



## VOLUME 2

# The Royal Commission's recommendations, and responses from the Truth Justice and Healing Council

An initial analysis of recommendations from the Royal Commission into Institutional Responses to Child Sexual Abuse in its:

Final Report  
Redress and Civil Litigation Report  
Criminal Justice Report  
Working with Child Checks Report

**As delivered to the Supervisory Group March 2018**

The Truth Justice and Healing Council  
is coordinating the response of the Catholic Church in Australia  
to the Royal Commission into Institutional Responses to Child Sexual Abuse

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## Introduction

Structure and content of final report and this document

### The relevant documents in summary

On 11 January 2013 the Australian Federal Government, with the cooperation of the governments of the states and territories of Australia called a Royal Commission into the responses of institutions to claims of child sexual abuse committed on young people in their care. Under the Terms of Reference, the Royal Commission into Institutional Responses to Child Sexual Abuse was required to (among other things):

- identify systemic failures by institutions in relation to allegations and incidents of child sexual abuse and any related unlawful and improper treatment of children in their care; and
- make recommendations as to what institutions and governments should do
  - (a) to better protect children against child sexual abuse in institutional contexts in the future; and
  - (b) to alleviate the impact of past and future abuse in institutional contexts including ensuring justice for victims through the provision of redress by institutions.

On 15 December 2017 the Royal Commission delivered its final report to Government. It was released to the public on the same day.

The final report includes a preface and executive summary and 17 other volumes, each devoted to a particular topic or area. Appendix 1 to this document gives some detail about the final report and the three associated reports (described below). The Appendix is in two parts. The first part includes a description (largely in the Royal Commission's own words) about what each volume of the final report contains. The second part is a guide to the number of recommendations in each volume of the final report and in the associated reports.

Volume 16 in the final report deals with religious institutions and consists of three separate books:

- Book 1 (787 pages), with four parts (A to D) the first three of which cover matters relevant to all religious institutions and the fourth, namely part (D), starts the critique of individual faith based institutions with comment on the Anglican Church;
- Book 2 (925 pages), (which is a continuation of Part D), is devoted to the Catholic Church; and
- Book 3 (812 pages), is a continuation of Part D for religious institutions other than the Anglican and Catholic Churches and concludes with Part E, dealing with specific initiatives to 'create child safe institutions'.

While the bulk of material concerning the Catholic Church is contained in Book 2 there is relevant and important content in the other two books and in many other volumes.

To appreciate the significance of the Royal Commission's report it is necessary to go beyond the final report and consider three reports issued previously:

- Working with Children Checks (August 2015),
- Redress and Civil Litigation (September 2015), and
- Criminal Justice (August 2017)

In addition, there were 17 case studies about particular Church institutions. Of these, no reports were issued in relation to Case Study 31 (Bishop Robinson) and Case Study 50 (the Catholic Church Final Hearing) although both are dealt with in the final report. The Royal Commission has issued reports to government in relation to Case Study 43 (Diocese of Maitland-Newcastle) and Case Study 44 (Dioceses of Armidale and Parramatta - Fr Farrell), but they have not been released to the public because of a risk they might jeopardise criminal proceedings. Some material in reports for Case Study 28 (Church authorities in Ballarat) and Case Study 35 (Archdiocese of Melbourne), has been redacted for the same reason.

### About this analysis document

Abbreviations:

- 'abuse' – child sexual abuse,
- 'ACBC' – Australian Catholic Bishops Conference,
- 'Council' – Truth Justice and Healing Council,
- 'Church' – Catholic Church in Australia 'CPSL' – Catholic Professional Standards Ltd,
- 'CRA' – Catholic Religious Australia,
- 'CSSA' – Catholic Social Services Australia,
- 'Implementation Advisory Group' – the body to be established by the ACBC and CRA to replace the Supervisory Group and to coordinate and oversee implementation of the Royal Commission's recommendations and related matters,
- 'NCEC' – National Catholic Education Commission,
- 'NCPS' – National Committee for Professional Standards,
- 'OOHC' – Out of Home Care, and
- 'Royal Commission' – Royal Commission into Institutional Responses to Child Sexual Abuse.

This analysis report includes a preliminary analysis of the findings and recommendations in the Royal Commission's final report. Due to the short time frame and the size of the final report the analysis is necessarily limited but the Council has tried to identify areas of major significance for the Church. This analysis has been prepared on the understanding that the Church leadership will establish an Implementation Advisory

Group to assist the Church to address the Royal Commission's final report. Each Church authority affected by the content of the final report will have to make its own assessment of the implications, but the Council hopes this analysis and the work of the Implementation Advisory Group will be a useful resource for those purposes.

The main part of this document provides an analysis of each of the 189 recommendations in the final report. Some are of no direct relevance to the Church, but for the sake of completeness the Council has provided a commentary on each. In each case a section is included setting out what the Council believes to be action that Church authorities should or might take where relevant and appropriate. In many instances, there is much additional work to be done and the Council's recommendation simply draws attention to that fact and nominates the entity or body that might be involved.

There are some areas, and canon law is an example, where the Council has found it necessary to include general comment in this introductory section, to lay the groundwork for analysis of relevant recommendations.

Where necessary the Council has reviewed previous reports, namely Working with Children Checks; Redress and Civil Litigation; and Criminal Justice, to assist in a proper understanding of the Royal Commission's recommendations in the final report and the Council's reaction to them. To that end, the Council has made general comments about those three reports in this introductory section.

The final report is littered with references to the Royal Commission's case studies. When the Council started its analysis it had hoped to bring to the attention of particular institutions that had been the subject of case studies, the parts of the final report in which their case study was mentioned. Due to the large number of references that task proved too extensive and it was abandoned. However, it would be advisable for each relevant institution to look at the final report with that in mind (it will be a simpler task for an individual institution to do so) so that additional critical or important material, if any, can be identified.

The Council has identified a number of subject areas by which the various recommendations in the final report can be categorised. There is some crossover between categories and some recommendations fall into more than one subject area.

The categories include:

- civil governance: those that relate solely or predominately to the operation of the secular government but which have or may have an impact on the Church as a part of civil society and (or) as a body that must interact with the secular authorities;
- ecclesial governance: those that relate to the structure and governance of the Universal Church and (or) the Church in Australia;
- child safe standards: this is a broad category which covers recommendations for the formulation, promulgation and compliance with standards, policies and guidelines aimed at making institutions child safe places;
- schools: those pertaining to the education sector;
- confession: those pertaining to the sacrament of reconciliation;



- professional standards: those recommendations that relate to risk assessment and complaints handling procedures;
- out of home care: the recommendations specific to abuse in contemporary out-of-home-care;
- canon law: recommendations for changes to canon law;
- formation and supervision: those pertaining to the selection, screening, initial training and ongoing supervision (support) of persons in religious ministry;
- implementation: those in the final volume of the final report dealing, in the main, with administrative matters post-Royal Commission; and
- other faith based institutions: recommendations specific to faith based institutions other than the Catholic Church.

