

APPENDIX
Catholics for Renewal Inc.

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Appendix to Presentation at a Public Hearing of the *Inquiry into The Handling Of Child Abuse by Religious and Other Non-Government Organisations* – 23 Jan 2013

**TOWARDS HEALING AND THE MELBOURNE RESPONSE:
SIMILARITIES AND DIFFERENCES IN HANDLING COMPLAINTS OF
ABUSE**

(This paper is provided in response to a request from the Committee to provide information on “differences in approaches adopted by *Towards Healing* and the *Melbourne Response* in handling complaints relating to child abuse”.)

Background

1. The Catholic Church in Australia has taken steps since 1996-7 to improve its handling of sexual abuse complaints through the adoption of The Melbourne Response (covering those exercising ministry under the authority of the Archbishop of Melbourne) and Towards Healing (covering those exercising ministry in the national church except diocesan personnel in the Archdiocese of Melbourne). This Inquiry and the announced federal Royal Commission offer an opportunity to identify improvements to these responses.

2. The relevant Church authorities established at the outset principles that are common to both complaint handling protocols and provide public criteria by which the performance of the protocols may be judged:

“The Church makes a firm commitment to strive for seven things in particular: truth, humility, healing for the victims, assistance to other persons affected, a just response to those who are accused, an effective response to those who are guilty of abuse and prevention of abuse.” (Towards Healing, rev. Jan.2010, para. 12 at page 8).

3. The two internal church complaint handling responses deal primarily with historical abuse, i.e. children who were abused many years ago who often have not reported the abuse until adulthood. Restorative justice and compensation for past wrongs are ostensibly integral to both protocols. But each response also involves investigation of potentially criminal acts of abuse, police reporting requirements and the discipline of offenders. Both responses can also be used for contemporary cases of child abuse but that is not their primary focus. The investigation process addresses the individual’s complaint of abuse. The protocols are not concerned with other complaints against Church personnel, including allegations of silence or inaction where the abuse has been brought to their attention.

Differences in way of Proceeding:

4. Despite having common principles in their response to abuse complaints, the two complaint handling procedures adopted different ways of proceeding. Responsibility for the complaint handling process relating to child abuse under The Melbourne

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Response rests with two Independent Commissioners, senior members of the Victorian Bar, who are appointed by the Archbishop of Melbourne. The Commissioners' role is to receive, inquire into and advise the Archbishop in respect of complaints of abuse including complaints upheld, the form of response to victims, and action to be taken against offending church personnel.

5. Responsibility for complaint handling under Towards Healing rests with the National Committee for Professional Standards (NCPS) jointly appointed by the Australian Catholic Bishops Conference and Catholic Religious Australia. The role of the NCPS is to oversee the handling of complaints of abuse. In each State, Directors of Professional Standards manage the complaint management process and consider the recommendations made to them and the relevant Church authority (diocesan bishop or head of a religious order), including the response to victims and action to be taken in respect of offending church personnel in substantiated cases of abuse. The complaint handling process has a number of phases: contact (meeting and taking down a record of the victim's complaint and advising them of their right to take their complaint to the police at any stage of the process); assessment (investigating the complaint) and facilitation (meeting with the victim, the alleged offender and the relevant Church authority and working with those parties towards an agreed outcome), with different staff assigned to work with the victim at each phase of the process. Unlike the Melbourne Response, the process is not oversighted by a lawyer. Volunteers as well as staff from other professional callings are engaged in the complaint handling process.

6. Under The Melbourne Response, the relevant Commissioner provides recommendations to the Archbishop of Melbourne regarding how to respond to the complainant and the accused. The Archbishop has accepted all recommendations from the Commissioners in regard to complainants and those accused of abuse (Facing the Truth submission of the Catholic Church in Victoria, paras 8.2 and 8.6 at page 56). The Commissioners have a discretionary power to refer complainants to Carelink, an Archdiocesan agency, for counselling and related support services at any stage of the complaint handling process. The Melbourne Response establishes a separate Compensation Panel whose work commences when a complaint is upheld by an Independent Commissioner. The Panel has 4 members comprising a chairman (a senior member of the Victorian Bar), a psychiatrist, a solicitor and a community representative all of whom are, we understand, appointed by the Archbishop. The amount of compensation determined in each case under The Melbourne Response is recommended at the discretion of the Panel and binding on the Archbishop of Melbourne (Facing the Truth, para 8.7 at page 58). Ex gratia compensation of up to \$75,000 can be made to a victim. Victims who accept compensation remain entitled to counselling and support through Carelink for as long as needed. Counselling and support are funded at no cost to the victim, in addition to the compensation payment.

