

**Catholics for Renewal Inc.**

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**Submission on *Towards Healing***

**Submission to  
The Royal Commission on Institutional Responses to  
Child Sexual Abuse  
in response to  
The Royal Commission's Issues Paper 2  
released 9 July 2013:  
Towards Healing**

**from**

**Catholics for Renewal**

August 2013

Catholics for Renewal Inc.

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**The Royal Commission's Issues Paper 2  
released 9 July 2013:  
*Towards Healing***

**Introduction**

1. The Royal Commission is seeking submissions from interested individuals, institutions, government and non-government organisations, about the content, operation, or any aspect of the *Towards Healing* protocol and process. Catholics for Renewal is concerned about a number of aspects of *Towards Healing* and the related *The Melbourne Response*, the complaint handling protocol applying to personnel under the authority of the Archbishop of Melbourne.

2. Our submission addresses particularly the impact of the dysfunctional governance context under which *Towards Healing* and *The Melbourne Response* operate, and is relevant to the following items of interest listed by the Commission:

“2. The principles and procedures of *Towards Healing* as instructions for Catholic Church authorities dealing with complaints and redress regarding victims of child sexual abuse.”

“4. The engagement and accountability of institutions and responsible authorities of the Catholic Church in the *Towards Healing* process.”

“11. The sufficiency of the guidelines in relation to referral of matters to police.”

“12. The role of canon law in *Towards Healing*.”

“15. Does *Towards Healing* assist in the prevention of child sexual abuse within institutions of the Catholic Church?”

3. Catholics for Renewal Inc., established in April 2011, is a community-based group of committed Australian Catholics seeking renewal of the Catholic Church. It expresses concerns shared by many Catholics, lay and clerical, regarding the governance of our Church, concerns that are horribly validated by the Church's response to clerical sexual abuse, a response that denies the very basis of Christian teaching<sup>1</sup>.

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<sup>1</sup> The Catholic Church bases its theology and very existence on the Scriptures, traditions and the teachings of Christ. Matthew's Gospel (18:6) quotes Christ's very specific warning on the care of children:

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4. We make strong, evidenced statements regarding the inadequacy of the Church's governance because we believe that the Church's Christian mission is being displaced by a world-wide culture and governance that lacks accountability, transparency and inclusiveness in its decision making. That culture has focused on strict hierarchical control and the protection of the institution at all costs, even to the point of covering up serious child sexual abuse.

5. In 2011, more than 8,600 Australian Catholics signed an Open Letter auspiced by Catholics for Renewal, and addressed to Pope Benedict XVI and the Australian Bishops and expressing concerns about the Church's governance and practices, including:

*"Our Church has been tainted by injustice and blemished by bad decisions. We still reel from the sexual abuse scandal, where the Church's initial response was manifestly inadequate and where some authorities, in their attempts to protect the institution, exposed innocent young people to grave harm."*

6. More recently, Australian Bishops Robinson, Morris and Power launched a well-publicised petition calling on the Church to confront the world-wide governance issues that contributed to systemic sexual abuse.<sup>2</sup> That petition attracted 80,000 signatures in its first three months.

7. We believe that the views expressed in this submission reflect the concerns of many Australian Catholics that their Church has failed to listen to them about serious governance failures, but more importantly, has failed many innocent children who have been subjected to sexual abuse that could and should have been prevented.

8. The effectiveness of *Towards Healing*, and all the Church's protocols affecting sexual abuse of children, is presently compromised by inadequate worldwide Church governance.

9. While this submission refers to *The Melbourne Response* as well as *Towards Healing*, it focuses on the latter. We have attached for the Commission's information at Appendix 1 a paper prepared by Catholics for Renewal: 'Observations re Similarities and Differences of *Towards Healing* and *The Melbourne Response*' which expands further on some matters in this submission.

### Background

10. *Towards Healing* and *The Melbourne Response* are internal Church protocols that

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*"If any of you put a stumbling-block before one of these little ones who believe in me, it would be better for you if a great millstone were fastened around your neck and you were drowned in the depth of the sea."*

<sup>2</sup> Petitioning Pope Francis, The Vatican: *For Christ's Sake Stop Sexual Abuse.... for good!* sourced August 2013 at: <http://www.change.org/en-AU/petitions/pope-francis-the-vatican-for-christ-s-sake-stop-sexual-abuse-for-good>

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purportedly seek to ensure that the Church as a private organisation acts appropriately in responding to complaints of child abuse by its agents. These internal protocols cannot substitute for the State's role and responsibility in investigating and preventing crimes and ensuring that justice prevails in our society. The Church's protocols are not legally binding or subject to external review, and their outcomes are not subject to judicial review. Further, *Towards Healing* and *The Melbourne Response* must be seen in the context of the superior authority and nature of the international governance of the Church from the Vatican, the Holy See, in Rome. The Church is an international organisation and both Church protocols have been prepared in accordance with relevant Canon laws and directions from the Holy See<sup>3</sup>.

11. Both *Towards Healing* and *The Melbourne Response* are adult-focused. They were developed to facilitate appropriate responses to complaints from adults who were abused as children, and in practice have dealt almost exclusively with adult complainants. Both *Towards Healing* and *The Melbourne Response* are complaint-driven. They do not provide a proactive means of identifying current clerical abuse of children, even by abusers who are the subject of current adult complaints.

12. Neither *Towards Healing* nor *The Melbourne Response* adequately addresses the requirement for State intervention in criminal activity. While both protocols offer support for victims of clerical sexual abuse, they also provide a non-judicial recourse for victims; this can result in both the avoidance of necessary criminal investigations and the avoidance of the just prosecution of clerical sexual abusers by competent State authorities.

13. Catholic Church authorities have until recently failed to acknowledge that criminal offences of clerical sexual abuse of children were covered up by Church authorities in Australia. There still remains a reluctance to acknowledge that the cover-up was worldwide, sometimes with direct involvement and direction of the Holy See. Church authorities have not publicly addressed the ultimate accountability of the Vatican for this failure in the Church's governance, or the nature of the governance dysfunctions of the international Catholic Church, both cultural and structural, which facilitated such worldwide institutional betrayal of trust. This is not to suggest that there are not many good men in the hierarchy of the Catholic Church, but rather to recognise the simple fact that leaders of institutions can become accustomed to and accepting of inadequate governance structures and a deficient culture, particularly when strict autocratic controls have institutionalised poor governance practices. Leaders themselves have become captives of this culture, apparently unable to engage effectively with the people of the Church - a situation that could be described as institutional autism.

