeholders. Section 35.4 of the protocol indicates that while the survivor is provided with a “Contact Person” who “may act as a support... where appropriate,” the accused is provided with a “support person... who shall represent the needs of the accused to the Church”.

There is a growing realisation that the treatment of the survivors of sexual assault in the church has become a both a public and personal responsibility because church processes, in isolating the survivor, inadequately deal with the healing process.

Many allegations involve the sexual assault of multiple individuals. Disclosures in one case frequently lead to information about other victims. Parkinson (*Child Sexual Abuse and the Churches*, 2003) makes the observation that sex offending against children is often long-term and involves multiple offences. This may well mean that the number of offences coming to light is a small fraction of the number actually committed by each perpetrator. This also means that a church process that focuses on the needs of one complainant may well address that individual’s concerns, but not those of other survivors. This has clear implications for the community’s interest in ensuring the protection of potential future victims.

5.6 Protection of Alleged Perpetrators

The public has become aware of the common practise by bishops and heads of religious orders to cover up for the offender and to move known offenders around parishes, schools and institutions. This has allowed the paedophiles to continue to abuse children. Offenders have even been moved overseas to New Zealand, Asia and South Pacific Island nations. There are recorded cases where critical information about the paedophile’s past history was not disclosed to those in charge of the new diocese, parish or school. There have been a small number of cases where an offender has been removed from both pastoral duties and access to children on the order of an Australian bishop. The offender has then appealed against the ruling of the bishop under Canon Law to the Vatican, and the Australian bishop has been overruled.

Serious print media reporting and investigations reported on television have usually been followed by extensive public discussion, meetings of lay Catholics in parishes and, no doubt, behind-the-scene meetings and discussions amongst the church hierarchy. During this period of extended media coverage, four Catholic bishops have been “retired” from the dioceses of Melbourne, Woolongong, Parramatta and Ballarrat.

There is, however, a near-exclusive focus on priests, with little attention to the accountability of bishops either for abuse they may have committed or for failing to respond adequately to abuse carried out by priests under their supervision.

5.7 The Silence of the Confessional

Under 37.3 of *Towards Healing*, there is a requirement of the mandatory reporting of any knowledge of child sexual assault, with regard to Australian state and territory laws:

37.3 All Church personnel shall comply with the requirements for mandatory reporting of child abuse that exist in some States/Territories, and State or Territory law regarding the reporting of knowledge of a criminal offence must be observed. The appropriate Church authority shall also be notified of any such report.

Yet despite this provision, the Catholic church has for thousands of years upheld the seal of confessional as sacrosanct under Canon Law. The breaking of the seal of confessional is considered so serious by the Catholic church that for a priest to divulge anything told to them in confession is a matter for automatic excommunication.

For the most part, Australian courts have respected the sanctity of the confessional. Recently, a private member's bill introduced in the South Australian parliament attempted to make it mandatory for priests to report information about child sexual assault, even when discovered through the confessional; in early April 2005, the bill was amended to preserve the confidentiality of the confessional for priests.

This is clearly of concern from a child protection perspective, where the church has limited (if any) accountability under criminal law. The need to for the church to reform itself is clear if there is to be a zero tolerance of child sexual assault and no sanctuary for child sex offenders. Certainly with the issue of child protection, secular law should override any church law, and there should be no exemptions. It is the belief of the preparers of this report that most parents would want the authorities informed if their child was being sexually assaulted and the offender confessed to a priest. This is particularly relevant to ongoing sexual assault or serial perpetrators.

5.8 Meeting Claims of Former Child Slaves for Unpaid Wages

There are a significant number of former child migrants and Australian-born children who were required to work in institutions during their childhood. This unpaid labour allowed the institutions (which received government money), to operate profitably. During the time that the church did not pay wages to the child labourers, it built up substantial property and business assets.

Girls were required to work in commercial laundries, to clean houses and to serve in the kitchens of various orphanages. They were required to mind, wash and care for babies and small children. They were also engaged in the regular cleaning of parish churches.

Boys did heavy manual labour on church-owned and independent farms. In an extreme case, scores of boys in Western Australia actually built their own orphanage, converting a 17,000 acre patch of bare ground (a donation to the Order of the Christian Brothers) into a fully function commercial farming enterprise during two decades.

Many of these children were working up to thirty hours per week at a time when child labour was illegal. Many received no or very little education. Many left the institution without reading and writing skills.

5.9 Impediments to Compensation

This Catholic church's use of Australian state and territory law is a major contributor to the hurdles that exist for victims seeking financial compensation from the Catholic church. There are three major hurdles:

- Claimants encounter difficulties with a claim because of the impact of a particular state's statute of limitations.
- Legislation such as the *Roman Catholic Church Community Lands Act 1942 (NSW)* has enabled church property and assets to be hidden in such a way that it becomes very difficult to identify "the church" as a legal entity.
- The relationship between the clergy and religious and their specific church affiliation is obfuscated by law, which does not recognize clergy and religious as employees in a civil sense. In contrast, a lay teacher or a gardener is recognized as an employee.

6. Recommendations

To the Australian Government

- A Royal Commission into Sexual Assault of Children in Australia should be established. In 2002, when Bravehearts formerly called for a Royal Commission, the Catholic church was the only church not to support the call.
- When reporting to the Committee, Australia should include information about the scope of clergy sexual abuse in Australia and what measures the Australian government has taken to protect children from future clergy sexual abuse and exploitation.
- Australian authorities should carry out an analysis of the Holy See's laws and the laws of Australia and determine areas where the Australian Catholic church may not be in compliance with Australia's child protection laws.
- A unified procedure to deal with suspicion and clarification of sexual abuse allegations should be developed.

- Specialized committees or counseling services, which also include experts external to the church in all dioceses, should be installed.

To the UN Committee on the Rights of the Child

- When Australia reports to the Committee, the Committee should inquire about instances of clergy sexual abuse in Australia and ask that the Australian government explain how Australian law holds Australian Catholic church officials and other religious leaders accountable in cases of clergy sexual abuse and the exploitation of minors. The Australian government should be asked what measures it has taken to investigate the magnitude of such cases and to prevent them from happening in the future.
- The Committee should urge the Australian government to seek ways to hold the Australian Catholic church and the Holy See accountable to its laws, especially those that seek to protect children from abuse.

To the Holy See

- The Holy See should institute mandatory reporting of sexual assault, both within the church and within the confessional. This is particularly relevant, but not exclusively so, when children are involved and there is a risk of ongoing offences.
- The Holy See should desist from reliance on Canon Law in respect to child sexual offences and operate through the same legal processes as the rest of the community. Both Catholic child and adult survivors should be directed towards and afforded the same legal opportunities as the rest of the population.
- The Holy See should disregard the statute of limitations (known as “prescription” in Canon Law), leading to removal from ministry for offences that may have occurred 20 or 30 years in the past. Canon Law presently specifies that the clock runs out for offences committed before Nov. 27, 1983, after five years from the date of the offence; for offences committed on or after Nov. 27, 1983, and prior to April 25, 1994, five years after the victim has completed the 18th year; and for offences committed on or after April 25, 1994, 10 years after the victim has completed the 18th year.
- The Holy See should implement immediate defrocking of clergy and religious who have been implicated in any level of child sexual assault; including those who were involved in the cover-up or protection of offenders.
- The Holy See, a state party to the Convention on the Rights of the Child, is delinquent in its obligations as it has not yet submitted its 1997 and 2002 reports to the Committee. It should do so immediately and include a full report on child abuse by clergy and members of religious orders, with a concrete plan for

ensuring that future abuse does not occur. It should also submit a report to the Australian government including full disclosure about cases of abuse in Australia and measures the Holy See is taking to prevent future abuses.

- In addition, the Holy See should reveal to other states' parties what measures it has taken to eliminate the sexual abuse of children and adolescents by Catholic clergy and members of religious orders in those countries and what measures it proposes to take to secure justice for the abused.
- The Holy See should commit to cooperating with local civil authorities by providing evidence and assisting with the prosecution of Catholic church officials involved in the abuse of children and adolescents.
- The Holy See must commit to rescinding its requirements of secrecy in these cases, and it should comply with its own law in creating accessible opportunities for children and adolescents, or their representatives, to vindicate and defend their rights, and must guarantee procedural integrity in internal judicial and non-judicial processes.
- The Holy See must also prohibit those clerics who have abused children from affiliation with activities and organisations which would allow them access to children, including, but not limited to: parishes, schools, day care facilities, leisure groups and activities (such as Catholic Youth Groups or those affiliated with World Youth Day), hospitals, mentoring groups, missionary activities to children and youth, seminaries and convents.
- To assist in fulfilling these ends, the Holy See should create and maintain a publicly accessible database of proven child-abusing clergy and members of religious orders so that these people cannot merely relocate to avoid the consequences of their crimes.