7. The process of finalising complaint claims is different under Towards Healing, where the State Director of Professional Standards appoints assessors, and their investigation and recommendations regarding the complainant and the accused are

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provided to the State Director and the relevant Church authority for decision. We are unaware of whether Church authorities covered by Towards Healing have universally accepted recommendations from assessors like their Melbourne episcopal counterpart has done in respect of the Independent Commissioners appointed under The Melbourne Response. Where a complaint is upheld, the process moves to a final facilitation stage focused on settlement of the complaint, including the terms for compensation and counselling support to be provided.

8. At the facilitation stage, the complainant gets to meet with the relevant Church authority to discuss face to face the personal circumstances of their abuse and the outcomes sought (Towards Healing, para 41.4.1 at page 25), a situation not provided in The Melbourne Response. This is an important pastoral aspect of Towards Healing. Where financial compensation is being claimed, the relevant Church authority is often accompanied at a facilitated meeting by legal and insurance advisors. This can be a daunting experience for a victim not legally represented, and until facilitation, often only accompanied in the process by a non-legal support person. Even when legally represented, the pastoral aspects of the process can be displaced by a focus on legal and financial issues. Towards Healing provides the option of a separate facilitated meeting for the negotiation of these issues on the same day as the pastoral meeting, but with different people present, so that the pastoral and compensation issues are kept distinct and the power imbalance in the room reduced to some degree. The Church authority is the final decision maker concerning the amount of compensation to be offered after advice from a Consultative Panel (Towards Healing, para 35.8). However, it is our understanding that the insurance and legal advisers set the limits of what level of compensation will be approved in each case, and that advice has a major if not determining influence on the final offer made by the Church authority in settlement of the complaint.

9. What is clear from the evidence of some witnesses before this Inquiry (e.g. Dr Tom Keating, Submission to Inquiry at page 7) is that contrary to Towards Healing espousing that it settles complaints “with justice and compassion” (see Towards Healing, para 41.1), the view of the victims is often different, seeing the process as involving protracted and legalistic negotiations, a compensation offer bearing little relationship to the severity and longevity of the pain done, and a refusal of the Church authority to accept in its terms of apology any responsibility for systemic culpability for the abuse. Catholics for Renewal understands that similar frustrations with the outcomes of the process have been expressed by victims using The Melbourne Response.

10. On the question of financial compensation, The Melbourne Response and Towards Healing share a number of common features (Facing the Truth, para 10.1 at page 76) but have different structures and methods of arriving at financial compensation amounts granted in individual cases. A 2009 review of Towards Healing by Professor Parkinson evaluated these differences before coming down against the establishment of separate compensation panels under Towards Healing (See Facing the Truth, para 10.5 at pages 79-80)

Different approaches to External Review

11. There have been differences in the approach to external review by Towards Healing and The Melbourne Response. The Independent Commissioners under The Melbourne Response have conducted internal reviews from time to time, the most significant being the changes made to the process following discussions with Victoria Police and the ultimately unsuccessful attempt to negotiate a protocol with police in 2010 on the rules for reporting to police complaints of child abuse received by the Church in the Archdiocese of Melbourne. Independent external reviewers have not been engaged to survey users of The Melbourne Response. Nor has feedback been sought on The Melbourne Response from users of the process, particularly victims, as to how the procedure can be improved, purportedly because such reviews may breach the confidentiality of complainants and those accused of abuse.