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<sup>3</sup> Often incorrectly referred to as "the Vatican", the Holy See is not the same entity as the Vatican City State. The Holy See is the episcopal jurisdiction of the Catholic Church in Rome. The primacy of Rome makes its bishop, commonly known as the Pope, the worldwide leader of the church and contains the central government of the church, including various agencies essential to administration. Diplomatically, the Holy See acts and speaks for the whole Catholic Church. (source Wikipedia, sourced August 2013: [http://en.wikipedia.org/wiki/Holy\\_See](http://en.wikipedia.org/wiki/Holy_See) )

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14. Catholics for Renewal submits that until the serious governance deficiencies of the Catholic Church are exposed, admitted and corrected, *Towards Healing* and *The Melbourne Response* will be of limited value and the Church's corporate leadership and corporate citizenship will continue to be questioned. A leading Australian Catholic social commentator, jurist, academic, Father Frank Brennan SJ, recently observed regarding sexual abuse and the Church:

*"Clearly, the Church itself cannot be left alone to get its house in order. That would be a wrongful invocation of freedom of religion in a pluralist, democratic society."*<sup>4</sup>

15. In examining the adequacies of *Towards Healing* and *The Melbourne Response*, the Royal Commission should consider the moral obligation of any organisation (let alone an organisation that professes to follow the highest Christian ideals) to support the highest standards of civil justice. These protocols need to be examined in the context of the inadequate governance practices of the international Church, which ultimately guide the Catholic Church throughout the world, an organisation of considerable influence; 1.2 billion persons, about 1 in 6 of the world's population, are Catholic.

### Governance of the Catholic Church

16. Just weeks before his death on 29 August 2012, Cardinal Carlo Maria Martini recorded the following trenchant critique of the Catholic Church's governance<sup>5</sup> :

*"The church must recognize its errors and follow a radical path of change, beginning with the pope and the bishops. The pedophilia scandals compel us to take up a path of conversion."*

*"The church is 200 years behind the times."*<sup>6</sup>

*Towards Healing* and *The Melbourne Response* should be informed by that need for 'a path of conversion', involving fundamental change to the governance structures, accountability, and practices of the international church.

17. Any protocols of the Catholic Church must be considered in the context of the Church's overall governance. The Catholic Church is centrally governed from the Holy See. In April 2010, Fr Hans Kung, an internationally eminent Catholic theologian who served as an expert advisor to members of the Second Vatican Council, wrote an open letter to all Catholic bishops entitled '*Church in worst credibility crisis since Reformation*' in which he stated:

*"There is no denying the fact that the worldwide system of covering up cases of sexual crimes committed by clerics was engineered by the Roman Congregation for the Doctrine*

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<sup>4</sup> Father Frank Brennan SJ, Law and Justice Oration, at the Law and Justice Foundation 2012 Justice Awards Dinner, Wednesday 31 October 2012, Parliament House, Sydney, sourced August 2013 at <http://www.eurekastreet.com.au/article.aspx?aeid=33917>

<sup>5</sup> Belfast Telegraph, 3 Sep. 2012, sourced August 2013 at <http://www.belfasttelegraph.co.uk/news/world-news/vatican-is-rocked-by-cardinal-martinis-damning-words-from-beyond-the-grave-16205822.html - ixzz2G73QteH0>

<sup>6</sup> Cardinal Carlo Maria Martini, 8 August 2012, reported in National Catholic Reporter, 4 Sep 2012, sourced August 2013 at <http://ncronline.org/blogs/ncr-today/translated-final-interview-martini>

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*of the Faith under Cardinal Ratzinger (1981-2005). . . Ratzinger himself, on May 18th, 2001, sent a solemn document<sup>(7)</sup> to all the bishops dealing with severe crimes . . . , in which cases of abuse were sealed under the “secretum pontificium”, the violation of which could entail grave ecclesiastical penalties.”<sup>8</sup>*

18. This direction from Cardinal Ratzinger, to ensure secrecy regarding criminal offences involving the abuse of children, is particularly disturbing. Later, as Pope Benedict XVI, he asserted that the “*entire activity of the Church is an expression of a love that seeks the integral good of man*”<sup>9</sup>; that ‘expression of love’ was regrettably absent in the Church’s approach to the clerical sexual abuse of children. Church authorities should have acted immediately to protect children, and should have required that all evidence of child abuse be reported promptly to the civil authorities. Cardinal William Levada, Cardinal Ratzinger’s successor as Prefect of the Congregation for the Doctrine of the Faith, subsequently and belatedly issued a global direction 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.*”<sup>10</sup> Unfortunately, that direction’s efficacy depends on local civil legislation and does not require reporting as a moral imperative.

19. Pope Francis is reported to have instructed the Prefect of the Congregation for the Doctrine of the Faith in April to “act decisively with regard to cases of sexual abuse”<sup>11</sup>. However, he has not made any public pronouncement on the Church’s need for governance reforms to ensure accountability, transparency and inclusiveness in decision-making throughout the Church. The American publication, *National Catholic Reporter*, recently commented, “*Many observers*

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<sup>7</sup> *Epistula ad totius Catholicae Ecclesiae Episcopos aliosque Ordinarios et Hierarchas interesse habentes de delictis gravioribus eidem Congregationi pro Doctrina Fidei reservatis*, The Vatican, May 18, 2001.

(Congregation for The Doctrine of the Faith, ‘*Letter sent to Bishops of the entire Catholic Church and other Ordinaries and Hierarchs having an Interest Regarding The More Serious Offenses reserved to the Congregation for the Doctrine of the Faith*’) sourced August 2013 at <http://www.bishop-accountability.org/resources/resource-files/churchdocs/EpistulaEnglish.htm>

<sup>8</sup> Hans Kung, *The Irish Times*, Fri. 4 April 2010, sourced August 2013 at <http://www.irishtimes.com/newspaper/opinion/2010/0416/1224268443283.html> and at <http://www.associationofcatholicpriests.ie/2012/05/hans-kungs-letter-to-bishops-is-worth-re-reading-chris-mcdonnell/>

<sup>9</sup> Pope Benedict XVI, ‘*Deus Caritas Est - On Christian Love*’, para 19, 2006.