TO THE ROMAN CATHOLIC CHURCH IN AUSTRALIA

- The Catholic church in Australia should cooperate with government officials to ensure that in handling cases of clergy sexual abuse, the Australian Catholic church complies with the national laws of Australia.
- The Australian Catholic church should work in conjunction with the Australian government to ensure both Australia's and the Holy See's compliance with the Convention on the Rights of the Child.
- A record should be published of all cases of sexual abuse—respecting the privacy of victims and offenders—that includes criminal cases and those reported to the Holy See.

APPENDICES

Appendix A: Sexual Assault in the Catholic Church in Australia

The following extract from Broken Rites (<http://brokenrites.alphalink.com.au>) exemplifies the extent of the problem of sexual assault in the Catholic church in Australia and certainly emphasises the need for an adequate and effective response from the church (other extensive lists of perpetrators within the church can be found at <http://www.pip.com.au/~chenderson/perplist.htm> or in the Eros Foundation's 2000 publication *Hypocrites*):

Here is a list of Catholic church leaders who have already been through the Australian courts in recent years for sexual offences. The list is not complete as some offenders slip through the courts unnoticed. Broken Rites supported the victims during these cases.

Jailed

- Fr Wilfred (Bill) **Baker**, Melb., 2-4 years (1999);
- Christian Brother Robert **Best**, Vic. (now at Parkville), served 3 months in jail 1998 (also had a 9-mths suspended sentence in 1996);
- Marist Brother Gregory **Carter**, Qld., 12-18 months (1997);
- Fr Richard **Cattell**, Parramatta, 2-3 yrs (1994);
- Fr Peter **Comensoli**, Wollongong, 18 mths (1994);
- Fr Francis **Derriman**, ex-Brisbane (later Ballarat), 4-12 mths (1998);
- Christian Brother Gerard William **Dick**, WA, 3 yrs (1994);
- Christian Brother Edward **Dowlan**, Vic., 6.5 yrs after appeal (1996);
- Fr Reginald **Durham**, Rockhampton, 7.5 yrs (1990);
- Christian Brother Rex **Elmer**, Vic., 3 yrs 4 mths to 5 yrs (1998);
- Fr Desmond **Gannon**, Melb, jailed 12 mths, 1995, plus suspended sentence 1997;
- Fr Michael **Glennon**, Melb., 7-9 yrs (released 1997);
- ex-Marist Brother Brian **Gordon**, Sydney & Brisbane, 12 mths min. (1998);
- Patrician Brother Thomas ("Augustine") **Grealy**, Sydney, 4-7 yrs (1997);
- James Richard **Gunn**, Vic., Catholic primary school principal, 3.5 yrs to 5.5 yrs (1995);
- Phillip **Hardy**, Catholic teacher and trainee priest, NSW, 7 yrs (1995);
- Ronald W. **Hopkins**, former trainee Christian Brother, SA, 2 yrs (1999);
- Michael **Lannen**, Catholic psychologist, Qld., 4 yrs (1996);
- De La Salle Brother Frank "Ibar" **Keating**, Melb. (later Qld. and SA), 8 to 36 mths (1998);
- Fr Leo **Leunig**, WA, 7 yrs (1994);
- St John of God Brother Bernard K. **McGrath**, 9 mths Sydney (1997) & 3 yrs New Zealand (1993);
- Fr Ronald **McKeirnan**, Brisbane, 1-3 yrs (1998);
- former Marist Brother "Oswald" **McNamara**, jailed Brisbane (1995);
- Fr Gerard **Mulvale**, Pallottine order, Melb., 18-36 mths (1995);
- Christian Brother Damian **O'Dempsey**, Qld, 18 mths (1994);
- Fr Kevin **O'Donnell**, Melb., 15 mths (1995);
- Fr "Joseph" **Pritchard**, St Gerard Majella order, Parramatta, 4-6 yrs (1997);

- Fr David **Rapson**, Salesian priest, Vic, 2 yrs (1992);
- Fr Gerald **Ridsdale**, Ballarat dioc., 15-18 yrs (1993);
- Chr. Bro. "Greg" Francis **Riley**, NSW, 3 yrs (1999);
- Fr Stephen **Robinson**, St Gerard Majella order, Parramatta, 18 mths min. (1998);
- Fr Vincent G. **Ryan**, Maitland dioc., 2-4 yrs (1996) plus 11-16 yrs (1997);
- Jack **Shea**, ex-priesthood trainee, Melb., 1-3 yrs (1995 and 1996);
- Terence **Simpson**, Catholic schools teacher, NSW, 3 yrs (1998);
- Marist Brother Gregory **Sutton**, NSW, 13.5 yrs to 18 yrs (1996);
- Fr John **Sweeney**, St Gerard Majella order, Parramatta, 18-27 mths (1997);
- Alan **Swingler**, ex-trainee Marist Brother, Vic, 5-7 yrs (1996);
- Alan **Walters**, Catholic schools teacher, Sydney, 3 yrs (1998);
- Fr Leo **Wright**, Qld., 3 yrs (1995) & 18 mths (1997).

Other Jail Sentences

- Fr Bryan **Coffey**, Ballarat dioc., 3yrs jail, suspended (1999);
- Fr Douglan **Conlan**, Bunbury dioc., WA, 3 yrs jail, suspended (1999);
- Gregory Coffey, ex-Salesian priesthood trainee, 1 yr jail (suspended) SA (1972) & 2.5 yrs jail (suspended) Vic. (1998);
- Fr Raymond **Deal**, Melb., 4 mths jail, suspended (1999);
- Marist Bro. John **Dyson**, Vic., 12 mths jail, served in community (1997);
- Christian Brother Stephen **Farrell**, 2 yrs jail, suspended (1997);
- Fr Kevin Howarth **Sandhurst** dioc., 3 mths jail, served in community (1996);
- Fr Francis **Klep**, Salesian priest, Vic., 9 mths jail, served in community (1994);
- former Christian Brother Terence **Simpson**, Brisbane, 2 yrs jail, suspended (1998 and 2004).

Non-Custodial Sentences for Sexually Abusing Boys

- Marist Brother David **Christian**, ex-WA (now in Templestowe, Vic.) (1995);
- Fr Robert **Claffey**, Ballarat dioc. (1998);
- Christopher **D'Astoli**, ex-priesthood trainee, Vic. (1994);
- Christian Brother William **Hocking**, NSW (1992);
- Ernest Anthony **Jones**, teacher, Catholic schools, NSW;
- Christian Brother "Fabian" John **Jordan**, Vic. (now SA) (1999);
- Marist Brother "Nestor" John **Littler**, NSW, 1993 (1993);
- Christian Brother William **Marchant**, WA (1997);
- Fr. Victor **Rubeo**, Melb. (1996);
- DeLaSalle Brother "George" A.M. **Taylor**, NSW (1996);
- Fr John **Treacey**, Sandhurst dioc., Vic. (1993).

Non-Custodial Sentences for Sexually Abusing Females

- Fr Desmond Joseph **Brown**, a Redemptorist, Vic. & NSW (1992);
- Marist Brother Francis **Hesford**, formerly Vic., now WA. (1997).

Other Non-Custodial Sentences Include

- Fr Rex **Brown**, ex-Lismore NSW, now Palm Beach Qld, child pornography (1996);
- Fr Peter **Colley**, Warrnambool West, indecent assault of adult male (1993);
- Fr Edward **Hewitt**, WA, wilful exposure (1986 and 1996);
- Fr Bruce **Little**, Brisbane dioc., now at Noosa, indecent act with another male in a public toilet (1996);
- Fr Tabusz **Swiatkowski** (Society of Christ order), Brisbane 1994 (now at Mayfield West, Newcastle), soliciting a prostitute (1998).

Committed Suicide During Prosecution Process

- Christian Brother Michael **Evans**, NSW (1994);
- Marist Brother Raymond **Foster**, Qld and NSW (1999);
- former Christian Brother John **Gladwin**, Qld (1998);
- Fr Jack **Gubbels**, Melb. and Townsville (1995);
- Fr Daniel **Hourigan**, Sale dioc. (1995).

Other Deaths During Prosecution

- Fr Nazzareno **Fasciale**, Melb. (1996);
- Marist Brother "Malcolm" **Hall**, Vic. (1960s);
- Fr John **O'Regan** (Oblate Fathers, Qld & WA) (1998).

Other Offences

- Fr Peter **Searson**, Doveton, Vic., physically assaulting an altar boy, good-behaviour bond (1997);
- former Marist Brother "Oswald" **McNamara**, physical assault of a schoolboy, good-behaviour bond, Sydney (1999).

... Seven lay teachers have also been prosecuted for offences and a number of priests and brothers are currently before the courts or awaiting hearings. Furthermore, others are currently under police investigation.