12. A different approach to external review has been taken by the NCPS for the Towards Healing response to complaints. Professor Parkinson was invited by the NCPS to conduct reviews of Towards Healing in 1999 and 2008. These reviews involved broad ranging consultation with victims, accused church personnel, church authorities and those administering the protocol at state and national level. These independent external reviews led to a new version of the protocol being published in 2000 and important procedural changes being made in 2009. The Committee is aware of Professor Parkinson's submission and evidence given on 19 October 2012 concerning his work with Towards Healing. His report and findings on the failed handling of abuse complaints against some members of the Salesians of Don Bosco and his subsequent allegation of a cover up by the NCPS (see Professor Parkinson's submission at pages 3-4 and evidence to the Inquiry, 19 October 2012, at pages 7-8) requires a response from church authorities. That evidence indicates that the Towards Healing protocol has not complied with its own public criteria with respect to providing "an effective response to those guilty of abuse and the prevention of abuse."

13. The Parkinson reviews have shown the importance of external audits of the Church's complaint handling responses. Such reviews increase the accountability of those responsible for such processes and encourage greater adherence to procedural fairness principles. The reviews have shone a light on actions and inactions by church authorities that would not have come to light without these searching independent reviews. In the case of The Melbourne Response, we are left to speculate as to what might have come to light had it been subjected to a similar external audit. Such reviews, with public reporting, should be a normal aspect of Church accountability and their absence reinforces the inadequacies of Church governance already highlighted by Catholics for Renewal.

Similarities in responses to the accused and offenders

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14. The Catholic Church in Victoria's Facing the Truth submission states that under The Melbourne Response priests facing sexual abuse allegations are "*placed on Administrative Leave*", i.e. removed from ministry, whilst under investigation (Facing the Truth, page 56 para 8.6). But The Melbourne Response actually provides for the Independent Commissioners to exercise discretion in this matter, expressed in these terms:

"It has been the practice of the Archbishop of Melbourne to seek advice from the Independent Commissioner as to whether an accused priest should be placed on Administrative Leave while under investigation. It has been the invariable practice of the Archbishop to accept the Commissioner's recommendation."

(Facing the Truth, para 8.6 at page 57).

15. Catholics for Renewal believes that the process should be unambiguous and that religious personnel accused of sexual abuse should be immediately removed from ministry whilst the complaint is being investigated and both protocols should be amended to reflect this reform. The accused still maintains a presumption of innocence and retains the protections of natural justice and canon law.

16. Further, Facing the Truth provides no information as to action taken with regard to confirmed offenders under either protocol. These are confirmed sexual abusers of children who would presumably be convicted criminals if subject to the civil justice system as they should be. Archbishop Hart is on the public record as saying that he has accepted every recommendation of the Independent Commissioners under The Melbourne Response (A Pastoral Letter on Sexual Abuse, 1 July 2010.) We do not know what those recommendations were and how they were acted upon. We know nothing about how many offenders have been removed from ministry or laicised, how many offenders have been suspended for a limited period and then returned to ministry, or the steps taken to protect children from confirmed offenders still at large, clearly a matter for civil authorities. We do not know what, if any, supervision and reporting arrangements apply, and nor do the police. These concerns apply equally to the response to offenders under Towards Healing.

17. There is no protocol to report confirmed offenders to the police under either response. Catholics for Renewal notes with concern the submission and evidence given to this Committee by Professor Parkinson that in some cases the promises made in Towards Healing in dealing with offenders have not been fulfilled (Professor Parkinson's submission at page 2 and evidence 19 October, 2012 at page 7). Consequently, the community cannot be confident that offending church personnel no longer pose a risk to vulnerable children. Nor can the community or civil authorities be satisfied that church authorities have complied with their own undertaking that:

"Serious offenders, in particular those who have been found responsible for sexually abusing a child or young person... will not be given back the power they have abused. (Towards Healing, para 27 at page 10.)"

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That assertion from a private organisation is not an adequate assurance on a matter affecting civil justice and community safety.

18. Catholics for Renewal believes that Church decisions with respect to the punishment of offending church personnel should not be secret, that victims and the general public should be assured that justice is done and seen to be done. More importantly, all evidence of child abuse should be reported to the police as we have recommended and discussed further below. We also believe that the Australian Catholic Bishops Conference and Catholic Religious Australia should immediately establish a national record of offenders for use in assessing suitability for future assignments.