<sup>10</sup> 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

<sup>11</sup> Zenit ‘*The world seen from Rome*’ 5 April 2013: <http://www.zenit.org/en/articles/francis-signals-continued-toughness-in-sex-abuse-scandal>

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*believe one test will be whether Francis extends the tough accountability the church now has for priests who abuse also to bishops who mismanage abuse complaints.*"<sup>12</sup>

20. Catholics for Renewal believes that the failure to hold errant bishops accountable is but one failure of accountability in an institution that lacks the practice of accountability due to a culture of poor governance. *Towards Healing* makes no provision for mishandling of abuse complaints by the bishops responsible for its practices. It is simply a protocol, not legally binding, and the outcomes are not subject to judicial review.

21. The value of *Towards Healing* and *The Melbourne Response* can only be properly assessed in the context of the Church's international governance framework. The Archbishop of Melbourne admitted to the Victorian Parliamentary Inquiry that his ability to act on the laicisation of clerical paedophiles was seriously constrained by the need for Holy See approval. In a case discussed before that Inquiry, Archbishop Hart advised that, until the issuing of the document *Sacramentorum Sanctitatis Tutela* in 2002, there were serious impediments to any bishop petitioning the Holy See for the removal from the clerical state (involuntary laicisation) of a cleric found guilty of child sexual abuse in a civil court.<sup>13</sup> The priest concerned had his faculties withdrawn in 1993 but it was not until 2011 that the Holy See was petitioned for his laicisation, which is still awaited. The Church's laws have focused more on protection of offending clerics than the protection or safeguarding of children from clerical abuse.

22. Cardinal George Pell of Sydney has provided a commonly understood but very worrying view of the autocratic governance of the Catholic Church:

*"Under Christ Our Lord, the papacy is at the head of the world-wide communion of faith, hope and love, a system where bishops promise obedience to the Pope and priests promise obedience to their bishops.*

*For us the papacy is . . . the longest surviving monarchy in the world . . ."*<sup>14</sup>

That promise of obedience in a monarchical system is reinforced in the oath every new Bishop is required to make in taking up office. It includes these words:

*"With Christian obedience I shall associate myself with what is expressed by the holy shepherds as authentic doctors and teachers of the faith or established by them as rulers of the church."*

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<sup>12</sup> John L. Allen Jr., *Looking toward the 'Francis revolution' still to come*, National Catholic Reporter, Aug. 12, 2013 sourced August 2013 at <http://ncronline.org/news/vatican/stage-set-looking-toward-francis-revolution-s-still-come>

<sup>13</sup> Archbishop Denis Hart in Evidence provided to the Victorian Parliamentary Inquiry, 20 May 2013, pp8-9

<sup>14</sup> Cardinal George Pell, Speech Of Welcome at Opening Of *Domus Australia*, Rome, by His Holiness, Pope Benedict XVI, 21/10/2011, sourced August 2013 at <http://www.parra.catholic.org.au/news---events/latest-news/latest-news.aspx/domus-australia-opening--cardinal-s-speech.aspxopening--cardinal-s-speech.aspx>

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23. Dr Marie Keenan's 2012 study of clerical child abuse in Ireland<sup>15</sup> locates the crisis of sexual abuse within the very cultural fabric of the priesthood and the governance structures and practices of the Church. Keenan suggests that 'clerical culture' (often referred to as 'clericalism') imposes "an iron law of denial and silence on priests that contributes to many of the problems in the priesthood today."<sup>16</sup> Keenan suggests the problem appears rooted in the attitudes inculcated in the seminary system that creates a closed, secretive, clerical world and a hierarchy that is responsible only to itself, and sees itself as beyond the reach of the state's legal system. Sexual abuse was, and may still be, common in that closed, secretive, clerical world of seminaries.

24. As Cardinal Pell asserts the governance philosophy and practices of the Church involve a strong requirement of ultimate obedience to the Pope. This obedience involves a level of loyalty that, in practice, could arguably be seen as 'blind obedience'. Keenan speaks of "a failure of leadership and of the relational governance that went right to the top"<sup>17</sup> and observed,

*"the role of obedience in the current crisis of child sexual abuse cannot be underestimated"*

and that,

*"obedience is one of the central features of governance for the . . . Church in exercising authority"*<sup>18</sup>.

25. The failure of the Holy See, the ultimate Church authority to publicly discipline bishops involved in the improper protection of sexual abusers and the continued exposure of children to harm, not only illustrates the Church's lack of accountability but also supports the view that bishops were acting in accordance with directions, explicit and/or implied. The case of Cardinal Bernard Law is illustrative: Cardinal Law resigned as Archbishop of Boston in 2002 after church documents were revealed suggesting he had covered up sexual abuse committed by priests in his archdiocese. However, Pope John Paul II subsequently appointed Law as Archpriest of the Basilica of St Mary Major in Rome in 2004.<sup>19</sup>

26. The Cummins Report on Protecting Victoria's Vulnerable Children observed,

*"a good organisational approach to risk management of child abuse would incorporate an understanding of . . . (h)ow **theological beliefs and church structures that engender and maintain patriarchal views** (bolding added) can operate to undermine the ability of a victim to speak up, and to expect that appropriate criminal action can take place"*<sup>20</sup>

27. The Catholic Church in the 21<sup>st</sup> century remains an assertively patriarchal organisation. Despite recent attempts to involve women in more responsible roles, it still excludes women

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<sup>15</sup> Marie Keenan, *Child Sexual Abuse and the Catholic Church: Gender, Power and Organizational Culture*, Oxford University Press, New York, 2012,

<sup>16</sup> Keenan, op.cit. P.41

<sup>17</sup> *ibid*, 214

<sup>18</sup> Keenan, op.cit. P. 156

<sup>19</sup> Wikipedia, sourced August 2013 at: [http://en.wikipedia.org/wiki/Bernard\\_Francis\\_Law](http://en.wikipedia.org/wiki/Bernard_Francis_Law)

<sup>20</sup> Cummins report, Report of the Protecting Victoria's Vulnerable Children Inquiry, Jan. 2012, 14.5.2

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from the exercise of hierarchical authority in clerical ministry and in top executive or doctrinal direction. The ban on women's ordination, which is not accepted by many Catholics, has been used as a rationalisation for gender discrimination in most areas of executive Church authority, extending to positions that do not require priestly ordination, such as the heads of the Vatican dicasteries (departments). The best-managed and most successful institutions throughout the world have long accepted the need for and benefits flowing from gender diversity – and optimally gender balance - in organisational direction. Despite the Cummins observation and the widely accepted importance of diversity in ensuring good governance and high performance, there appears to be no evidence of Church authorities examining the role of “*theological beliefs and . . . structures that engender and maintain patriarchal views*” in the sexual abuse crisis, or questioning its system of governance.