Appendix B: Clergy Sexual Assault and Canon Law

Canon Law includes processes relevant to handling of sexual assault allegations against the Catholic church, clergy or religious. These include the judicial procedures incorporated under 1720-1728 and 1341-1353:

THE DEVELOPMENT OF THE PROCESS

Can. 1720. If the ordinary thinks that the matter must proceed by way of extrajudicial decree:

- 1/ he is to inform the accused of the accusation and the proofs, giving an opportunity for self-defense, unless the accused neglected to appear after being properly summoned;
- 2/ he is to weigh carefully all the proofs and arguments with two assessors;
- 3/ if the delict is certainly established and a criminal action is not extinguished, he is to issue a decree according to the norm of cann. 1342-1350, setting forth the reasons in law and in fact at least briefly.

Can. 1721 §1. If the ordinary has decreed that a judicial penal process must be initiated, he is to hand over the acts of the investigation to the promoter of justice who is to present a libellus of accusation to the judge according to the norm of cann. 1502 and 1504.

§2. The promoter of justice appointed to the higher tribunal acts as the petitioner before that tribunal.

Can. 1722. To prevent scandals, to protect the freedom of witnesses, and to guard the course of justice, the ordinary, after having heard the promoter of justice and cited the accused, at any stage of the process can exclude the accused from the sacred ministry or from some office and ecclesiastical function, can impose or forbid residence in some place or territory, or even can prohibit public participation in the Most Holy Eucharist. Once the cause ceases, all these measures must be revoked; they also end by the law itself when the penal process ceases.

Can. 1723 §1. The judge who cites the accused must invite the accused to appoint an advocate according to the norm of can. 1481, §1 within the time limit set by the judge.

§2. If the accused does not make provision, the judge is to appoint an advocate before the joinder of the issue; this advocate will remain in this function as long as the accused does not appoint an advocate personally.

Can. 1724 §1. At any grade of the trial the promoter of justice can renounce the trial at the command of or with the consent of the ordinary whose deliberation initiated the process.

§2. For validity the accused must accept the renunciation unless the accused was declared absent from the trial.

Can. 1725. In the discussion of the case, whether done in written or oral form, the

accused, either personally or through the advocate or procurator, always has the right to write or speak last.

Can. 1726. If at any grade and stage of the penal trial it is evidently established that the accused did not commit the delict, the judge must declare this in a sentence and absolve the accused even if it is also established that criminal action has been extinguished.

Can. 1727 §1. The accused can propose an appeal even if the sentence dismissed the accused only because the penalty was facultative or because the judge used the power mentioned in cann. 1344 and 1345.

§2. The promoter of justice can appeal whenever the promoter judges that the repair of scandal or the restoration of justice has not been provided for sufficiently.

Can. 1728 §1. Without prejudice to the prescripts of the canons of this title and unless the nature of the matter precludes it, the canons on trials in general and on the ordinary contentious trial must be applied in a penal trial; the special norms for cases which pertain to the public good are also to be observed.

§2. The accused is not bound to confess the delict nor can an oath be administered to the accused.

THE APPLICATION OF PENALTIES

Can. 1341. An ordinary is to take care to initiate a judicial or administrative process to impose or declare penalties only after he has ascertained that fraternal correction or rebuke or other means of pastoral solicitude cannot sufficiently repair the scandal, restore justice, reform the offender.

Can. 1342 §1. Whenever just causes preclude a judicial process, a penalty can be imposed or declared by extrajudicial decree; penal remedies and penances, however, can be applied by decree in any case whatsoever.

§2. Perpetual penalties cannot be imposed or declared by decree, nor can penalties be so applied when the law or precept establishing them prohibits their application by decree.

§3. What a law or precept states about the imposition or declaration of a penalty by a judge in a trial must be applied to a superior who imposes or declares a penalty by extrajudicial decree unless it is otherwise evident or unless it concerns prescripts which pertain only to procedural matters.

Can. 1343. If the law or precept gives the judge the power to apply or not apply a penalty, the judge can also temper the penalty or impose a penance in its place, according to his own conscience and prudence.

Can. 1344. Even if the law uses preceptive words, the judge can, according to his own conscience and prudence:

1/ defer the imposition of the penalty to a more opportune time if it is foreseen that greater evils will result from an offerly hasty punishment of the offender;

2/ abstain from imposing a penalty, impose a lighter penalty, or employ a penance if the offender has reformed and repaired the scandal or if the offender has been or, it is

foreseen, will be punished sufficiently by civil authority;

3/ suspend the obligation of observing an expiatory penalty if it is the first offense of an offender who has lived a praiseworthy life and if the need to repair scandal is not pressing, but in such a way that if the offender commits an offense again within the time determined by the judge, the person is to pay the penalty due for each delict unless in the interim the time for the prescription of a penal action has elapsed for the first delict.

Can. 1345. Whenever the offender had only the imperfect use of reason or committed the delict from fear, necessity, the heat of passion, or mental disturbance from drunkenness or something similar, the judge can also abstain from imposing any penalty if he thinks that reform of the person can be better accomplished in another way.

Can. 1346. Whenever the offender has committed several delicts, it is left to the prudent decision of the judge to moderate the penalties within equitable limits if the sum of the *feren dae sententiae* penalties appears excessive.

Can. 1347 §1. A censure cannot be imposed validly unless the offender has been warned at least once beforehand to withdraw from contumacy and has been given a suitable time for repentance.

§2. An offender who has truly repented of the delict and has also made suitable reparation for damages and scandal or at least has seriously promised to do so must be considered to have withdrawn from contumacy.

Can. 1348. When an accused is acquitted of an accusation or when no penalty is imposed, the ordinary can provide for the welfare of the person and for the public good through appropriate warnings and other means of pastoral solicitude or even through penal remedies if the matter warrants it.

Can. 1349. If a penalty is indeterminate and the law does not provide otherwise, the judge is not to impose graver penalties, especially censures, unless the seriousness of the case clearly demands it; he cannot, however, impose perpetual penalties.

Can. 1350 §1. Unless it concerns dismissal from the clerical state, when penalties are imposed on a cleric, provision must always be made so that he does not lack those things necessary for his decent support.

§2. In the best manner possible, however, the ordinary is to take care to provide for a person dismissed from the clerical state who is truly in need because of the penalty.

Can. 1351. Unless other provision is expressly made, a penalty binds the offender everywhere, even when the authority of the one who established or imposed the penalty has lapsed.

Can. 1352 §1. If a penalty prohibits the reception of the sacraments or sacramentals, the prohibition is suspended as long as the offender is in danger of death.

§2. The obligation to observe an undeclared *latae sententiae* penalty which is not notorious in the place where the offender is present, is suspended totally or partially whenever the offender cannot observe it without danger of grave scandal or infamy.

Can. 1353. An appeal or recourse from judicial sentences or from decrees, which impose

or declare a penalty, has a suspensive effect.

Procedures are also outlined in respect to the removal of clergy in Canons 1740-1747:

THE MANNER OF PROCEEDING IN THE REMOVAL OF PASTORS

Can. 1740. When the ministry of any pastor becomes harmful or at least ineffective for any cause, even through no grave personal negligence, the diocesan bishop can remove him from the parish.

Can. 1741. The causes for which a pastor can be removed legitimately from his parish are especially the following:

- 1/ a manner of acting which brings grave detriment or disturbance to ecclesiastical communion;
- 2/ ineptitude or a permanent infirmity of mind or body which renders the pastor unable to fulfill his functions usefully;
- 3/ loss of a good reputation among upright and responsible parishioners or an aversion to the pastor which it appears will not cease in a brief time;
- 4/ grave neglect or violation of parochial duties which persists after a warning;
- 5/ poor administration of temporal affairs with grave damage to the Church whenever another remedy to this harm cannot be found.

Can. 1742 §1. If the instruction which was carried out has established the existence of one of the causes mentioned in can. 1740, the bishop is to discuss the matter with two pastors selected from the group established for this purpose in a stable manner by the presbyteral council at the proposal of the bishop. If the bishop then judges that removal must take place, he paternally is to persuade the pastor to resign within fifteen days, after having explained, for validity, the cause and arguments for the removal.

§2. The prescript of can. 682, §2 is to be observed for pastors who are members of a religious institute or a society of apostolic life.

Can. 1743. A pastor can submit a resignation not only purely and simply but also conditionally, provided that the bishop can accept it legitimately and actually does accept it.

Can. 1744 §1. If the pastor has not responded within the prescribed days, the bishop is to repeat the invitation and extend the useful time to respond.

§2. If the bishop establishes that the pastor received the second invitation but did not respond even though not prevented by any impediment, or if the pastor refuses to resign without giving any reasons, the bishop is to issue a decree of removal.