Recommendations are also contained in the Working with Children Checks, Redress and Civil Litigation and Criminal Justice reports. The Council will deal with the first two of these reports briefly in this introductory chapter. A few of the recommendations in the Criminal Justice report are the subject of particular comment later in this document.

Appendix 2 to this analysis report includes a list of the recommendations in the final report grouped into the subject area categories.

Appendix 3 lists the Church bodies identified in this analysis report as having an ongoing role or interest in the implementation of recommendations in the areas in which the Council considers they may be involved.

### Other Council materials

This analysis report will not stand alone as an historical record of the Council's position on matters relating to the Royal Commission.

The Council intends to publish an Activity Report which summarises the work of the Council over the life of the Royal Commission. It also includes a summary of each of the case studies in which Church authorities have been engaged.

The Council will be wound up on or before 31 March 2018. Before that date it will deliver its final report, including views on important issues for the future.

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## The Royal Commission – perspectives and processes

### Survivors

In large part, the Royal Commission has based its recommendations on the evidence it heard during 57 formal public hearings held between September 2013 and March 2017, its policy roundtable and issues paper processes and, significantly, the private sessions it held with more than 8,000 survivors of child sexual abuse within institutions and others who have been impacted by the abuse.

At the formal opening of the inquiry in Melbourne on 3 April 2013, the Chair of the Royal Commission said:

*The Commissioners accept that part of the task given to us by the Terms of Reference is to bear witness on behalf of the nation to the abuse and consequential trauma inflicted upon many people who have suffered sexual abuse as children. The bearing of witness is the process of making known what has happened. It involves the telling of personal accounts by those who have experienced child sexual abuse as well as listening to the accounts of others who may have observed these crimes.*

The importance of the direct involvement of survivors of abuse during the Royal Commission cannot be overstated. Bearing witness came at a considerable personal toll for many survivors and their families. Their first-hand accounts and their willingness to come forward to tell their stories, many under very difficult circumstances, have made a significant contribution to the community's understanding of the scourge of child sexual abuse and the Church's poor performance in responding to the tragedy. The records of their experiences were the primary source for the Royal Commission's 'Message to Australia' publication which has been deposited with the National Library and which will be an important and lasting historical record.

The final report bears witness to the suffering of survivors and the Council acknowledges their major contribution and thanks survivors and their families for their involvement and courage.

The Royal Commission is critical of the way Church authorities dealt with, and in some instances still deal with survivors who come to them for help or who wish to pursue a claim. Some of these criticisms are tied in with the Redress and Civil Litigation report and others are directed at *Towards Healing* and *The Melbourne Response*. Where those criticisms form the basis of, or are reflected in, specific recommendations, they will be dealt with later in this report.

However, there is a more general criticism of Church Authorities regarding their interaction with survivors and advocacy groups. While progress has been made, more remains to be done. Quite apart from survivors seeking compensation through redress schemes or civil litigation, there will always be people who don't want to go down that path, who come to Church authorities seeking help to repair their lives. In many ways, these questions go beyond the scope of the Royal Commission. The Council will discuss this issue more fully in its final report.

## Survivor narratives

The experiences of more than 8,000 survivors and others directly impacted by child sexual abuse in institutions who attended a private session with one or more Commissioners has played a significant part in the development of the Royal Commission's final report and recommendations.

As part of the material published with the final report the Royal Commission has collected some 4,000 of these stories and published summaries on its website under the Private Sessions > Narratives tab.

Within the 4,000 narratives, some 1,316 reference 'Catholic' as part of their story.

The private session narratives will be a valuable resource for the Church. The Council recommends that the Implementation Advisory Group, and ideally each Church authority, review these narratives, to help better understand from the survivors' perspective what actually happened, and to identify as far as possible common failings and where improvements might be made.

## Best practice in child safety

Two of the most significant of the Royal Commission's terms of reference are:

- what institutions and governments should do to better [sic] protect children against child sexual abuse and related matters in institutional contexts in the future; and
- what institutions and governments should do to achieve best practice in encouraging the reporting of, and responding to reports or information about, allegations, incidents or risks of child sexual abuse and related matters in institutional contexts.

In reality, these two important issues are what the Royal Commission was about. But to establish codes of best practice it was first necessary to identify the deficiencies that the codes were designed to address or protect against. This is why there was such a concentration in public hearings and media commentary on the darkness of past events. As time passes and the efficacy or otherwise of this Royal Commission is assessed, the extent to which there have been improvements in the way institutions interact with children and whether they are safer places will be a better measure than the light it has shone on the shocking history of institutional abuse in past decades. The latter is a means to an end, it is not an end in itself.

This also explains why so many of the 189 recommendations in the final report, the 36 in the Working with Children Checks report and the 85 in the Criminal Justice report relate to the search for and codification of best practice standards for child safe institutions and monitoring and enforcing compliance with them and the tightening of mandatory reporting regimes.

Most of those recommendations are directed to the legislative and executive arms of government for statutory and (or) administrative action. In this analysis of individual recommendations, the Council has used the notation 'no action required of the Church at this time' or similar. This does not mean that Church authorities will not be affected by those recommendations (if implemented) or that they should be indifferent to them. Rather, it assumes that, as implementation of these recommendations is considered by governments, the usual

policy monitoring and advocacy processes of ACBC, CRA and relevant Church agencies will operate as and when needs and opportunities are identified.

### The Royal Commission's reasoning processes and conclusions

As it is not a judicial body a Royal Commission cannot make binding declarations of rights affecting individuals or institutions. However, it does have expansive powers to reach conclusions, including:

- making findings of fact on the material presented to it;
- referring material to a regulatory or prosecutorial authority with a view to further investigations and, where appropriate, the launching of criminal prosecutions (referrals can be made either in a formal report or by confidential communication between the Royal Commission and the authority concerned);
- making recommendations to government for the enactment of new laws or changes to existing laws in relevant areas; and
- making recommendations to private individuals or institutions about changes to cultures, structures or processes in relevant areas.

The Royal Commission has made a multitude of findings. Some are neutral, but many are adverse to the interests of individuals and institutions. Some may have legal consequences, civil and (or) criminal. The impact of others may be more in terms of reputation but that is also significant. They are phrased in different ways, for example: 'we find (or found)...', 'we are satisfied...', 'we have concluded...', 'we were told (followed by text implicitly accepting what they were told)'. Due to time constraints, the Council has not been able to identify and list every finding that relates to the Church in the seventeen volumes or even in the three books of Vol 16. They are too numerous. Some of them are obvious from the tenor of the recommendation to which they relate. Others are described in the analysis of individual recommendations. But over time as Church authorities digest the final report and its implications for them and as the Implementation Advisory Group works through the documents a more comprehensive assessment of findings should emerge.