28. To summarise, the Catholic Church's system of governance involves considerable global control, with complex systems of authority through diocesan hierarchies and religious orders. The Church fails its own espoused ‘principle of subsidiarity’<sup>21</sup>, lacks accountability at every level, has no commitment to transparency or to inclusiveness in decision making, has institutionalised gender bias, and persists with an inappropriate and anachronistic culture and structure that insists on a pre-eminent concern for protection of the institution. It comprises a solely male ordained hierarchical structure of autocratic and sexist governance, exercised through celibate bishops, often socially isolated and increasingly aged, with limited communication and engagement with the membership, subject to the supreme control of a papal monarch. It is, to say the least, a very outdated and unaccountable system of governance which does not approach modern standards of good governance - or established Australian values - of transparency, inclusivity and accountability.

29. Catholics for Renewal asserts that the Church's governance structure makes it impossible for its decision makers adequately to understand, respond to, and learn from the social and spiritual experiences of the people of the Church and society. In the sexual abuse scandal, Church decision makers have resisted accountability to civil society.

30. Australian bishops have not openly consulted with the laity on the sexual abuse scandal and have long been averse to engaging openly with their members. Synods, which the Second Vatican Council recommended should ‘flourish’, have done anything but that in Australia. Only five bishops have convened a diocesan synod since 1965. The Melbourne Archdiocese has not had a synod since 1916, and Sydney Archdiocese since 1951. The last National Synod or Plenary Council was held in 1937.<sup>22</sup> Church synods are the oldest and most traditional forums

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<sup>21</sup> The principle of subsidiarity was first formally developed in the encyclical *Rerum Novarum* of 1891 by Pope Leo XIII, and can be stated as: “If a complex function is carried out at a local level just as effectively as on the national level, the local level should be the one to carry out the specified function”. cf Wikipedia sourced August 2013 at: [http://en.wikipedia.org/wiki/Subsidiarity\\_\(Catholicism\)](http://en.wikipedia.org/wiki/Subsidiarity_(Catholicism))

<sup>22</sup> Wilkinson, Peter J., *Catholic Synods in Australia: 1844-2011*, (Unpublished, December 2011, sourced August 2013 at: <http://www.catholicsforrenewal.org/News%20Items/P%20Wilkinson%20Synods%20April%202012x.pdf>

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for collegial discussion, debate and decision-making on matters of doctrine, morals and discipline. Under the 1983 Revised Code of Canon Law synods allow for the consultative participation of lay women and men; the Australian bishops would have been wise to convene a synod or synods to discuss openly with their people the issue of clerical sexual abuse and the safeguarding of children in the development and review of *Towards Healing* and *The Melbourne Response*. But they did not.

31. The above provides the context in which *Towards Healing* and *The Melbourne Response* must be examined.

### ***Towards Healing and The Melbourne Response***

32. *Towards Healing* is the protocol that contains the principles and practices adopted by the Catholic Church in Australia in responding to complaints of abuse against its personnel. *The Melbourne Response* protocol has adopted the same principles, but differs in its practices. We do not understand why the Melbourne archdiocese maintains *The Melbourne Response* as a separate protocol when all other Australian dioceses have adopted a common protocol (*Towards Healing*). We believe there should be a common protocol for all parts of the Catholic Church in Australia with minor local variances if warranted.

33. It is noted that the traumatic prospect of complaining is made even more confusing to a Melbourne victim through *The Melbourne Response* covering solely allegations against persons "under the control of the Archbishop of Melbourne", and that religious orders in Melbourne are under *Towards Healing*, not *The Melbourne Response*. The prospect is even more daunting for a victim where a religious order is exercising a parish ministry under the control of the Archbishop of Melbourne. Further, *The Melbourne Response* imposes a cap on compensation but no explicit limit applies under *Towards Healing* (we propose below an independent national compensation body). A common protocol for responding to complaints of abuse against personnel of the Catholic Church in Australia could be introduced by agreement of the Australian bishops, or the Royal Commission could seek a direction from the Holy See.

34. The primary focus of *Towards Healing* should be the pastoral healing of victims of abuse and not the protection of the Church's reputation or the limiting of financial payments to victims, a view that would be endorsed by the Church. In its submission to the Victorian Parliamentary Inquiry, Catholics for Renewal drew attention to the conflicting interests that can arise between the pastoral healing objective and the financial and legal interests of the Church and influence the settlement of claims.<sup>23</sup> This conflict needs to be managed carefully to ensure that undue influence by insurance or legal advisors does not prejudice a just and pastoral settlement.

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<sup>23</sup> [Catholics for Renewal Supplementary Submission, Appendix 1, \*Towards Healing and The Melbourne Response: Similarities and Differences in Handling Complaints of Abuse\*, para 8](#)

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35. In a recent ABC Lateline program<sup>24</sup>, Dr Robert Grant, a child abuse specialist who in 1996-97 advised the National Committee for Professional Standards, the Church body responsible for *Towards Healing's* policy and practice, has raised serious governance questions about *Towards Healing*. He has alleged that Catholic Church Insurance (CCI) membership of the NCPS may have unduly influenced the response of Church leaders to the amounts of compensation offered to victims. CCI is a commercial business founded in 1911 and wholly owned by the Catholic Dioceses and Religious Institutes of Australia. The ABC program alleged cross-membership of key Church personnel between CCI and *Towards Healing*, a situation presenting considerable risk of conflict of interests. Dr Grant's allegations warrant investigation by the Royal Commission. Regardless of CCI's involvement, or the accuracy of the allegations, dioceses and religious congregations should make adequate payments based on justice, not an insurer's limit.