Can. 1745. If the pastor opposes the cause given and its reasons and alleges reasons which seem insufficient to the bishop, the bishop, in order to act validly, is:

- 1/ to invite the pastor to organize his objections in a written report after he has inspected the acts, and offer any proofs he has to the contrary;

2/ when any necessary instruction is completed, to consider the matter together with the same pastors mentioned in can. 1742, §1, unless others must be designated because those pastors are unavailable;

3/ finally, to establish whether the pastor must be removed or not and promptly to issue a decree on the matter.

Can. 1746. After the pastor has been removed, the bishop is to make provision either for an assignment to some other office, if he is suitable for this, or for a pension as the case warrants and circumstances permit.

Can. 1747 §1. The removed pastor must refrain from exercising the function of pastor, vacate the rectory as soon as possible, and hand over everything belonging to the parish to the person to whom the bishop has entrusted the parish.

§2. If, however, the man is sick and cannot be transferred elsewhere from the rectory without inconvenience, the bishop is to leave him the use, even exclusive use, of the rectory while this necessity lasts.

§3. While recourse against a decree of removal is pending, the bishop cannot appoint a new pastor, but is to provide a parochial administrator in the meantime.

Appendix C: Towards Healing – December 2000

Towards Healing - December 2000

Australian Catholic Bishop's Conference & the Australian Conference of Leaders of Religious Institutes

Towards Healing: Amendments May/June 2003

Executive Officer National Committee for Professional Standards
PO Box 981 Bondi Junction
NSW 1355
Phone: 02 9387 2400 Fax: 02 9386 1400

The National Committee for Professional Standards is a committee established by the Australian Catholic Bishops' Conference & the Australian Conference of Leaders of Religious Institutes to oversee the development of policy, principles and procedures in responding to church-related abuse complaints.

Additionally, each state has a Director of Professional Standards and a Resource Group to advise and assist in matters concerning church-related abuse and to appoint suitable people as contact persons, support persons, assessors, facilitators and reviewers of process. The phone numbers for the State Professional Standards offices are:

New South Wales	1300 369 977	Tasmania	1800 356 613
Northern Territory	07 4789 1044	Victoria	1800 816 030
Queensland	1800 337 928	Western Australia	1800 072 390
South Australia	08 8223 5890		

Introduction

As bishops and leaders of religious institutes of the Catholic church in Australia, we acknowledge with deep sadness and regret that a number of clergy and religious have abused children, adolescents and adults who have been in their pastoral care. To these victims we offer our sincere apology.

In December 1996 we published a document, *Towards Healing*, setting out the principles that must form the basis of the church's response to complaints of abuse and the procedures to be followed in responding to individual complaints. We stated that this document would be in force for only a limited time and was "intended as a means of seeking the comments of all interested persons in the community".

In accordance with this intention, Professor Patrick Parkinson, pro-Dean of the Faculty of Law at Sydney University and author of the book *Child Sexual Abuse and the Churches*, was asked to lead the process of revision of the document. This process included broad consultation with complainants, accused, church authorities, and the various persons who

had a role in responding to complaints - contact persons, assessors etc. Consideration of the requirements of Canon Law was also part of the revision, so that decisions made through *Towards Healing* could be securely implemented.

As a result of the experience of the last four years and the feedback provided during the consultation, a number of changes have been made. The major change in the principles is the extension of abuse to include sexual, physical and emotional abuse, formalising a change that had already been accepted as experience unfolded. The more numerous changes to the procedures aim to clarify the steps to be taken and provide a document that is clear and able to be applied to the many and varied matters that can be brought forward. The goal of moving “towards healing” remains paramount.

Like the earlier document, this document establishes public criteria according to which the community may judge the resolve of church leaders to address issues of abuse within the church. If we do not follow the principles and procedures of this document, we will have failed according to our own criteria.

We express our gratitude to Professor Patrick Parkinson and to all who contributed to the process of revision.

The Archdiocese of Melbourne and the Society of Jesus have in place sets of procedures that are of similar intention to those set out in Part 2 of this document. Both sets of procedures are designed to meet the principles of Part 1. Accordingly it is acknowledged that the procedures of Part 2 do not apply to the Archdiocese of Melbourne and the Society of Jesus.

Part One

Principals for Dealing with Complaints of Abuse

Sexual Abuse

1. Clergy and religious are in a special position of trust and authority in relation to those who are in their pastoral care, e.g. those in their parish, people seeking advice, students at a Catholic school. Any attempt to sexualise a pastoral relationship is a breach of trust, an abuse of authority and professional misconduct. Such sexualisation may take the form not only of sexual relations, but also harassment, molestation, and any other conduct of a sexual nature which is inconsistent with the integrity of a pastoral relationship. Compliance by the other person does not necessarily imply meaningful consent. Even when the other person concerned is the one who seeks to sexualise the relationship, it is the professional responsibility of clergy or religious to guard the boundary against sexual contact.
2. Other people who are employed by an official agency of the Catholic church or appointed to voluntary positions may also be in a pastoral role. This includes, for example, pastoral workers in parishes, teachers in Catholic Schools, counsellors in Catholic welfare organisations, health care professionals, youth workers, staff

- in child care centres, and volunteers conducting religious education classes in schools or parishes.
3. Any form of sexual behaviour with a minor, whether child or adolescent, is always sexual abuse. It is both immoral and criminal.
 4. Sexual abuse by clergy, religious, or other church personnel of adults in their pastoral care may be subject to provisions of civil or criminal law. Even when there are no grounds for legal action, we recognise that serious harm can be caused.

Physical and Emotional Abuse

5. Physical and emotional cruelty also constitute an abuse of power. Where a priest, religious or another person appointed to a position of pastoral care by an agency of the church has acted towards a child or young person in a way which causes serious physical pain or mental anguish without any legitimate disciplinary purpose as judged by the standards of the time when the incidents occurred, then this constitutes abuse.

The Victims

6. Victims of abuse can experience fear, shame, confusion and the violation of their person. They can feel guilty, blame themselves and take responsibility for what has happened. Children and adolescents can suffer distortions in the process of determining their identity as persons. They may find it difficult to trust those in positions of authority or pastoral care or to believe in or trust in God. Victims can go through a long period of silence, denial and repression. Other people can refuse to believe them, reinforcing their sense of guilt and shame.
7. The intensity of the effects of abuse on victims will vary. Some of the factors involved are the age and personality of the victim, the relationship with the offender, the duration and frequency of the abuse, the particular form of the abuse, the degree of force used, the threats used to compel secrecy, the degree of violation of trust and abuse of power involved and the reaction of those in whom the victim confides.
8. We recognise that responses to victims by the many church authorities vary greatly. We express regret and sorrow for the hurt caused whenever the response denies or minimises the pain that victims have experienced. Through this document we commit ourselves to principles and procedures that apply to all church authorities.

The Offenders

9. In most cases of abuse free choices are made and many serious and sacred obligations are violated. These very facts argue to a clear awareness by the offender of the wrong that is being done.
10. Offenders frequently present as respectable, good and caring people. They can be quite exemplary in their public life, and they can actually use this as an excuse for a private life that contradicts their public image.

11. At the same time, a number of offenders are disturbed persons and some have serious psychological problems. A significant number were themselves victims of abuse in their earlier years.

The Response of the Church

12. The church makes a firm commitment to strive for seven things in particular: truth, humility, healing for the victims, assistance to other persons affected, an effective response to those who are accused, an effective response to those who are guilty of abuse and prevention of abuse.

Truth

13. The church makes a commitment to seek to know the full extent of the problem of abuse and the causes of such behaviour within a community that professes the values of Jesus Christ.
14. Concealing the truth is unjust to victims, a disservice to offenders and damaging to the whole church community.

Humility

15. It is very humbling for a Christian church to have to acknowledge that some of its clergy, religious and other church personnel have committed abuse. We must recognise that humility is essential if we are to care for victims and prevent abuse in the future.

Healing for the Victims

16. Whenever the offender is a clergyman, religious or another person appointed to a position of pastoral care by an agency of the church, church authorities accept that they have a responsibility to seek to bring healing to those who have been victims of abuse.
17. A compassionate response to the complainant must be the first priority in all cases of abuse.
18. This attitude must be present even at a time when it is not yet certain that the allegations are accurate. At the first interview complainants should be assured that, if the facts are truly as stated, abuse must be named for what it is and victims assisted to move the blame from themselves to the offender. They should be asked what needs to be done to ensure that they feel safe from further abuse. They should be offered whatever assistance is appropriate. These responses do not pass judgment on or prejudice the rights of the person accused, but they are part of the Christian response to the very possibility that the person present is a victim of abuse.
19. Whenever it is established, either by admission or by proof, that abuse did in fact take place, the church authority shall listen to victims concerning their needs and ensure they are given such assistance as is demanded by justice and compassion. Details concerning the procedures to be followed are contained in the second half of this document.