It should be remembered that the Council acted for Church authorities, not individuals, although it did assist witnesses as and when they were called to give evidence in public or private hearings. Some individuals were separately represented. In this report the Council has not covered adverse findings made against individuals. Church authorities responsible for those individuals or with whom the individuals are connected should examine the final report and may have to take a position on some of those findings. The Council will have more to say about this later in this report.

In a similar vein, the Council has not been a provider of legal advice and does not do so in this report. It will be up to Church authorities to take their own legal advice (if they think warranted) on whether, for example, there are findings that are open to legal challenge. The following comments are intended as a guide to assist Church authorities in deciding whether to take legal advice on particular issues.

Findings of a Royal Commission cannot be challenged on the merits. In other words, it is not possible to have a finding set aside simply because a person or body affected by the finding believes that the result is wrong. There must be some legal impediment recognised as such in administrative law, in particular:

- going beyond the remit (the terms of reference);
- reaching a finding where there was no evidence to support it;
- taking into account irrelevant considerations or failing to take into account relevant considerations;
- not affording the person procedural fairness; and (or)
- reaching a conclusion to which no reasonable decision maker could have come.

Challenging recommendations (as opposed to findings) is even more difficult, except for the first of these grounds (exceeding the remit). However, if findings that were essential to the recommendation were set aside, the recommendation may fall with them. Taking issue with recommendations that call for new legislation falls into the political arena. Recommendations to private individuals or institutions about changes to culture, structures or processes should be considered by the relevant individual or institution.

Repeating the caution that it is for Church authorities to take their own legal advice where necessary or appropriate, in its preliminary and limited review the Council has not seen matters that are legally flawed. The Council has a different view on the merits of some matters, and on other matters there may be some overreach. But these are different issues.

It is understood from what the Royal Commission said in the final report and on other occasions that it has referred material to a regulatory or prosecutorial authority with a view to further investigations in 2,562 matters (see the Royal Commission 'Final Information Update'). No information is available as to the identity of persons named in these referrals or of the incidents to which they relate. It will be up to the prosecuting authorities to decide whether to lay criminal charges.

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## Final report

### An initial reaction to the final report

It is no easy task to record the initial reaction of Council members to the Royal Commission's final report given its many volumes, some of the content will strike different people in different ways and individuals will ascribe varying levels of importance to disparate topics. Nonetheless, what follows is an attempt to distil a common initial reaction to the final report.

The report contains few, if any, surprises. There is little, if anything that the Council did not expect to see in the report and its general tenor is as predicted. There is some over reach, some disagreement on the merits of several of the recommendations and, in some instances the efficacy of implementation given the significant cost impact is perhaps questionable. That said, the final report will be of benefit to the Church and the broader community.

In examining the final report, Council members, like the Catholic community generally, expressed a range of opinion on particular matters while being resolute over the need for the Church to bear its responsibility for the response to the abuse scandal without qualification.

What is clear is that the Church, justifiably, comes out of it badly. Both in terms of the prevalence of abuse in Catholic institutions and the failure of Church leaders to deal with the tragedy, the disastrous performance of the Church in this area has been laid bare for all to see. As expected, there was saturation publicity both here and abroad in the days following the release of the report, most of it of a critical nature. Attention focused primarily on two issues, namely celibacy and the confessional. Not surprisingly (given the release of the report just before Christmas) many other matters went largely unnoticed. Many of the Royal Commission's recommendations are now starting to receive attention. For example, the Council is aware of recent media interest in issues such as the proposals to make bishops more accountable in their decision making; the commencement of a national review of the governance and management structures of the Church; approaches to the Holy See for amendments to canon law; whether bishops should be held retrospectively to account for past failings; and the establishment of a national redress scheme.

Church leaders need to take every opportunity to make it clear that the final report is being taken seriously. Much complex and politically difficult work remains to be done.

Importantly, the Royal Commission's inquiry was based on case studies and policy analysis. The former concentrated on matters arising largely in the 1970s and 1980s. Church policies and procedures have changed considerably from those times and it is legitimate to bring those matters to public attention. So too have the administrative and legislative requirements of governments in the safeguarding of children. As a consequence, a good number of the Royal Commission's recommendations point to actions that are already underway in both the Church and secular sectors. To that end, the Council has noted this progress and indicated the area of responsibility for oversight within the Church.

## Final report – a summary of what the Royal Commission has said

Vol 16, Book 1, Part A, pp34 to 49, includes a summary of the Royal Commission's findings concerning the Church. It commences by repeating the statistics demonstrating the prevalence of abuse in Catholic institutions and goes on to criticise the failures of the Church leadership in dealing with the tragedy. The latter is divided into two periods: before and after the development of national procedures in the Church in the 1990s. It then pays specific attention to the institutional response to abuse in Catholic schools, before finishing with a list of its conclusions about contributing factors in the Church.

In relation to the failures of the Church leadership in dealing with the tragedy before *Towards Healing* and *The Melbourne Response*, the following extracts are a guide to the Royal Commission's thinking:

*We have concluded that there were catastrophic failures of leadership of Catholic Church authorities over many decades, particularly before the 1990s. Those failures led to the suffering of a great number of children, their families and wider communities. For many, the harm was irreparable. In numerous cases, that harm could have been avoided had Catholic Church authorities acted in the interests of children rather than in their own interests.*

*Few survivors of child sexual abuse that occurred before the 1990s described receiving any formal response from the relevant Catholic Church authority when they reported the abuse. Instead, they were often disbelieved, ignored or punished, and in some cases were further abused. [p36]*

*The clearest indication of the inappropriateness and ineffectiveness of institutional responses by Catholic Church authorities to alleged perpetrators of child sexual abuse in this period is that often they did not prevent the further sexual abuse of children. Some perpetrators continued to offend even after there had been multiple responses following initial and successive allegations of child sexual abuse. [p37]*

The Royal Commission commented that improvements were made following the introduction of *Towards Healing* and *The Melbourne Response*. However, those acknowledgments are tempered, as the following extracts show:

*While the early protocols contained some provisions relating to alleged perpetrators of child sexual abuse, they did not comprehensively set out the obligations of bishops and religious superiors in responding to alleged perpetrators and convicted offenders. Furthermore, it appears that leaders of Catholic Church authorities were not always aware of or did not consistently follow these protocols. [p38]*

*The early protocols did not require leaders of Catholic Church authorities to report allegations to the police. Towards Healing did not mandate this until 2010. From the mid-1990s, leaders of Catholic Church authorities continued not to report alleged perpetrators to police, leaving this to victims and survivors. This had the effect of keeping many complaints from the public gaze and in some cases meant that children continued to be at risk. [p39]*