36. Catholics for Renewal suggests that the conflict between *Towards Healing's* pastoral and compensation objectives is best resolved by the Catholic Church redesigning *Towards Healing* as a pastoral response to victims of abuse and withdrawing from its involvement in compensation matters. The awarding of compensation is more appropriately a matter for an independent national compensation body, funded by those institutions against which complaints of abuse have been established, including the dioceses and religious congregations of the Catholic Church.

37. *Towards Healing* and *The Melbourne Response* are of course merely private protocols or processes of organisational complaint handling by an interested party. They are not an adequate means of identifying crimes of abuse or preventing further abuse; that is a responsibility of the State. However, any organisation aware of serious crimes has a moral responsibility to report such crimes to the Police even where a statutory provision does not apply. This is not only a matter of justice but is particularly relevant in the case of sexual abuse of children where a private complainant is but one victim of the alleged abuser, and that abuser may have abused many others; and may be presently abusing others, with more children at risk of future abuse.

38. The failure of Catholic Church authorities to report crimes of child abuse and their protection of abusers through cover-ups have had grave consequences. The evidence of 'AQ' to the NSW inquiry into clergy sexual abuse in the Hunter Valley is instructive in this regard. As reported by ABC News<sup>25</sup>,

*"Ten years old in 1954, the woman known to the inquiry as AQ, wrote that she was always the last to be driven home by McAlinden (a clerical sexual abuser).*

*She said he would stop in nearby bushland. She described him as an "evil, sexual predator kept hidden by the Church".*

*AQ wrote, "Why did no one stop him before he got to me?"*

*"I often wonder what life would have been like had this not happened to me.*

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<sup>24</sup> ABC Lateline, 8 August 2013 <http://www.abc.net.au/lateline/content/2013/s3821560.htm>

<sup>25</sup> ABC News, 1 August 2013, sourced August 2013 at <http://www.abc.net.au/news/2013-08-01/abuse-inquiry-moved-to-tears/4859764?section=nsw>

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*"If the inquiry finds that there were people who knew about this and allowed this to happen, we the victims might find some peace in knowing that at last, after all these years, something has been done and someone has been held accountable."*

39. The two internal church complaint-handling protocols in practice have dealt primarily with historical cases of abuse, that is, children who were abused many years ago who eventually as adults have had the courage (and often desperation) to complain to the Church. Restorative justice and compensation for past wrongs are claimed to be integral to *Towards Healing* and *The Melbourne Response*; but each protocol must also address the broader needs of justice, particularly the need for police investigation of any criminal acts of abuse, police reporting requirements, and the prosecution of offenders, and the protection of any other victims, both current and potential. The protocols are not accountable to the State or to society at large; they have no legal status, and Church authorities cannot be sued if they were to subvert the course of justice. The protocols provide no redress for dissatisfied complainants nor do they allow for complaints of silence or inaction against Church personnel aware of abuse outside the particular complaint of abuse.

40. *Towards Healing* and *The Melbourne Response* are internal Church processes that should be a pastoral and just response to complainants. In practice, these protocols can deal privately outside the criminal justice system with people confirmed to be criminal offenders, and consider evidence of criminal activity not available to the police, evidence that demands police investigation under civil law. A formal police investigation would of course investigate according to law in the pursuit of justice, and seek to identify other victims and to prevent further assaults by an alleged abuser.

41. Statistics of complaints through *Towards Healing* and *The Melbourne Response* confirm a horrifying but conservative number of past cases, conservative because child victims of clerical sexual abuse rarely come forward as children (they might not even tell their parents of violation by a priest or religious brother or sister), and are reluctant to come forward even as adults. The Whitlam Report noted that in Moree in NSW parents had been “reluctant to notify police because they did not want to embarrass their children or the church”.<sup>26</sup> Some recent research reported, “only 100 of every thousand child sex abuse victims report crimes to the police.”<sup>27</sup> We are not aware of data indicating the proportion of total victims of Catholic clerical sexual abuse who present to *Towards Healing* or *The Melbourne Response*; that is impossible to deduce but it would seem likely that few victims in fact come forward. The numbers of those presenting is likely a very conservative indication of the actual number of victims. It follows that many child

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<sup>26</sup> ‘Whitlam Report’ commissioned by the Bishops of Armidale and Parramatta on “Fr F”, released January 2013, sourced August 2013 at <http://www.parra.catholic.org.au/news---events/latest-news/latest-news.aspx/report-by-the-hon-antony-whitlam-qc-released.aspx-.JPdMHPxps1Y.email>

<sup>27</sup> The Age, Barney Schwartz, ‘Abuse claims never even get to court’, Friday 26 July 2013, P. 2

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sex abusers might never be identified, and statistics should be treated with caution and assumed to be conservative.

42. Although the Church is of the view that *Towards Healing* settles complaints “with justice and compassion”<sup>28</sup>, some witnesses before the Victorian Parliamentary Inquiry did not see it this way. The process has been described by one victim as involving protracted and legalistic negotiations, a compensation offer bearing little relationship to the severity of pain suffered, and a refusal of the Church authority to accept in its terms of apology any responsibility for systemic culpability for the abuse<sup>29</sup>.

43. It is disturbing that whilst *Towards Healing* has been in operation since 1996, there has been no comprehensive research conducted or commissioned by the Australian Catholic Church authorities into the causes of child sexual abuse by clergy.<sup>30</sup> Church authorities have referred to external studies in the United States, in particular the 2002 and 2012 studies of the John Jay College of Criminal Justice, but these studies, whilst useful, are no substitute for research specific to the Australian situation. They also fail to address directly the Church’s concealment, cover-up, and protection of perpetrators at the cost of further child victims.

44. Research and investigation of governance inadequacies should be seen as essential if child sexual abuse is to be minimised. Recent lower numbers of complaints through the protocols *Towards Healing* and *The Melbourne Response* are not an indication of lower levels of abuse, and the protocols themselves are of limited value without serious research into the governance and cultural issues that have contributed to past abuse and its mishandling. Past experience would indicate that most abused children of today will not report until they are adults; some of them as mid-life adults.