Assistance to Other Persons Affected

20. We shall also strive to assist in the psychological and spiritual healing of those persons who, as well as the victims, have been seriously affected by incidents of abuse.
21. The effect on the family of the victim can be profound. Sometimes the disclosure is so terrible that the family would rather reject the victim than face the reality. Parents can feel guilty that they did not protect their child more effectively.
22. The parish, school or other community in which the abuse occurred may be deeply affected. The more popular and respected the perpetrator, the greater will be the shock.
23. The family and close friends of the offender may also be deeply hurt. They can find it difficult to know how to respond and how to act towards the offender.
24. When clergy or religious are found to have committed child abuse, then other clergy and religious are affected, and the thought that other people might be looking at them as potential child abusers can be a cause of personal stress. Clergy and religious have had to make changes in their manner of relating to all young people and some good things have been lost in these changes.
25. The whole church community has been affected by incidents of abuse, for all Catholic people have been dismayed by the stories they have heard. The reputation of the whole church has been affected and the religious faith of many has been disturbed.

A Response to those Accused

26. All persons are presumed innocent unless and until guilt is either admitted or determined by due process. If church personnel accused of abuse are asked to step aside from the office they hold while the matter is pending, it is to be clearly understood that they are on leave and that no admissions or guilt are implied by this fact. Unless and until guilt has been admitted or proved, those accused should not be referred to as offenders or in any way treated as offenders.

A Response to those Guilty of Abuse

27. If guilt has been admitted or proved, the response must be appropriate to the gravity of what has happened, while being consistent with the precepts of Canon Law or civil law which govern that person's position. Account will be taken of how serious was the breach of professional responsibility, the degree of harm caused, and whether there is a likelihood that such behaviour could be repeated. Serious offenders will not be given back the power they have abused. Those who have made the best response to treatment recognise this themselves and no longer claim a right to return to ministry.
28. We accept that the community expects of us a serious and ongoing role in seeking to ensure that offenders are held accountable for what they have done, come to a true appreciation of the enduring harm they have caused, seek professional help in overcoming their problems, and do whatever is in their power to make amends.

29. In order to carry out this responsibility, church authorities need to have some contact with offenders and some form of influence over their conduct. In order to achieve change, they need to hold out to them something more than the prospect of unending condemnation. They need to be able to tell them that there can be forgiveness, by human beings as well as by God, and that change is possible.

Prevention

30. We commit ourselves to making every effort to reduce the risk of abuse by church personnel. Special care shall be taken in relation to all work with children and young people. No person shall be permitted to work in a position if the church authority believes, on the basis of all the information available, that there is an unacceptable risk that children or young people may be abused.
31. We continue to review the selection of candidates for priesthood and religious life and their ongoing formation. We commit ourselves to a process of community education and awareness in recognising and responding to abuse.

Commitment

32. We commit ourselves to the principles presented in this document. We invite the whole church to assist us in offering whatever healing is possible to victims of abuse and in preventing abuse in the future.

Part Two

Procedures for Dealing with Complaints of Abuse

33. Notes
- 33.1 This section of the document deals with the procedures to be applied where victims (or other complainants on their behalf) seek a response from the church as a result of abuse. It is to be implemented in the context of the previous sections on principles.
- 33.2 These procedures are a revised version of the document published by the Australian Catholic Bishops' Conference and the Australian Conference of Leaders of Religious Institutes in 1996.
- 33.3 These procedures are intended to apply to all complaints of abuse by church personnel, whether they be clerics, religious personnel, lay employees or volunteers. In the case of current lay employees, the response of the church authority will be made in conjunction with the relevant body for employment relations in each state or territory.
- 33.4 A complaint of abuse may raise medical, psychological, spiritual, legal and practical questions. An appropriate response may, therefore, need to be based on a team approach
34. Definitions
- 'Abuse' means:

- Sexual assault, sexual harassment or any other conduct of a sexual nature that is inconsistent with the integrity of the relationship between church personnel and those who are in their pastoral care.
- Behaviour by a person with responsibility for a child or young person which causes serious physical pain or mental anguish without any legitimate disciplinary purpose as judged by the standards of the time when the behaviour occurred.

‘Accused’ means the person against whom a complaint of abuse is made.

‘Children and young people’ refers to those persons under the age of 18.

‘Church authority’ includes a bishop, a leader of a religious institute and the senior administrative authority of an autonomous lay organisation, and their authorised representatives, responsible for the church body to which the accused person is or was connected.

‘Church body’ includes a diocese, religious institute and any other juridical person, body corporate, organisation or association, including autonomous lay organisations, that exercise pastoral ministry within, or on behalf of, the Catholic church.

‘Church personnel’ includes any cleric, member of a religious institute or other persons who are employed by a church body, or appointed by a church body to voluntary positions in which they work with children or young people, or engage in other forms of pastoral care.

‘Church procedure’ means a penal process under canon law, or a disciplinary process in relation to a person who is employed by a church body, or an assessment process under Clause 40 of these procedures.

‘Civil authorities’ include members of the police service as well as officials of the government departments responsible for child protection, for the administration of laws relating to complaints of sexual harassment, for the discipline of professions and for industrial relations.

‘Complainant’ means the person who has alleged abuse against church personnel. In most but not all cases the complainant will also be the person against whom it is alleged that the abuse was directed, and this is to be understood in this document unless the context suggests otherwise.

‘Offender’ means a person who has admitted abuse or whose responsibility for abuse has been determined by a court of law or by due process in accordance with canon law, or a disciplinary process in relation to a person who is employed by a church body, or an assessment process under Clause 40 of these procedures.

‘Pastoral care’ means the work involved or the situation which exists when one person has responsibility for the wellbeing of another. This includes the provision of spiritual advice and support, education, counselling, medical care, and assistance in times of need.

All work involving the supervision or education of children and young people is a work of pastoral care.

‘Victim’ means the person against whom the abuse was directed.

35. Structures and Personnel

- 35.1. The Australian Catholic Bishops’ Conference and the Australian Conference of Leaders of Religious Institutes have jointly established a National Committee for Professional Standards (National Committee) to oversee the development of policy, principles and procedures in responding to complaints of abuse against Church personnel.
- 35.2 The bishops and leaders of religious institutes of the Catholic Church in Australia have established and shall maintain a Professional Standards Resource Group (Resource Group) in each State and the Northern Territory.
- 35.2.1 The Resource Group shall consist of at least one priest and one religious and a suitable number of other persons (no more than ten), both men and women, of diverse backgrounds, skilled in areas such as child protection, the social sciences, civil and Church law and industrial relations. Members of the Resource Group shall be appointed by the bishops and leaders of religious institutes.
- 35.2.2 The Resource Group shall act as adviser to all Church bodies in the State in matters concerning professional standards.
- 35.2.3 In addition to responding to requests for assistance, the Resource Group shall also act in a proactive manner. It shall be free to offer advice within its mandate to any Church body in the State as it sees fit.
- 35.3 The bishops and leaders of religious institutes for each State shall jointly be responsible for appointing a Director of Professional Standards in each State.
- 35.3.1 The Director shall manage the process in relation to specific complaints, appoint assessors, facilitators and reviewers when required, convene and chair meetings of the Professional Standards Resource Group as required; liaise with the National Committee, other Resource Groups, and individual Church bodies and their professional advisers; have an overview of all matters dealt with under these procedures within their State; and be responsible for the safe-keeping of all documentation connected with these procedures.
- 35.3.2 The bishops and leaders of religious institutes for each State may nominate a Deputy Director who may exercise any of the responsibilities which are delegated to him or her by the Director.
- 35.4 Each Resource Group shall appoint suitable persons from among its own members or otherwise, to be available to fulfil the following roles:

CONTACT PERSONS, who shall be the usual persons to receive complaints of abuse and pass them on to the Director of Professional Standards. Contact persons shall be skilled listeners, sensitive to the needs of complainants. After the initial complaint has been received, they may act as a support person for the complainant

and may assist, where appropriate, with communication between the complainant, assessors and the Church authority. The contact person is not a counsellor to the complainant and shall not be the complainant's therapist.

ACCUSED'S SUPPORT PERSONS, who shall represent the needs of the accused to the Church authority and assist, where appropriate, with the care of the accused and with communication between the accused, assessors and the Church authority. The accused's support person shall not be the accused's therapist.

35.5 Each Resource Group shall maintain a list of suitable persons, not from its own members, to fulfil the following roles:

ASSESSORS, who shall be responsible for investigating the complaint.

FACILITATORS, who shall facilitate processes by which agreements may be reached between a victim and the Church authority about what the Church body can and should do to assist the victim.

REVIEWERS, who shall, where appropriate, conduct a review of process. Reviewers must be independent and impartial. They should not have close associations either with the complainant or with the Church authority responsible for dealing with the complaint.