*Following the introduction of Towards Healing, bishops and religious superiors retained considerable latitude with respect to the measures they should take in response to perpetrators whose guilt had*

*been admitted or proved. It appears that they took disciplinary steps under canon law to dismiss offenders in only a small number of cases during the 1990s and early 2000s. The reluctance of Catholic Church leaders to engage with canonical disciplinary processes may have been caused, in part, by confusion about those processes, as well as by a view that the Vatican tended to resolve matters in favour of offending priests. It may also have been due to the fact that formal canonical disciplinary processes took considerable time. [p39]*

*The delayed or limited use of canon law processes to dismiss those found to have committed child sexual abuse meant that some perpetrators remained in the priesthood or in religious orders for many years after their guilt had been admitted or established. In addition, the Vatican was very slow to respond to petitions for dismissal from Catholic Church authorities in Australia, and it is clear that the Vatican's approach to child sexual abuse by clergy was protective of the offender. One bishop told us that in a number of cases his requests to have offender priests dismissed from the clerical state were refused and he was instead directed to ensure that the priests live a life of prayer and penance. [p40]*

The Royal Commission commented (pp 41-42) that abuse in Catholic schools represented a substantial proportion of the abuse reported to it and that the response by teachers, principals, Catholic education offices, diocesan authorities and leaders of religious orders was similarly poor. In the summary section, there is no comment on improvements made, or of the current situation in Catholic schools. However, there is a discrete volume (Vol 13) devoted to the education sector. No doubt all Catholic education authorities are playing close attention to this. Volume 13 includes eight recommendations specific to the sector and the Council comments on them later in this report.

The final part of the summary (pp 42-49) includes a brief description of the conclusions concerning contributing factors to the tragedy. None of them come as a surprise:

- factors pertaining to individuals;
- clericalism;
- organisational structure and governance;
- leadership;
- canon law;
- celibacy;
- selection, screening and initial formation;
- oversight, support and ongoing training of people in ministry; and
- the sacrament of confession.

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## Background comment on specific areas

Some matters are mentioned in the final report but are not the subject of specific recommendations. Others are the subject of recommendations, but it is necessary to make some general comments to assist in a proper understanding of the recommendations. It will also be useful to make general comments about the Working with Children Checks, Redress and Civil Litigation and Criminal Justice reports. This section deals with those matters.

### A timely reminder

Much of the Royal Commission's work and most of the final report is devoted to learnings from the past. The task for the Church is to take those learnings and, informed by them, to chart a course for the future. With this in mind anyone who has an interest in positioning the Church for its life in the coming decades would do well to read Vol 16, Book 1, Part C, Sect 10, Impact of child sexual abuse in religious institutions. It is a convenient summary of the way in which the abuse crisis and the failures of leadership that emanated from it, have affected both attitudes to religion and life within faith communities.

These are issues that Church leaders must address as they seek to restore trust and strengthen child protection measures. They must be central to planning for the 2020 Plenary Council.

### Impact of adverse findings

Earlier in this report the concept of 'adverse' findings was described in a Royal Commission context. Some such findings have legal consequences (civil and (or) criminal) while the impact of others is largely reputational. The latter category might relate to individuals or to the Church as a community of the faithful. In both instances, the consequences can be serious.

For reasons already given, the Council does not propose to say anything about adverse findings against individuals *per se*. However, where an individual who is the subject of an adverse finding has had some form or public recognition bestowed upon them, the Church authority with whom that person is connected needs to be alert to public perception of this given their changed circumstances. Similarly, findings that are adverse to the Church, rather than to individuals, present challenges for Church leaders in their dealings with the faith community and society generally.

This is another reason Church leaders need to react in a meaningful way to the Royal Commission's reports. And it is another reason why Church authorities which were the subject of case studies need to re-examine the case study reports in the light of what is said in the final report.

## Schools

In the Preface and executive summary (p 81) the Royal Commission recorded statistical details of what they had been told by survivors in private sessions:

- 31.8 per cent said they had been abused in a school setting as a child,
- 71.8 per cent of those survivors spoke of abuse in a religious school, and
- Many were abused by people in religious ministry in a school.

In the light of these statistics, coupled with the fact that almost every child attends a school, it is not surprising that so many of the recommendations in the report, and so much of the discussion, is of direct or indirect application to the education sector. Of particular interest are

- Vol 6, Making institutions child safe, (where there are six recommendations directly affecting schools);
- Vol 8, Record keeping and information sharing, especially Sect 2, Record keeping, Sect 4.2, Improving information sharing in schools and Sect 4.3, Improving information sharing about students between schools, (where 9 recommendations directly affecting schools are to be found);
- Vol 10, Children with harmful sexual behaviours; and
- Vol 13, Schools.

Much of Volume 13 (which is dedicated entirely to the education sector) and all of Vol 16, Book 2 Sect 13.10 (which deals the Church responses to child abuse in Catholic schools) recite historic matters.

Considerable time and effort was expended in compiling and presenting evidence to the Royal Commission about the current position in relation to child protection standards and guidelines. It is a matter of disappointment that the Royal Commission has not indicated whether, in a general sense, it accepts that advances have been made. There are some brief, scattered references to individual standards (for example, it noted that Catholic Education Melbourne has established a Student Wellbeing Information Line which is designed to 'act as a conduit between the school and the family to promote effective communication and resolution of enquiries') but there is no measurement of the general adequacy of present day standards.

Many of the Catholic education offices with whom the Council has spoken since the release of the report and who have done preliminary work in this area have expressed the view that their policies and regimes are compliant. As previously noted, in preparation for Case Study 50: Catholic Church Final Hearing, there was considerable analysis undertaken by Catholic schools: see for example, the statements of evidence provided by various Church authorities. That work, along with any consequential policy development within the education sector, will undoubtedly form the basis of future best practice in child safeguarding by schools. It would be advisable in any ongoing work for reference to be made to the 10 Child Safe Standards promulgated by the Royal Commission.

## Prior knowledge

Volume 16, Book 2, Sect 13.4 'Awareness of allegations on child sexual abuse within the Catholic Church' is a relatively long section (about 80 pages) and is supported by an appendix (Vol 16, Book 3, Appendix C, Catholic Church Insurance and prior knowledge) of about 110 pages.

The significance of these materials will be readily apparent and the Council does not propose to comment on them. All Church authorities who are, or believe they might in the future be, involved in litigation about historic abuse claims should scrutinise this section and Appendix C carefully.

We have not been able to locate in the final report, or elsewhere, a similar exercise in scrutinising documents relating to prior knowledge for any other faith based, government or other institution. Without comparisons with other institutions the information lacks a degree of force and it begs the question as to why this material is presented as stand-alone information in the final report.