Differences in reporting to Police

19. Both Towards Healing and The Melbourne Response provide that victims who lodge complaints of child abuse are encouraged to notify the police and are supported in doing so. Both protocols state that the police are best placed to investigate allegations of abuse not the church. Neither protocol commences an investigation or makes an assessment until any police investigation is completed or the complainant decides not to report to the police, in which case the complainant must formally sign an intention to proceed with the church procedure having been advised of their rights to take complaints directly to the police. (Facing the Truth, page 110; Towards Healing, para 37 and footnote 2 pages 17-18; The Melbourne Response, clauses 4-5). Catholics for Renewal understands however that lawyers acting for a complainant will at times advise the complainant that the uncertainty and delays of the legal process can make the Church process more attractive, with the result that some complainants will choose the Church process and not report to police for those reasons rather than primary concerns for privacy, the reason suggested by the Church.

20. Under The Melbourne Response, the Independent Commissioner has a discretionary power to report to the police allegations of child sexual or other abuse (Term of Appointment of Independent Commissioner, clause 2 (iv)) and “will always report such conduct to the police if the complainant has requested that he do so” (Facing the Truth, para 8.13 at page 62). If approached by the police requesting information in respect of police investigations of child sexual abuse allegations, the Independent Commissioner will provide the police with “all the information he can” (Facing the Truth paragraph 8.13 at page 62). Similar arrangements apply under Towards Healing (Towards Healing, para 37 at pages 17-18).

21. These acknowledgements of the crucial role of the police in investigating crime, and accompanying assurances of cooperation with police, are clearly at odds with the evidence of Deputy Commissioner Graham Ashton, Victoria Police, given to this Inquiry, 19 October 2012. At page 2 of the transcript of that evidence, he advised that not one single referral of a child abuse allegation has been made by the Catholic Church in Victoria.

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22. The key difference in reporting arrangements under the church protocols applies to Towards Healing in New South Wales where there is a legal duty on anyone who has a knowledge or a belief that a serious indictable offence has been committed, to report information of possible material assistance in apprehension or prosecution or conviction to the police (See section 316 Crimes Act 1900 (NSW) – note that this reporting requirement for a serious indictable offence provides for an undefined “reasonable excuse” which Catholics for Renewal considers inappropriate to child sexual abuse crimes where the reasonableness of excuses is best left to civil authorities. Under the Towards Healing protocol applying in that State, the Director of Professional Standards reports all complaints of child sexual abuse to the police. This includes allegations made against someone who is deceased, because these allegations may still be of assistance to the police. When a victim does not wish to go to the police, this is respected by reporting all the details of the allegation except for the complainant’s identity (Towards Healing, para 37.4 at page 18). Catholics for Renewal contests the appropriateness of this exception.

23. There is no similar legal requirement in Victoria. Complaints of abuse are not reported to the police under The Melbourne Response and Towards Healing, with the Church in Victoria arguing that in the absence of a legal obligation, the decision to report or not report a complaint to police is a matter of choice for the individual victim (Facing the Truth, page 112.) We note that the Church in Victoria “*would support a situation in which all allegations of serious crimes are reported to the police in a way that avoids infringing the confidentiality and privacy of victims who have come forward on that basis.*” (Facing the Truth, page 114). This observation about all and any ‘*serious crimes*’ clearly goes beyond the terms of reference of this inquiry and, in the view of Catholics for Renewal, should not distract the Inquiry from the need, already established by the Cummins Inquiry, for mandatory criminal reporting of child abuse by an individual associated with a religious or other non-government organisation.

24. The Vatican has now given clear instructions about compliance with civil law provisions in these matter in a global circular issued on 3 May 2011 stating, inter alia:

“ . . . the prescriptions of civil law regarding the reporting of (crimes of sexual abuse of minors) to the designated authorities should always be followed.”

(Congregatio Pro Doctrina Fidei, Circular Letter to assist Episcopal Conferences in Developing Guidelines for dealing with cases of Sexual abuses of Minors perpetrated by Clerics, issued by Cardinal Levada, Prefect, 3 May 2011