35.6 All members of the Resource Group shall abide by the highest possible standards of professional conduct in all aspects of their work, including the maintenance of confidentiality.

35.7 The Group shall act in an advisory capacity to the Director of Professional Standards concerning any aspect of his or her work.

35.8 In addition to the above national and state structures, each diocesan bishop and religious leader of Australia shall have a consultative panel to advise and assist him or her at all stages of the process.

35.8.1 The panel shall consist of at least five members who collectively provide the expertise, experience and impartiality that are necessary in this field.

- 35.8.2 The bishop/leader must consult with this panel concerning the issues contained in nos. 38.8, 40.12, 41 and 42 of this process, and may well experience the need to consult concerning the issues raised in nos. 38.5, 39.2, 40.8 and 43.
- 35.8.3 The panel must be consulted when an alleged crime is prosecuted before a criminal court.
- 35.8.4 The panel must be consulted in any decision concerning whether a person constitutes an “unacceptable risk” to vulnerable persons

35.8 - 35.8.4 Amendments May/June 2003

- 36. Receiving a Complaint
 - 36.1 If a complaint of abuse comes to the notice of any Church personnel and the person who has made this complaint wishes to invoke the procedures outlined in this document, the Church personnel shall refer the matter to a Contact Person as soon as possible.
 - 36.2 Information shall be widely circulated to the public, and especially among Church counselling agencies, parishes and schools, to make people aware that these procedures exist. The information shall set out as simply as possible the manner for making a complaint about abuse.
 - 36.3 Anonymous complaints are to be treated prudently. An anonymous complaint cannot have the full force of one made by an identified person, but anxiety and fear may persuade some complainants not to reveal their identity immediately. The Church authority may be unable to act on the complaint under these procedures unless at some point the name of the complainant becomes known.
 - 36.4 The Contact Person shall listen fully, honestly and compassionately to the person laying the complaint, both concerning the facts of the situation and its emotional, psychological and spiritual effects. The Contact Person shall explain the procedures for addressing the complaint and ensure that the complainant gives his or her consent to proceeding on the basis laid down in this document.
 - 36.5 The Contact Person shall either receive a written and signed complaint, or provide written notes of the details of the complaint and these notes are to be confirmed by the signature of the complainant. The complaint should have sufficient information about the nature of the complaint for the accused person to know what has been alleged against him or her.
- 37. Criminal Offences and the Reporting of Child Abuse
 - 37.1 When the complaint concerns an alleged crime or reportable child abuse, the Contact Person shall tell the complainant of the complainant’s right to take the matter to the police or other civil authority and, if desired, provide assistance to do so. The Contact Person should also explain the requirements of the law of mandatory reporting.

- 37.2 In all cases other than those in which reporting is mandatory, if the complainant indicates an intention not to take the matter to the police or other civil authority, this should be recorded by the Contact Person and confirmed by the signature of the complainant.

Appendix - 37.2

When a complainant does not wish to go to the police or other appropriate authority and asks the Church to investigate an alleged crime the complainant is required to sign the following statement before the Church takes any action:

“The Catholic Church has strongly urged me to take my complaint to the police or other civil authority. It has been carefully explained to me that any process the Church establishes cannot compel witnesses, subpoena documents or insist on a cross-examination of witnesses. It cannot impose the same penalties as a criminal court. Aware of these limitations, I still state that I do not wish to take my complaint to the police or other civil authority at this time and I ask that a Church process be established.”

37.1 - Appendix 37.2 Amendments May/June 2003

- 37.3 All Church personnel shall comply with the requirements for mandatory reporting of child abuse that exist in some States/Territories, and State or Territory law regarding the reporting of knowledge of a criminal offense must be observed. The appropriate Church authority shall also be notified of any such report.
- 37.4 No Church investigation shall be undertaken in such a manner as to interfere in any way with the proper processes of criminal or civil law, whether they are in progress or contemplated for the foreseeable future. However, where the complainant has chosen not to report the matter to the police or other civil authority, or the civil authorities have decided not to take further action under the criminal law or child protection legislation, the Church authority must act on the complaint.
- 37.5 The Director of Professional Standards shall endeavour to establish a protocol with the police in each relevant State or Territory to ensure that church assessments do not compromise any police action.
38. Responding to a Complaint
- 38.1 The following procedures apply only where the complaint does not concern a criminal matter, or where a complainant has chosen not to report the matter to the police or other civil authority, or the civil authorities have decided not to take further action under the criminal law or child protection legislation.
- 38.2 The Contact Person shall forward the report promptly to the Director of Professional Standards.
- 38.3 The Director of Professional Standards shall determine whether the complaint concerns conduct which could reasonably be considered to fall within the definition of abuse in this document. If the complaint does not concern a matter which is to be dealt with by this procedure, or the behaviour complained of does

- not represent a serious breach of pastoral ethics and can properly be dealt with by correction and apology, he or she shall advise the complainant of other means of addressing the issue. This may include voluntary mediation or a complaint under Integrity in Ministry. The Director may assist in making the referral. The Director should advise the Church authority of the action taken.
- 38.4 Apart from matters dealt with under 38.3, on receiving the complaint of abuse, the Director shall forward it to the appropriate Church authority and may make a recommendation concerning any immediate action that needs to be taken in relation to the protection of vulnerable children and adults. The Director may also make recommendations concerning the funding of counselling or other such assistance for the complainant pending the outcome of the investigation.
- 38.4.1 In the event that a complaint of abuse is made against a bishop or leader of a religious institute, the “Director of Professional Standards” for the case shall be the Co-Chairpersons of the National Committee for Professional Standards acting together. The “Church authority” for the case shall be the person designated in accordance with Appendices 1 & 2.

Appendix 1 - 38.4.1

If a complaint of abuse is made against a bishop, the Church authority for a suffragan, auxiliary or retired bishop shall be the Metropolitan; for the Metropolitan himself it shall be the suffragan bishop senior by promotion.

For the purpose of these cases the Archbishop of Canberra and Goulburn, the Maronite bishop, the Melkite Eparch and the Military Ordinary shall be deemed to be suffragans of the Province of Sydney, and the Archbishop of Hobart shall be deemed to be a suffragan of the Province of Melbourne.

Appendix 2 - 38.4.1

If a complaint of abuse is made against a leader of a religious institute the Church authority is determined to be:

- a) The diocesan bishop of the principal house (cf canon 595) for a major superior of an Institute of diocesan right; or b) The supreme moderator for a major superior of an institute of pontifical right; or c) The Prefect of the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life (CICLSAL) for the supreme moderator of an institute of pontifical right.

The general principle applies in all cases that the “supreme moderator” of any ecclesiastical group is subject to the authority of an appropriate ecclesiastical superior, although the latter may delegate that authority to another person

38.4.1 - Appendix 2 - 38.4.1 Amendments May/June 2003

- 38.5 As soon as possible after receiving notice of the complaint, the Church authority or its representative shall inform the accused of the nature of the complaint if it is possible to do so. The accused needs to be given enough detail about the

- complaint, and the complainant, to be able to offer a response. The Director of Professional Standards may be involved in such a process. The accused shall be entitled to information about his or her rights and about the process for dealing with the complaint. The accused shall be offered a support person.
- 38.6 The Church authority (or his or her delegate) shall seek a response from the accused in order to determine whether the facts of the case are significantly disputed. If they are not, then the Church authority shall proceed in accordance with Clause 42 of these procedures.
- 38.7 Where there is a significant dispute about the facts, or the accused is unavailable to give a response, the matter shall be investigated in accordance with the procedures set out in this document.
- 38.8 At any time, the Director of Professional Standards may recommend to the Church authority that the accused be asked to stand aside from a particular office or from all offices held in the Church, pending investigation. The Church authority may seek the opinion of others involved in the matter before making a decision, and shall give the accused the opportunity to be heard on the matter. Where the accused is a priest or religious, the Church authority shall comply with canon 1722.1
- 38.8.1 If there is seen to be any significant risk of abuse of other persons, this advice must be given and acted upon by the Church authority at the earliest possible moment.
- 38.8.2 If accused persons are asked to stand aside from any office they hold while the matter is pending, it is to be clearly understood that they are on leave and that no admissions of any kind are implied by this fact. Accused persons who are clergy or religious shall, therefore, receive their normal remuneration and other entitlements while the matter is pending and they are standing aside. They shall be provided with an appropriate place to live. Where possible, they should be given some suitable activity. They shall not engage in any public ministry during this time.
39. Selecting the Appropriate Process
- 39.1 If the allegations concern a current employee of a Church body, other than a priest or religious, then the Director should refer the complaint to the relevant body for employment relations to investigate in accordance with the applicable procedures of employment law (and any other relevant laws) in that State or Territory. The Director of Professional Standards should liaise with the relevant body when the investigation has been completed, concerning how to respond to the victim if the complaint is validated. The response to the victim should follow the principles and procedures outlined in this document.
- 39.1.1 The documents or other material arising from the investigation are to be kept in accordance with the practices of the employing authority and any relevant laws.
- 39.2 If the allegations concern a priest or religious, the Church authority shall consider whether a penal process should be commenced in accordance with Canon Law.2