## Canon law

The canon law system of the Church receives general criticism in the final report, although the recommendations that advise amendments to the canon law are in a relatively confined area and are phrased in a less confrontational way. Save in one instance they are prefaced by the words 'The [ACBC] should request the Holy See to amend the 1983 Code of Canon Law to ...'.

The Royal Commission's position on canonical processes is expressed at a high level and the recommendations are phrased as directions for the ACBC to consult with the Holy See on what are exclusively internal Church legal matters. Most of the evidence presented to the Royal Commission on canon law issues, both for the round table discussions in June 2016 and during the Catholic Church Final Hearing came from witnesses (canon lawyers) engaged by the Council. In reaching its recommendations, the Royal Commission seems to have relied primarily on other opinions. While the Council agrees with many of the Royal Commission's conclusions, this is an area where in some respects there has been overreach.

The Council appreciates the problems associated with amendments to a code that has worldwide application and it assumes the Royal Commission was alert to these difficulties. The Council notes that in July 2011 the Pontifical Council for Legislative Texts circulated to national bishops' conferences around the world for comment, a draft schema outlining a set of proposed amendments to parts of the 1983 Code, including some that are relevant for present purposes. In 2012 the ACBC submitted comments on the draft schema-as part of a world-wide consultation but to date no revised legislation has been promulgated.

There are many sections in the final report dealing with relevant aspects of canon law, particularly Vol 16, Book 1, Part B, Ch 3, Child sexual abuse in the global Catholic Church: early history and previous inquiries, Vol 16, Book 2, Part D, Sect 13.2, Canon law provisions relating to responding to child sexual abuse and Vol 16, Book 2, Part D, Ch 13, Contributing factors in the Catholic Church, Sect 13.11.6, Canon law. The Royal Commission's interest in this topic is illustrated by this extract from the Preface and executive summary, p70:

*The disciplinary system imposed by canon law for dealing with clergy and religious who sexually abuse children contributed to the failure of the Catholic Church to provide an effective and timely response to*

*alleged perpetrators and perpetrators. We heard that canon law as it applied to child sexual abuse was cumbersome, complex and confusing.*

The tenor of the Royal Commission's attitude is demonstrated by the quote from a witness selected as the introduction to Sect 13.11.6, p 691:

*The Church has for centuries presumed that it can police its own borders, that it is an independent empire, not answerable to any secular power. It has had its own language, its own administration and training programs, its own schools and universities, its own system of laws and regulations ... a developed list of penalties and its own courts and processes. A law unto itself – an organisation founded by God and answerable only to God.*

It is beyond the Council's competence to comment definitively on the examination of the historical development and content of relevant canonical documents in Sect 13.2 but there is nothing the Council has seen that appears patently to be wrong. If there is, it will not doubt emerge as canonists reflect on the final report over time.

The concerns about canon law enunciated by the Royal Commission in various sections of the final report can be summarised as follows:

- secrecy was imbedded into the system, for example canon 1943 of the 1917 Code, *Crimen sollicitationis*, Articles 11 and 13 and *Secreta continere* generally (commonly referred to as 'the pontifical secret');
- the limitation period of five years in the 1983 Code is indefensible;
- the standard of proof (moral certainty) is too high;
- there was a lack of knowledge about some aspects of the Code and a reluctance of ordinaries to use canonical processes;
- there is confusion and inconsistency in the canons and in the application of processes as between (ordained) clerics and (lay) members of religious congregations;
- the 1983 Code conceptualises child sexual abuse as a moral failing, namely an offence against the cleric's vow of celibacy and the Sixth Commandment, rather than a crime;
- the system is weighted too heavily in favour of a therapeutic and pastoral approach towards the cleric as opposed to the interests of victims; and
- the move over time away from dismissal from the clerical state to lesser penalties is misplaced

Save in relation to secrecy the Council does not propose to develop any of those issues further, although it will return to some of them in the context of individual recommendations.

In the materials that were adduced in evidence and the oral evidence during Case Study 50: Catholic Church Final Hearing there were two significant areas of contention:

- whether canon law generally, and the documents *Crimen sollicitationis* and *Secreta continere* in particular, were a legal impediment to an ordinary reporting allegations of abuse by a cleric to police or to anyone else; and
- whether the effect of canon 22 (dealing with the intersection between canon law and civil law) meant that an ordinary was not subject to the reporting obligations of civil law.

The answer advocated by the canonists who gave evidence, in particular Dr Rodger Austin, Fr Thomas Doyle (USA) and Sr Moya Hanlen, in both instances was 'no', and that the problem lay in culture rather than the canons. The contrary position, put by others was 'yes'; certainly, a culture of secrecy prevailed but it was mandated by the letter of the canons and the canonical documents. While the Royal Commission recited the arguments on both sides of these questions it did not, in the end resolve the conflict: see Vol 16, Book 2, p708. At p.709, it expressed its conclusions on secrecy in this way:

*We are persuaded that Crimen sollicitationis and the secret of the Holy Office reflected and reinforced a cultural mindset that regarded child sexual abuse by clergy and religious as a matter to be dealt with internally, and in secret, rather than be reported to the civil authorities. We agree with Beal's argument, published on the Vatican's website, that in relation to child sexual abuse it is hard to avoid the conclusion that the overriding motivation underlying the imposition of the secret of the Holy Office, and later the pontifical secret, was to protect the reputation of the Church.*

*It is clear that the view that bishops and religious superiors should not report allegations of child sexual abuse by clergy and religious was still operative in the Holy See during the 1990s and early 2000s. However, this began to change from 2002 when, at the height of the clergy sexual abuse scandal in the United States, the American bishops persuaded the Holy See to grant them an exemption to the pontifical secret, initially restricted to those American jurisdictions which had mandatory reporting laws. In 2010 this exemption was extended to become a worldwide exemption, but also only in jurisdictions with mandatory reporting laws.*

*The text of canon law itself has not yet been amended to explicitly reflect these changes. Rather, it appears that the Holy See preferred to alter its interpretation of the law. The position in the text of canon law with respect to reporting to the civil authorities in jurisdictions that do not have comprehensive mandatory reporting laws also remains unclear.*

The Royal Commission has accepted some limitations on its authority in these areas. This explains why, with one exception, it has done no more than recommend that the ACBC approach the Holy See to request changes to the relevant aspects of canon law. Those relevant aspects are, in summary:

- child sexual abuse should be a 'delict', not simply a moral failing and this should apply equally to all in religious ministry, whether ordained or not;
- the 'pontifical secret' should not apply to these delicts;
- neither the pastoral approach, nor a diagnosis of paedophilia, should be a precondition of commencing a canonical process;
- limitation periods should be abolished (retrospectively);

- the standard of proof should be lowered from moral certainty to the balance of probabilities;
- anyone in religious ministry who is convicted of child abuse should be dismissed from office;
- Vatican courts and tribunals should act expeditiously, publish decisions and give written reasons; and
- the edicts on destruction of documents relating to trials of delicts should be changed so that documents are retained for at least 45 years.