45. *Towards Healing* must be subject to independent external review to increase the accountability of those responsible for administering the protocol, to identify inadequate governance frameworks, and to encourage a greater adherence to procedural fairness for victims and accused religious personnel. Francis Sullivan, chief executive of the Australian Catholic Church’s Truth, Justice and Healing Council, has claimed:

*“Towards Healing has always been open to continuous improvement. It has had two major independent reviews by Professor Patrick Parkinson, a family law and child protection specialist, and the Church has adopted the recommendations of these reviews.”*<sup>31</sup>

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<sup>28</sup> *Towards Healing*, para 41.1

<sup>29</sup> Dr Tom Keating, Submission to Vic. Parliamentary Inquiry 10 Dec. 2012 (we commend the reading of this thoughtful submission and the attached paper)

<sup>30</sup> Victorian Parliamentary Inquiry transcript, Evidence given by Ms N McMahon on the *Towards Healing* protocol, 3 May 2013, 13

<sup>31</sup> Francis Sullivan, *Towards a Greater Healing*, THJC blog site, 24 July

2013 <http://www.tjhcouncil.org.au/media/34449/Towards-a-greater-healing.pdf>

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46. This claim should however be seen in the context of evidence given to the Victorian Parliamentary Inquiry by Professor Parkinson concerning the failed handling of abuse complaints under *Towards Healing* against some members of the Salesians of Don Bosco, and his allegation of a cover up of those complaints by *Towards Healing's* oversighting body, the National Committee for Professional Standards. Professor Parkinson observed, “*The National Committee, which is meant to be in the vanguard of providing a just response to the problem of sexual abuse within the Church was largely responsible for the cover-up to which I refer.*”<sup>32</sup> He concluded, “*the Church is no longer committed to the criteria by which it said it would be judged when it first promulgated Towards Healing in 1996.*”<sup>33</sup>

47. It is unclear whether the Catholic Church has appointed another external reviewer of *Towards Healing* since the resignation of Professor Parkinson. Such reviews, with public reporting, should be a normal aspect of Church accountability. We are not aware of any independent review of *The Melbourne Response*. The absence of such reviews reinforces the inadequacies of Church governance structures, culture and practices highlighted by Catholics for Renewal.

48. *Towards Healing* and *The Melbourne Response* should not be regarded as the Church’s only source of information of possible child abuse in its ranks. The Church, like all organisations, can also become aware of internal failings and criminal activity through normal management and observation. A focus on *Towards Healing* and *The Melbourne Response* can overlook such organisational knowledge of criminal activity and the question of whether separate internal processes are adequate to ensure that such evidence is reported to civil authorities. The churches and other organisations having responsibility to safeguard children must strive to be alert to abusers and to seek by every means to identify them and to report them to civil authorities. Evidence implicating suspected perpetrators of child sexual abuse should be reported to State authorities by anyone who can identify them, whether such evidence comes to light through *Towards Healing/The Melbourne Response* or organisational intelligence, formal or informal; we discuss below the imperative for mandatory criminal reporting of child abuse. Society should be able to expect that all good corporate citizens, particularly those claiming high moral purposes, would ensure that such reporting occurs in respect of any criminal activity in their organisations.

49. Although *Towards Healing* involves some requirements to report abuse crimes to the Police in New South Wales in accordance with the Crimes Act 1900, this is not the case outside NSW. Similarly, *The Melbourne Response* fails to recognise the moral imperative to report to Police.

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<sup>32</sup> [Victorian Parliamentary Inquiry submission by Prof. Patrick Parkinson AM](http://www.parliament.vic.gov.au/images/stories/committees/fcdc/inquiries/57th/Child_Abuse_Inquiry/Submissions/Parkinson_Patrick.pdf) July 2012, 2, sourced August 2013 at (use paste to browser):

[http://www.parliament.vic.gov.au/images/stories/committees/fcdc/inquiries/57th/Child\\_Abuse\\_Inquiry/Submissions/Parkinson\\_Patrick.pdf](http://www.parliament.vic.gov.au/images/stories/committees/fcdc/inquiries/57th/Child_Abuse_Inquiry/Submissions/Parkinson_Patrick.pdf)

<sup>33</sup> Ibid., 18

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### Legislative Reform

50. The Commission's Letters Patent include requirements for the Commission to inquire into (bolding added):

*“what should be done to eliminate or reduce impediments that currently exist for responding appropriately to child sexual abuse and related matters in institutional contexts, including addressing failures in, and **impediments to, reporting,** investigating and responding to allegations and incidents of abuse”*

and to have regard to:

*“the adequacy and appropriateness of the **responses** by institutions, and their officials, to **reports and information about allegations, incidents or risks of child sexual abuse and related matters** in institutional contexts”*

and

*“**changes to laws, policies, practices and systems** that have improved over time the ability of institutions and governments to better protect against and respond to child sexual abuse and related matters in institutional contexts”.*

51. In our view, *Towards Healing* and *The Melbourne Response* are inadequate in a number of respects particularly the governance issues discussed above, but also in the context of Church “responses . . . to reports and information about allegations, incidents or risks of child sexual abuse and related matters.” *Towards Healing* and *The Melbourne Response* cannot be substitutes for criminal investigation by the State, a situation that arises when the Church has information about criminal sexual abusers that is not available to State authorities.

52. Catholics for Renewal believes that uniform legislative reform is essential across Australia to provide for mandatory *criminal* reporting of child abuse crimes. This is currently a requirement only in New South Wales (albeit with a ‘reasonable excuse’ provision for failing to report, a provision that is unnecessary and undesirable; organisations and individuals should not have discretion in matters of serious criminal behaviour where society, and particularly children, could continue to be at risk).

53. The *Cummins Report* in Victoria rebutted the then strong opposition from the Victorian Catholic Bishops to mandatory reporting of reasonable suspicion of child abuse by religious personnel. After careful analysis, *Cummins* proposed that religious personnel should be mandated under the Crimes Act, specifically rejecting the extension of mandatory *welfare* reporting as inadequate. The Catholic Church's submission to the Victorian Parliamentary Inquiry modified its position to support the extension of mandatory *welfare* reporting to Church officials, an option specifically rejected by Cummins.