- If a penal process is commenced, the Director of Professional Standards should liaise with the Church authority when the penal process has been completed, concerning how to respond to the victim if the complaint is validated. The response to the victim should follow the principles and procedures outlined in this document.
- 39.2.1 Where the accused is a priest or religious, the documents associated with the penal process shall be preserved in accordance with canon 1719 and canons 489-490 of the Code of Canon Law.³
- 39.3 In all other cases where the facts of a case are in dispute, the Director of Professional Standards shall act in accordance with Clause 40 of these procedures.
- 39.4 If in the course of a Church procedure, allegations emerge for the first time which indicate that a criminal offense may have been committed, the Church procedure shall cease immediately and the matter will be dealt with in accordance with 37.1-37.3. If the complainant indicates an intention not to take the matter to the police, this should be recorded and confirmed by the signature of the complainant before the Church procedure resumes.
40. Assessment
- 40.1 In all cases to which this Clause applies, the Director of Professional Standards shall appoint assessors. Two assessors shall be appointed unless the Director considers that in the circumstances one professional assessor is sufficient. A list of assessors shall be maintained by the Resource Group. The appointment of the assessors shall occur as soon as practicable.
- 40.1.1 The assessors chosen must be, and be seen to be, independent of the Church authority, the complainant and the accused.
- 40.2 The purpose of an assessment is to investigate the facts of the case where there is a significant dispute as to the facts, or where there is a need for further information concerning the complaint.
- 40.3 The assessor or assessors shall arrange an interview with the complainant. Where there is more than one assessor, both should interview the complainant and the accused.
- 40.3.1 Where the complainant is not the victim, then the assessors shall not seek to interview the victim without first discussing the matter with the complainant and the Director of Professional Standards. If the facts are disputed, and it is not possible to interview the person who it is said has been victimised, then it may not be possible to proceed any further in dealing with the complaint unless other relevant information, such as a police record of interview, is available.
- 40.3.2 The complainant shall be invited to have another person present at the interview.
- 40.3.3 Under no circumstances shall there be any attempt to intimidate a complainant or to dissuade a complainant from proceeding with a complaint.

- 40.3.4 No interview with a child will take place if there is a risk that this will interfere with the proper process of civil or criminal law. No interview, either by a Contact Person or an assessor, shall be conducted with a child without the express written authority and in the presence of the parent or guardian. An interview with a child shall only be conducted by personnel who are professionally recognised as skilled practitioners in interviewing children.
- 40.3.5 Special care shall also be taken in interviewing persons with an intellectual or psychiatric disability, and any such interview shall be conducted only by an appropriately qualified and experienced person.
- 40.3.6 The Director of Professional Standards has a discretion to close a matter if the complainant decides not to co-operate with an assessment process.
- 40.4 The assessor or assessors shall arrange an interview with the accused, if he or she is available and willing to speak to them. If the accused does not wish to co-operate with the assessment, the assessment shall still proceed and the assessors shall endeavour to reach a conclusion concerning the truth of the matter so that the Church authority can make an appropriate response to the complainant.
- 40.4.1 Where an interview with the accused takes place, the assessor or assessors shall inform the accused that in both civil and Church law a person is presumed innocent until proven guilty.
- 40.4.2 An accused person may be invited to admit to an offense but is not bound to do so, nor may an oath be administered.⁴
- 40.5 The accused has the right to obtain independent legal advice.
- 40.5.1 This advice shall be at the accused's expense, although the Church authority may exercise a discretion to make loans or to reimburse an accused for reasonable legal expenses if he or she is unable to afford legal assistance.
- 40.6 The accused is entitled to have other persons present during any interviews (e.g. accused's support person or legal representative).
- 40.7 The assessors shall interview any other persons who could be of assistance. Decisions about who should be interviewed should be made after taking account of any wishes expressed by the complainant and the accused, and following consultation with the Director of Professional Standards. They may also need to put to the complainant the accused's version of events.
- 40.8 Church authorities shall comply with all reasonable requests made by assessors for access to documents which may assist them in their work. Church authorities are not required to disclose documents concerning which it has an obligation of confidentiality to the accused or to any other person.
- 40.9 A written or taped record shall be made of all interviews.
- 40.10 The contact person and the accused's support person shall have ready access to the assessors and shall have the responsibility of keeping the complainant and accused, respectively, informed of the progress of the assessment.

- 40.11 After the assessment is completed, the assessors shall provide a written report to the Church authority and the Director of Professional Standards. The assessors shall review the evidence for the complaint, examine the areas of dispute and may advise the Church authority whether they consider the complaint to be true.
- 40.11.1 The assessors must provide reasons for their conclusions. If they are unable to reach a determination of the truth of the matter with a sufficient degree of certainty, they may nonetheless make recommendations to the Church authority concerning its response to the complainant.
- 40.11.2 Where the behaviour about which complaint has been made was not a criminal offense, the assessors may also comment on how serious was the abuse of the pastoral role.
- 40.11.3 The complainant is entitled to know the findings of the assessment promptly. The accused is also entitled to know the findings of the assessment if he or she has participated in the assessment or otherwise could be subjected to disciplinary action as a consequence of it by the Church authority. The Director of Professional Standards is responsible for communicating the relevant findings.
- 40.12 The Church authority shall discuss the findings and recommendations of the report with the Director of Professional Standards as quickly as possible. If the assessors consider the complaint to be true, then the Church authority must consider what action needs to be taken under Clauses 41 and 42 of these procedures. The Director of Professional Standards may be called upon by the Church authority for advice on these matters. If the Church authority decides to reject the complaint, then it must provide reasons for its decision to the complainant.
- 40.13 Mindful that the assessment process is a difficult and trying time for all concerned, particularly the complainant and the accused, the process of the assessment shall be undertaken and concluded as quickly as possible and the process shall be as transparent as possible to all concerned. The Director of Professional Standards shall seek to ensure that all parties adhere to this principle.
- 40.14 During the assessment, and therefore, at a time when guilt has been neither admitted nor proven, the issue of guilt, liability or the particular course of action that may follow assessment cannot be commented upon. Any comment regarding these issues must always be referred to the Church authority and its professional advisers.
- 40.15 The records of interview and all other documents or material associated with the assessment are to be treated as confidential. The Director of Professional Standards shall maintain a confidential record of all findings and any documents relevant to the suitability of the person for future ministry. The Director shall not retain any other documents or material for longer than five years following the completion of the assessment unless required to do so by law.
41. Outcomes Relating to the Victim

- 41.1 In the event that the Church authority is satisfied of the truth of the complaint, whether through admission of the offender, a finding of a court, a canon law process or a Church assessment, the Church authority shall respond to the needs of the victim in such ways as are demanded by justice and compassion. Responses may include the provision of an apology on behalf of the Church, the provision of counselling services or the payment of counselling costs. Financial assistance or reparation may also be paid to victims of a criminal offense or civil wrong, even though the Church is not legally liable.
- 41.2 The Church authority may seek such further information as it considers necessary to understand the needs of the victim.
- 41.3 Facilitation shall be the normal means of addressing the needs of the victim. The Church authority and the victim shall mutually agree on a Facilitator from the approved panel.
- 41.3.1 The Facilitator shall arrange and moderate a process for communication between the victim and Church authority (or delegate with power to make binding decisions). This may involve a meeting, under the direction of the Facilitator, in which apologies can be offered and unresolved problems addressed.
- 41.3.2 The victim may have a support person or adviser present at the meeting. The Church authority or delegate may also have an adviser if required. The presence of any other persons accompanying either the victim or the Church authority shall be subject to the agreement of the Facilitator. The Director of Professional Standards should not participate in the facilitation process.
- 41.3.3 The Facilitator shall seek to know the ongoing needs of the victim and the response of the Church authority to these needs.
- 41.3.4 The Facilitator shall also seek to know the needs of the victim's family and of the community in whose midst the abuse occurred.
- 41.3.5 The Facilitator shall seek to identify any outstanding issues where the victim is not satisfied with the response received and shall explore with both parties the best means of dealing with such issues.
- 41.3.6 Issues concerning reparation may either be dealt with in a facilitation, addressed through a compensation panel or dealt with through some other such process in order to reach a resolution on this aspect of the matter.
- 41.3.7 The Facilitator shall ensure that there is a record of any agreement reached and of any outstanding areas of disagreement.
- 41.3.8 The Director of Professional Standards shall be informed of the outcome, and whether the Facilitator considers that any other processes or actions would assist further in bringing the matter to a conclusion.
- 41.3.9 The Church authority shall bear all ordinary and reasonable expenses of the process of facilitation.