The sole instance in which a recommendation is framed in a way that does not require an approach to the Holy See is a suggestion that the ACBC and CRA should consider establishing a national Tribunal for Australia for hearing canonical criminal trials including the canonical crime of child sexual abuse.

The threshold question of whether the ACBC should approach the Holy See and suggest amendments to canon law is, of course, entirely a matter for the ACBC. The Council appreciates that there may be some reticence about approaching the Holy See on doctrinal or ecclesial matters at the behest of a civil tribunal that does not necessarily have the same level of competency in this area as it does in relation to the civil law, and may not have been conscious of the full context in which the canonical regulations operate. On the other hand, the Royal Commission has proffered the strong opinion that clericalism was at the heart of the crisis and that the culture of secrecy, sense of entitlement and resistance to accountability are all manifestations of clericalism. A refusal or failure to take these matters to the Holy See might well be characterised as an example of the very notions of secrecy and lack of accountability of which the Royal Commission has been so critical.

As there are areas to which the Royal Commission has drawn attention that would benefit from clarification or further consideration, it would be appropriate to communicate the suggestions to the Holy See.

There may be another advantage to that course of action. In recent weeks, there has been intense scrutiny of what is perceived as a lack of resolve on the part of the Holy See and the Curia generally in its response to the abuse crisis. This may be an opportunity for the authorities in Rome to demonstrate that relevant areas are under active consideration. In this respect, the Council considers that the Pontifical Commission for the Protection of Minors should be included in any approaches to the Holy See.

At the invitation of the Holy See's Secretariat of State, Archbishops Hart and Coleridge and Council Chair, Neville Owen visited Rome in October 2017 for discussions on matters relating the Church in Australia and, in particular, the impact of the Royal Commission. Following that visit, an arrangement was reached between the ACBC and the Secretariat of State for communicating matters concerning the Royal Commission. Under the arrangement, a working group has been set up by the Holy See to receive and deal with communications, and this would be the body to which the requests should be communicated in the first instance. Nonetheless, the Council believes that the Pontifical Commission should also be involved.

The Council makes one other general comment about canon law. In Vol16, Book 2, Sect 13.2, p67 the Royal Commission dealt with the 2016 *motu proprio* on disciplining Bishops. It said:

*On 4 June 2016, Pope Francis issued the motu proprio, As a Loving Mother, in which he noted that canon law already provided for the removal of bishops from office 'for grave reasons'. Canon 193 of the 1983 Code provides that a person can be removed from an office conferred for an indefinite period*

*'for grave causes and according to the manner of proceeding defined by the law'. The Pope stated that the intention of his letter was to underline that 'among the aforesaid "grave reasons" was negligence of a bishop in relation to cases of sexual abuse of minors and vulnerable adults.*

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

Interestingly, the Royal Commission made no recommendation about the *motu proprio*. Nor is the issue of holding bishops to account for failures in dealing with perpetrators mentioned in Sect 13.11.6. However, the subject of the accountability of bishops is the subject of comment in, among others, the section on clericalism and is inferentially included in the 'accountability' aspect of Recommendation 6.7. It is most likely at this general level, rather than as an issue arising under canon law, that public scrutiny of the Church's responses to the Royal Commission's final report will be assessed.

### Sacrament of confession

It is a notorious fact that the Royal Commission's conclusions in the Criminal Justice report and the final report about the sacrament of confession took on a life of their own and attracted much more attention than many Church observers believe is warranted by the practical realities of sacrament.

In summary, the Royal Commission has:

- opined that a person associated with an institution who knows or suspects that a child has been abused has a moral duty to report that matter to police,
- recommended that governments should legislate to create criminal offences of:
  - (a) failure to report child abuse in an institutional context, and
  - (b) failure to protect a child in an institution from substantial risk of abuse by an adult associated with the institution,
- and that in both cases the offences should cover persons in religious ministry and that there should be no exemption from reporting information obtained during a religious confession,

- recommended that the ACBC should seek clarification from the Holy See about aspects of the operation of the sacrament of reconciliation, and
- recommended that policies should be promulgated to ensure that children engaging in the sacrament do so in a physical environment that has line of sight and that an independent adult should be in close proximity.

In short, the recommendations flow from the Royal Commission's strong view that:

- the mandatory reporting regimes should be strengthened by the creation of new offences and broadened significantly, relevantly by including persons in religious ministry within the class of mandatory reporters,
- the civil law privilege protection for the seal of the confessional should be abolished, and
- in some dioceses the way the sacrament is administered to children at present does not accord with best practice concerning child safety.

In its submission for Case Study 50: Catholic Church Final Hearing, the Council supported retention of the civil law protection for the seal of the confessional: see, Sect 7.3, and in particular the following extracts:

*The Council submits that the Commission should not make any recommendation that would interfere with the pastoral and ecclesial aspects of the seal of confession because it would be futile to do so. Catholicism is a worldwide Church and this sacrament is celebrated throughout the world. The Australian Church has no power to change the seal of its own volition. That could only be done by an act of the Magisterium affecting Catholic practice in all parts of the world. The Magisterium is not subject to the jurisdiction of an administrative enquiry established by an individual, albeit sovereign, government. For reasons explained below, the Council also submits that the Commission ought not to make any recommendations abrogating civil law protections attaching to the seal of the confession.*

*It is because the Sacrament of Reconciliation touches so intimately upon a person's relationship with God and their own moral integrity, that the Church holds that the seal of confession is inviolable. Current legal protections of the 'seal of confession' accord with the fundamental human right freely to practice one's religion. .... Requiring disclosure of the content of a confession is therefore akin to requiring under compulsion of law, disclosure of the inner thoughts of a person, their private communication with God. So interference with this relationship would be akin to abrogation of the right of an accused person to remain silent.*

So far as concerns mandatory reporting, the Council's position is reflected in the submission responding to Issues Paper No 8, Police and Prosecution Responses, par 7, where the Council said:

*The Council is of the view that there should be a nationally consistent criminal law provision in Australia requiring a person who has information leading the person to form a reasonable belief that a sexual offence has been committed against a child to disclose that information to the police unless the person has a reasonable excuse for not doing so.*

The seal would constitute 'a reasonable excuse'. In short, the Council's position was that mandatory reporting should be extended to all priests, except where disclosure would be contrary to the seal of confession.

In May 2016, the Royal Commission released Issues Paper No 11 in which it listed matters for consideration in the Catholic Church Final Hearing. One of them was whether 'the operation of the sacrament of reconciliation' might have been a contributing factor to the abuse crisis. The case for Case Study 50: Catholic Church Final Hearing was prepared on the basis of majority view of canon lawyers who were engaged to give evidence, namely that:

- a statement by a child during confession that she or he had been abused was not confession of a sin committed by the penitent and thus was not covered by the seal, and
- it was legitimate to give conditional absolution, for example by withholding absolution until the penitent had reported to the relevant authorities.