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54. Under both *The Melbourne Response* and *Towards Healing* in all States but NSW, the Church can investigate a case and conclude that an allegation of grave abuse by an abuser still at large is substantiated, but not report the alleged abuse or abuser to the police. An informed community would in our view regard such a situation as unacceptable. The job of the police, and the responsibility of governments is, first and foremost, to protect and safeguard the community, especially its most vulnerable such as children. The police also have the duty to apprehend and deter criminals, particularly those who may be a continuing risk to the community.

55. In NSW, the Church has expressed its commitment to complying with the law requiring reporting of all reasonable suspicions of child abuse to the police whether complaint-based or not, but will not do so in Victoria where there is not a statutory requirement. At the Victorian Parliamentary Inquiry, the Victorian Catholic Bishops accepted that allegations of serious crimes should be reported to police, but argued that this should only be done in a way that respects the privacy of victims<sup>34</sup>, an argument that provides inappropriate discretion to a private organisation in reporting criminals who could be a continuing danger to society. It should also be noted that such discretion would reside in an organisation whose reputational and financial interests could be threatened by reporting, a clear and serious conflict of interest which has resulted in past cover-ups. The arguments against reporting in Victoria are apparently not supported by the Catholic Archdiocese of Sydney. The Sydney Archdiocese does not rely on statutory requirements in its clear statement of principle:

*“The police are best placed to investigate sexual abuse allegations, not the church. . . . The policy of the Archdiocese is for allegations of sexual abuse to be reported to the police so that they can be investigated and dealt with through the justice system. ‘Towards Healing’ is NOT a substitute for a police investigation.”*<sup>35</sup> (emphasis in original)

56. In our view, it is self-evident that neither *Towards Healing* nor *The Melbourne Response* nor any other form of private institutional protocol or complaints handling process, is a substitute for a police investigation in any Australian State or Territory, and that any knowledge of child sexual abuse must be reported to the Police to ensure justice and to protect society. The Police are accountable for respecting privacy in such a situation in accordance with law and the interests of justice. Whilst legislative provision is urgently required, there is in fact no moral reason why the Church, of its own initiative, could not adopt civil criminal reporting immediately, reporting all credible allegations or evidence of sexual abuse of children and advising all complainants that complaints will be shared with the police who will respect their privacy to the extent requested. Catholics for Renewal believes there is a moral obligation and

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<sup>34</sup> Catholic Archdiocese of Melbourne Supplementary Submission 1, 16 May 2013)

[http://www.parliament.vic.gov.au/images/stories/committees/fcdc/inquiries/57th/Child\\_Abuse\\_Inquiry/Submissions/Catholic\\_Church\\_in\\_Victoria\\_Supplementary\\_submission\\_1.pdf](http://www.parliament.vic.gov.au/images/stories/committees/fcdc/inquiries/57th/Child_Abuse_Inquiry/Submissions/Catholic_Church_in_Victoria_Supplementary_submission_1.pdf)

<sup>35</sup> Catholic Archdiocese of Sydney, *Sexual Abuse - The Response of the Archdiocese of Sydney* undated, P.7 (reported in *The Australian* 24 August 2012 and *CathNews* 24 August 2012)

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societal imperative to report any suspected or alleged child abuser, particularly if there is any possibility of other victims, current or potential.

57. The *Cummins Report* recognised that mandatory *welfare* reporting as a statutory provision primarily focused on the welfare needs of at-risk children rather than the reporting of sexual abusers. Further, Cummins saw that mandatory *welfare* reporting is inadequate to prevent the concealment of child abuse within religious organisations, and stressed the need for mandatory *criminal* reporting. Catholics for Renewal agrees and emphasises that this responsibility to report to the police should apply to all religious personnel at all levels, from lay church personnel to clerics to cardinals.

58. The *welfare* mandating of “clergy and other religious personnel” to report at-risk situations to the State Human Services Department, as supported by the Catholic Church authorities in Victoria, would be inappropriate, inefficient and inadequate. Clerical and religious sexual abuse of children is a distinctively insidious crime that should not be lost in an overloaded welfare system. It should also be noted that most clergy and other religious personnel would not have the necessary qualifications and training of other welfare-mandated professionals, nor sufficient dealings with children to warrant being mandated under the welfare legislation to identify at-risk children and trigger State child protection mechanisms. It is noted that the requirements of State legislation, including mandatory *welfare* reporting, already apply to persons in religious organisations who work or volunteer with children and young people. These are appropriate welfare arrangements that serve to underline the quite different purposes of mandatory *criminal* reporting.

### Conclusion

59. We believe that the views we express in this submission reflect the concerns of many ordinary Australian Catholics who believe that their Church has failed to listen to their concerns about its serious governance failures. More importantly, the Church has failed to safeguard innocent children who have been subjected to sexual abuse that could and should have been prevented.

60. The effectiveness of *Towards Healing* and all the Church’s protocols affecting sexual abuse of children are presently compromised by inadequate Church governance at the local, national and international levels. Until the serious governance deficiencies of the Catholic Church are exposed, admitted and corrected, *Towards Healing* and *The Melbourne Response*, however modified, will be of limited value and the Church’s corporate leadership and corporate citizenship will continue to be questioned.

61. We believe the following actions must be addressed and should be endorsed by the Royal Commission as matters of priority:

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1. The Catholic Church nationally and internationally must accept that its governance structures, culture and practices are seriously deficient and have been responsible for terrible damage to children, and must be reformed as a matter of urgency.
2. The Holy See should be asked to commit to a more accountable, transparent and inclusive Church informed by its member communities, rejecting patriarchal and autocratic cultures.
3. *Towards Healing* and *The Melbourne Response* should be reviewed by the Catholic Church as one nationally consistent protocol focussed in every respect on the safeguarding of children, on justice for victims, on pastoral care, and the reporting to civil authorities of all credible allegations of child sexual abuse.
4. *Towards Healing* should be redeveloped as a national pastoral response to victims of abuse and not be involved in compensation matters. The awarding of compensation is more appropriately a matter for an independent national compensation body, funded by those institutions, including the dioceses and religious congregations of the Catholic Church in Australia, against whom complaints of abuse have been established.
5. The Catholic Church should ensure that clear internal practices and a corresponding culture are developed within its organisations whereby all credible allegations or evidence of sexual abuse is reported to the police.
6. The Catholic Church should ensure that independent regular reviews are conducted of its sexual abuse protocols in association with government.
7. The Commonwealth should legislate in cooperation with State governments for the introduction of mandatory criminal reporting of all credible allegations or evidence of sexual abuse of children in church or other institutions.