- 41.4 No complainant shall be required to give an undertaking which imposes upon them an obligation of silence concerning the circumstances which led them to make a complaint, as a condition of an agreement with the Church authority.
- 41.5 If the victim remains of the view that the response of the Church authority is unsatisfactory, the victim shall be informed about access to a review of process.
42. Outcomes relating to the Accused
- 42.1 If either a police investigation or a Church process makes it clear that the accused did not commit the alleged wrong, the Church authority shall take whatever steps are necessary to restore the good reputation of the accused.
- 42.2 If abuse is admitted, or a Church process reaches the conclusion that on the basis of the findings of the assessment there are concerns about the person's suitability to be in a position of pastoral care, the Church authority in consultation with the Director of Professional Standards shall consider what action needs to be taken concerning the future ministry of the person. It may commission such other reports or Inquiries as are necessary to determine what action should be taken.
- 42.3 Where the offender is a current employee of the Church other than a priest or religious, the offender's future must be determined in accordance with the applicable procedures of employment law.
- 42.4 The process of determining the future ministry of a priest or religious shall be consistent with the requirements of the Code of Canon Law.⁵
- If a cleric or religious has admitted to or been found guilty of abuse, the Church authority shall, in person or through a nominated representative, meet with the offender to discuss honestly and openly the offender's future options. The offender may be accompanied by a support person and/or legal representative. The discussion shall take into account the seriousness of the offense and all relevant circumstances. It is unfair to hold out to a serious offender any hope of a return to ministry when it is clear that this will not be possible.
- 42.5 In making decisions on the future of a person found guilty of abuse, Church authorities shall take such action as the situation and the seriousness of the offense demand. In relation to child abuse, Church authorities shall be guided by the principle that no-one should be permitted to exercise a public ministry if doing so presents an unacceptable risk of abuse to children and young people.
- 42.6 As far as it is within its power to do so, the Church authority shall require the offender to address the issue of restitution to the victim and to the Church community.
- 42.7 The Church authority shall promptly communicate the outcomes in relation to an offender to the Director of Professional Standards.
43. Review of Process
- 43.1 A review of process of the procedures contained in Parts 40 and 41 is available for complainants who are not satisfied with the response of the relevant Church

- authority. A review of process of the procedures contained in Parts 40 and 42 is also available for accused persons if they co-operated with the assessment process.
- 43.2 A complainant or an accused person who is entitled to a review of process may request in writing to the Director of Professional Standards a review of process within 3 calendar months of the completion of the process. The process is complete in relation to the complainant when either the Church authority gives its response to the complaint or if the Church authority fails to offer a response within three calendar months of the time when an assessment has been completed or the facts otherwise established. The process is complete in relation to the accused when the Church authority has made its decision concerning the future ministry of the accused in response to the complaint of abuse.
- 43.3 If the request is accepted, the Director shall appoint one of the Reviewers named by the Resource Group.
- 43.3.1 If the request is to be denied, the Director must first consult the other members of the Resource Group.
- 43.3.2 If any party objects to the Reviewer named, the matter shall be considered at a meeting of the Resource Group which may nominate another Reviewer.
- 43.3.3 The Director shall inform the Church authority that a review of process has been requested and approved. He or she shall also ensure that the complainant or accused person as the case may be, is informed that a review has been requested and approved. This only applies to accused persons who have co-operated with the process.
- 43.4 The review of process is an independent evaluation, not only of whether the procedures set out in this document have been properly observed, but also of whether the principles established in the first part of the document have been adhered to. A review of process is not a review of outcomes unless the Church authority requests the reviewer to consider this aspect of the matter.
- 43.5 The Reviewer shall determine the procedures for the conduct of the review.
- 43.5.1 The Reviewer shall have authority to interview all Church personnel concerned and will have access to all relevant documentation.
- 43.5.2 The Reviewer shall conduct the review expeditiously and certainly within three calendar months, unless the Director provides for a further extension of time.
- 43.6 At the end of the review, the Reviewer shall provide a written report with recommendations to the Resource Group. If the Reviewer considers that there has been a failure to observe the required processes, he or she shall indicate whether the decided outcomes ought to be called into question.
- 43.7 The Director shall provide a copy of the report to the person requesting the review and the Church authority. As soon as convenient, the Director (or delegate if appropriate) shall discuss with all parties the implementation of the recommendations.

- 43.8 The Church authority shall bear all ordinary and reasonable expenses of the review of process.
44. Preventive Strategies
- 44.1 Each Church authority shall ensure that all Church personnel are made aware of the seriousness of abuse. They should be warned of behaviour that is inappropriate or which might be misunderstood as involving improper behaviour.
- 44.2 Each Church authority shall ensure that those working with children and young people are made aware of the issue of child abuse and are given information concerning processes for reporting disclosures of abuse. They should also be given information on how to conduct children's and youth ministry in such a manner as to reduce the risk of child abuse occurring.
- 44.3 Church bodies, especially those involved in providing care for children, shall have in place procedures, consistent with good child protection and industrial relations practice, for verifying the suitability of persons for employment or for participation as volunteers. They shall obey all applicable laws concerning employment screening and the prohibition of certain convicted persons from employment involving children.
- 44.4 Whenever a Church authority is concerned about the behaviour of any person connected with that Church body which might lead to a complaint of abuse, this fact should be brought to the attention of that person and appropriate steps taken to determine whether the behaviour is the symptom of a deeper problem requiring attention.
- 44.5 Church personnel who feel that they might be in danger of committing abuse shall be offered opportunities to seek both spiritual and psychological assistance before the problem becomes unmanageable and they offend. Names of suitable therapists and treatment programs should be made available.
- 44.6 Whenever a cleric or religious is to transfer from one diocese or institute to another, or is to carry out a ministry or apostolate in another diocese or institute, the Church authority to which the person is to be transferred shall ask for a written statement from the priest or religious indicating whether there have been any substantiated complaints of abuse against him or her or whether there are known circumstances that could lead to a complaint of abuse. Such statements shall be held as confidential documents by the Church authority.
- 44.7 In these same circumstances the Church authority in the diocese or institute where the cleric or religious previously lived and worked, shall provide a statement in writing to the new diocese or institute indicating whether such authority knows of any complaints of abuse which have been substantiated or is aware of circumstances that could lead to a complaint of abuse. Where there has been a substantiated complaint, the Church authority shall furnish all information necessary to evaluate the seriousness of the offense, and shall report on all treatment undertaken, and other measures employed to ensure that further

- offences do not occur. Such statements shall be held as confidential documents by the Church authorities.
- 44.8 Each Church authority shall have in place procedures for verifying the suitability of candidates for seminaries or religious institutes. In particular, candidates must be asked to state in writing whether they have a criminal record, or any complaints of abuse have been made against them, or whether there are any known circumstances that could lead to a complaint of abuse against them.
- 44.9 While due process must be observed, any proven incident of sexual assault or other serious abuse must lead to the dismissal of a seminarian from a seminary or a candidate from an institute's program of formation.
- 44.10 Church authorities shall be honest and frank in references and shall not act in a way which would allow an offender to obtain employment in circumstances where others might be at risk.
45. Concluding Statements
- 45.1 All Church authorities shall take the necessary steps to conduct such in-service programs for Church personnel as may be necessary to inform them of the principles and procedures set down in this document.
- 45.2 While the distribution of this document is unrestricted, the publication of the document, its implementation, and all matters of interpretation are reserved to the National Committee for Professional Standards.
- 45.3 Abuse of both children and adults by Church personnel has done great harm to individuals and to the whole Church. Despite this, it can become an opportunity to create a better Church, but only if the response given by the leaders and all the members of the Church is humble, honest and thoroughly Christian.
1. This canon requires that the Ordinary shall consult with the promotor of justice and shall summon the accused to appear, before prohibiting the accused from exercising some ecclesiastical office or position.
 2. This may involve an administrative or a judicial procedure as laid down in canons 1720-1728. Canon 1341 provides that administrative or judicial procedures should be invoked only when pastoral approaches have failed.
 3. Code 1719 requires that all documents which form part of the investigation process or which preceded the investigation, should be retained in the secret curial archive. Canons 489-490 govern the maintenance of this archive and issues about access to it.
 4. Canon 1728, #2
 5. Canon law provides a number of principles and procedures which may be relevant to determining the future of a priest or religious in cases of alleged abuse. In addition to an administrative or judicial procedure as laid down in canons 1720-1728, there is the procedure for the removal of a parish priest under canons 1740-1747. Reliance may also be placed upon Canons 1041 and 1044 if it is considered

that the priest or religious is incapable of fulfilling ministry due to psychological infirmity. In some cases it will be appropriate to commence a formal penal process even where guilt is admitted in order to reach a judgment in accordance with canon law.