That case was predicated on giving prominence to the welfare of the child in situations where information about child sexual abuse is revealed in the operation of the sacrament of reconciliation.

When it came to evidence given in the public hearing, witnesses expressed differing opinions in relation to both of those positions. This divergence of view was noted by the Royal Commission: Criminal Justice Report, Part IV, p 172. At the Catholic Church Final Hearing a suggestion was made that the bishops should approach the Holy See for clarification of the differences. This did not occur, again a matter noted by the Royal Commission: Final Report, Vol 16, Book 2 p 869.

In the Criminal Justice Report the Royal Commission did not give much detail about the evidence which it said justified its concerns: see Part IV, Ch 16, Sect 16.6.2. However, there is a more comprehensive analysis in the Final Report, Vol 7, Sect 2.5 and Vol 16, Part D, Ch 13, Sect 13.11.10 and in the survivor narratives referred to earlier.

In Vol 16, Book 2, Sect 13.11.10, pp 852-854 the Royal Commission deals with the contentions that perpetrators are unlikely to use the sacrament and records the evidence that it says justifies its concerns. It acknowledges that many priests gave evidence that they had never heard a confession in which the penitent confessed to abuse or in which a child disclosed that she or he had been abused. However, it said that it had sufficient material to reach a conclusion that abuse of the confessional was a contributing factor to the crisis.

The Royal Commission also considered a range of arguments put as to why there should be no interference with the pastoral and ecclesial practices of, and civil law protections for the sacrament, including the declining attendance at the sacrament and interference with freedom of religion but came to this conclusion (Criminal Justice Report, Ch 16, Sect 16.7.2):

*Our inquiry has demonstrated the very grave harm caused by child sexual abuse, with the impacts of such abuse often reverberating for decades or even a whole lifetime. As noted above, child sexual abuse is a crime and should be reported to the police. Our inquiry has also demonstrated the significant risk that, if perpetrators are not reported to police, they may continue with their offending. Reporting child sexual abuse to the police can lead to the prevention of further abuse. In relation to the*

*Sacrament of Confession, we heard evidence that perpetrators who confessed to sexually abusing children went on to re-abuse and seek forgiveness again.*

*In this context, we have concluded that the importance of protecting children from child sexual abuse means that there should be no exemption or privilege from the failure to report offence for clergy who receive information during religious confession that an adult associated with the institution is sexually abusing or has sexually abused a child.*

Much of the debate following release of the Criminal Justice report focused on whether the recommendation to abrogate the civil law protection for the seal was justifiable given its impact on freedom of religion. In the Criminal Justice report (Part IV, Ch 16, pp 218 and following) the Royal Commission expressed its conclusion on freedom of religion in this way:

*We acknowledge the submissions and evidence we received that a civil law duty on clergy to report information learned in religious confessions, even of child sexual offending, would constitute an intrusion into the religious practice and that complying with that obligation would raise serious issues of conscience for Catholic clergy. We accept this would be the case for any faith in which clergy are required by that faith's teachings or particular laws to keep religious confessions confidential.*

*However, the Royal Commission does not accept that, as a consequence, communications of sexual offences against children made in religious confession should be protected by the civil law.*

*When considering whether clergy members should be exempt from the failure to report offence, the recognition of the right to freely practise one's religious beliefs must be balanced against the right of children to be protected from sexual abuse.*

*In a civil society, it is fundamentally important that the right of a person to freely practise their religion in accordance with their beliefs is upheld. However, that right is not absolute. This is recognised in article 18 of the International Covenant on Civil and Political Rights on the freedom of religion, which provides that the freedom to manifest one's religion or beliefs may be subject to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.*

*Although it is important that civil society recognise the right of a person to practise a religion in accordance with their own beliefs, that right cannot prevail over the safety of children. The right to practise one's religious beliefs must accommodate civil society's obligation to provide for the safety of all. Institutions directed to caring for and providing services for children, including religious institutions, must provide an environment where children are safe from sexual abuse. Reporting information relevant to child sexual abuse to the police is critical to ensuring the safety of children.*

The Royal Commission returned to these issues in the final report. In Vol 7, Sect 2.5, pp 97 – 100 it applied the reasoning used in the Criminal Justice report (including the impact on freedom of religion) to explain why it was recommending that people in religious ministry should not be exempted from the operation of the proposed 'failure to report' offence. In Vol 16, Book 1, Sects 2.2 and 2.3, pp 144 – 146, it explained what it understood freedom of religion to mean in this context.

In essence, what the Royal Commission has said is that the freedom of religion is not an absolute right. It has to be balanced against a competing right, namely, the right of children to proper protection, and that in this balancing exercise in this context the former must give way to the latter.

Given the more detailed reasoning and recitation of evidence in the final report and details on material adduced in the private sessions, it would be difficult to argue that the Royal Commission exceeded its powers, reached a conclusion without any evidence or on a basis to which no reasonable decision maker could have come or that it is otherwise legally flawed. But reasonable minds can and will arrive at different end points concerning the merits of the recommendations and the reasoning process that led to those proposals, for example, as to the balance between freedom of religion and child protection and whether the evidence justifies a conclusion of systemic abuse.

The Council respects the inviolability of the seal and acknowledges the fundamental notion of the seal in Catholic teaching. However, in the course of this analysis differences have emerged across the Council about the Royal Commission's conclusions concerning the sacrament. There is sufficient unanimity to present the comments and action plan for Recommendations 7.4, 16.26 and 16.48 (and the related proposals in the Criminal justice report) that are detailed later in this report. When it delivers its final report the Council may give greater detail about the reasoning process and about the difference of views. What follows is a brief summary of the positions within the Council noting that all members recognised the difficulty in resolving the tension between the inviolability of the seal and the primacy of the right of children to a safe and protective environment.

One position is that the Royal Commission's recommendations are, and any legislation based on them would be, an unjustifiable attack on the right of a citizen freely to practice her or his religion and should be regarded as such.

A second position emphasises the primacy of the safety of the child, while acknowledging the teaching on the seal and the question of conscience priest/confessors will face. This position places an obligation on the priest/confessor when he becomes aware that either a child has been harmed or is at risk of being harmed that he takes direct action to bring that information to the attention of the relevant civil authorities.

The other position, and the one held by a majority of the Council (although with differing emphases and manners of expression) is to support retention of civil law protection for the seal but to recommend a thorough examination of the theology of the sacrament, the theology of the child and the practices through which the sacrament is celebrated to identify ways in which the theological purpose of the seal can be maintained while complying with the civil responsibility to protect the welfare of children. Central to the examination would be things such as:

- further consideration of the views advanced by expert canonists and some church leaders in the Royal Commission that acting on disclosure by a child made in the confessional that she or he has been abused is not in conflict with the integrity of the seal and the instigation of appropriate protocols for that information to be passed to relevant authorities, to ensure children are protected.
- an investigation of the extent to which, consistent with fidelity to the seal and the theology of the sacrament, appropriate protocols can be instigated (such as withholding absolution) whereby

perpetrators are reported to the police and the information from children disclosing abuse is given to the appropriate authorities.