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Maria McGarvie  
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August 2013

## **Appendix 1**

### **OBSERVATIONS RE SIMILARITIES AND DIFFERENCES OF *TOWARDS HEALING* AND *THE MELBOURNE RESPONSE***

#### **Background**

1. Despite having common principles in their response to abuse complaints, *Towards Healing* and *The Melbourne Response* adopt different ways of proceeding. Responsibility for the complaint handling process relating to child abuse under *The Melbourne Response* rests with two Independent Commissioners<sup>36</sup>, 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. The Archbishop invariably accepts their advice.

2. 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.

3. 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.<sup>37</sup> The Commissioners have a discretionary power to refer complainants to Carelink, an Archdiocesan agency, for counselling and related support

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<sup>36</sup> Church authorities assert strongly the independence of these commissioners, Without in any way questioning the integrity of the commissioners, Catholics for Renewal points out that the commissioners are employed by the Church and their appointment and reappointment is a decision for the Church. If the Church wanted to ensure the perceived independence of these commissioners, it could surrender the appointment authority to the government.

<sup>37</sup> *Facing the Truth* submission of the Catholic Church in Victoria, paras 8.2 and 8.6, page 56

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services at any stage of the complaint handling process.

4. *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.<sup>38</sup> 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.

5. 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 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 as the Melbourne archbishop has done in respect of the Independent Commissioners appointed under *The Melbourne Response*. Where a *Towards Healing* 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.

6. At the *Towards Healing* 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<sup>39</sup>, 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.<sup>40</sup> Unlike *The Melbourne Response*, there is no explicit cap on the amount of compensation that can be determined. 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 that advice has a major if not

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<sup>38</sup> *Facing the Truth*, para 8.7, page 58

<sup>39</sup> *Towards Healing*, para 41.4.1, page 25

<sup>40</sup> *Towards Healing*, para 35.8

determining influence on the final offer made by the Church authority in settlement of the complaint.

7. Contrary to *Towards Healing* espousing that it settles complaints “with justice and compassion”<sup>41</sup>, the evidence of some witnesses before the Victorian Parliamentary Inquiry<sup>42</sup> 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*.

8. On the question of financial compensation, *The Melbourne Response* and *Towards Healing* share a number of common features<sup>43</sup> but have different structures and methods of arriving at financial compensation amounts granted in individual cases. The 2009 review of *Towards Healing* by Professor Parkinson evaluated these differences before coming down against the establishment of separate compensation panels under *Towards Healing*.<sup>44</sup>

### **Different approaches to External Review**

9. 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.

10. 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. Professor Parkinson provided a submission and evidence (19 October 2012) to the Victorian Parliamentary Inquiry concerning his work with *Towards Healing*. His report and findings on the

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<sup>41</sup> *Towards Healing*, para 41.1

<sup>42</sup> Dr Tom Keating, Submission to Vic. Parliamentary Inquiry, page 7

<sup>43</sup> *Facing the Truth*, para 10.1, page 76

<sup>44</sup> *Facing the Truth*, para 10.5, pages 79-80

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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<sup>45</sup> 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.”

11. 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 highlighted by Catholics for Renewal.

### **Similarities in responses to the accused and offenders**

12. 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.<sup>46</sup> 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.”<sup>47</sup>*

13. 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*.<sup>48</sup> Civil authorities do not know what those recommendations were and how they were acted upon. They 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.

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<sup>45</sup> Professor Parkinson’s submission, pages 3-4; and evidence to the Inquiry, 19 October 2012, pages 7-8

<sup>46</sup> *Facing the Truth*, page 56 para 8.6

<sup>47</sup> *Facing the Truth*, para 8.6 at page 57

<sup>48</sup> A Pastoral Letter on Sexual Abuse, 1 July 2010

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They do not know what, if any, supervision and reporting arrangements apply. These concerns apply equally to the response to offenders under *Towards Healing*.

14. There is no protocol to report Church-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.<sup>49</sup> 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.”<sup>50</sup>*

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

15. 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

16. 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. Neither protocol commences an investigation unless the complainant decides not to report to the police, or until any police investigation is completed; 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.<sup>51</sup> 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.

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<sup>49</sup> Professor Parkinson’s submission, page 2; and evidence 19 October, 2012, page 7

<sup>50</sup> *Towards Healing*, para 27, page 10

<sup>51</sup> *Facing the Truth*, page 110; *Towards Healing*, para 37 and footnote 2 pages 17-18; *The Melbourne Response*, clauses 4-5

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### Submission on *Towards Healing*

17. Under *The Melbourne Response*, the Independent Commissioner has a discretionary power to report to the police allegations of child sexual or other abuse<sup>52</sup> and “will always report such conduct to the police if the complainant has requested that he do so”<sup>53</sup>. 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”<sup>54</sup>. Similar arrangements apply under *Towards Healing*<sup>55</sup>.

18. 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;<sup>56</sup> 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 specific circumstances are best left to civil authorities to consider. 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;<sup>57</sup> Catholics for Renewal questions the appropriateness of and need for this exception.

19. There is no legal requirement for mandatory criminal reporting in Victoria. Complaints of abuse are not reported to the police under *The Melbourne Response* or *Towards Healing*, with Church authorities 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.<sup>58</sup> 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*<sup>59</sup>.

20. Catholics for Renewal is of the view that the Church should make clear to a complainant that the Church has a moral obligation to provide evidence of a criminal offence to the police in the interests of justice and the protection of others, and explain to the complainant the sensitivity with which the police would proceed on the matter including police confidentiality. Provision to this effect should be included in legislation.

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<sup>52</sup> Term of Appointment of Independent Commissioner, clause 2 (iv)

<sup>53</sup> *Facing the Truth*, para 8.13, page 62

<sup>54</sup> *Facing the Truth* paragraph 8.13, page 62

<sup>55</sup> *Towards Healing*, para 37, pages 17-18

<sup>56</sup> Crimes Act 1900 (NSW), section 316

<sup>57</sup> *Towards Healing*, para 37.4, page 18

<sup>58</sup> *Facing the Truth*, page 112

<sup>59</sup> *Facing the Truth*, page 114

# **Catholics for Renewal Inc.**

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