- the giving of clear guidance to confessors as to how they are to encourage genuine penitents to report their crimes to the authorities.

There will be a further question for Church leaders as to how that position is to be articulated to the broader community and how it is to be advanced in the next phase of the debate. Whatever else happens, Church leaders will need to explain with clarity and precision why it is that the practical realities of the sacrament are not inherently inimical to the safety of children and what changes can be made to ameliorate concerns.

The comments and action plan for recommendation 7.4 and the associated recommendations are largely a reflection of the third positon but have broad agreement across the Council.

### Celibacy

The section dealing with celibacy has attracted attention, particularly for the two recommendations supporting the adoption of voluntary celibacy for clerical and religious life. The Royal Commission acknowledged that this issue pertains to the universal Church and as such can only effectively be addressed by the Holy See.

Interestingly, as the Royal Commission found no direct causal link between celibacy and the sexual abuse of children, it went only so far as to recommended that the ACBC encourage the Holy See to consider the option of voluntary celibacy for priests. Presumably this indicates that the Royal Commission was uncertain of the degree to which celibacy was a significant contributing factor generally, as distinct from in some cases, in the sexual abuse of children.

The evidence accepted by the Royal Commission, in some case studies and most heavily in the Church's final hearing, indicated no direct causative relationship between celibacy and child sexual abuse. This was also the position of the Council. The problem, as enunciated by the Royal Commission, is that celibacy was a contributing factor to a culture in which abuse and inappropriate handling of complaints was all too common. The influence on the decision making, attitudes and behaviours of individuals in that culture due to their obligation to a celibate lifestyle became the central focus.

The Royal Commission heard a diversity of opinions from clerics, religious and experts over the degree of influence celibacy has on the instances of child sexual abuse. It also heard of celibacy's central importance to the communal living of male religious. There was far more uniformity over the contribution of celibacy in the promulgation of clericalism and the nurturing of secrecy and a lack of accountability in matters related to child sexual abuse. However, the Royal Commission was satisfied and found that mandatory celibacy did contribute to the general stress and dysfunction of some individuals, due to other risk factors in their lifestyle, psychological make up and social circumstances.

The Royal Commission also found that the interconnected relationship of the obligations of celibacy, the culture of clericalism and secrecy and the access to children in unsupervised environments appears to have contributed to child sexual abuse and the poor management of allegations. It is from this basis that the Royal Commission recommended that the Holy See should consider the introduction of voluntary celibacy as an

option for priests. The Royal Commission likewise recommended that religious orders, in consultation with the Holy See, consider models of religious life that facilitated voluntary celibacy. Given the nature of vowed religious life and the centrality of celibacy to it, this will not be a simple exercise and might not be possible within the centuries-long understanding of vowed religious life. However, the recommendation is phrased such that the congregations might consider this issue in a range of options.

In summary, the Royal Commission shifted its attention from the causal nature of celibacy on child sexual abuse to the influence celibacy has on the culture that can facilitate the abuse of children. It particularly sought to explore whether there was any discernible difference if celibacy was mandatory on the propensity of risk for children being sexually abused. As with other contentious issues raised in the inquiry, the Church did not present consistently on this issue. It is now left for the Church leadership, at least in the mind of the public, to make the case for the maintenance of mandatory celibacy for the priesthood and religious life. Importantly, the leaders must also demonstrate that formation, support and assistance in living a celibate life is comprehensive and readily available.

There is merit in pursuing a more in depth understanding of the influence of celibacy on the psychological, social and behavioral functioning of priests and those in religious life, particularly in relation to children, vulnerable people and others over whom they might exercise power. This information, collected in a rigorous and objective manner, would assist in any discussions with the Holy See. It would also demonstrate that the Church has taken the Royal Commission's recommendations seriously and is not dismissive of the findings.

## Clericalism

It is worthwhile reflecting what the Council understands by the word 'clericalism'. In the submission for Case Study 50: Catholic Church Final Hearing the Council quoted from *Solidarity and Service: Reflections on the Problem of Clericalism in the Church – Conference of Major Superiors of Men*, Washington, D.C., 1983, p.2:

*The conscious or unconscious concern to promote the particular interests of the clergy and to protect the privileges and power that have traditionally been conceded to those in the clerical state. There are attitudinal, behavioural and institutional dimensions to the phenomenon of clericalism. Clericalism arises from both personal and social dynamics, is expressed in various cultural forms, and often is reinforced by institutional structures. Among its chief manifestations are an authoritarian style of ministerial leadership, a rigidly hierarchical worldview, and a virtual identification of the holiness and grace of the church with the clerical state and, thereby, with the cleric himself. As such clericalism is particularly evident in the ordained clergy, though it does not pertain exclusively to it. Persons other than clerics can exhibit the traits of clericalism. Lay people, religious men and women are all liable to the pitfalls of clericalism in certain situations. Generally speaking, exclusive, elitist or dominating behaviour can be engaged in by any person or group within the church. Such behaviour is properly termed clericalism when it rests on a claim to special religious expertise or ecclesial authority, based on role or status in the church.*

In other words, it is about power and its misuse. Understood in this way, the phenomenon exists, to varying degrees in many professions or callings but it is a particular issue for the Church for the reasons set out in the above quote. The fact it exists elsewhere does not detract from its impact on the faith community.

The Royal Commission, along with the Council, numerous witnesses and the Royal Commission's research literature review identified clericalism as a significant factor influencing both in the instances of child sexual abuse and the poor institutional response to the abuse cases. The Royal Commission emphasised the uniformity of opinion expressed by the Church leadership on this issue and in turn challenged the current leaders to address their concerns. In Vol 16, Book 2, p642, these comments appear:

*From the evidence provided by a range of Catholic Church leaders, including archbishops, bishops, provincials, senior clergy and theologians, it is apparent that there is strong agreement among the leadership of the Catholic Church in Australia that the culture of clericalism significantly contributed to child sexual abuse in the Catholic Church and to the inadequate response to that abuse.*

*There also appears to be a significant agreement among those same Australian Catholic Church leaders in relation to what the Catholic Church needs to do to address at the level of its own theology in order to combat the problem of clericalism.*

The Commission also explicitly stated that the Church leaders welcomed the Royal Commission's intent to recommend on aspects of the Church's culture (p. 642). To that end the Royal Commission made a series of recommendations that stemmed from its findings about clericalism as a significant factor in the abuse crisis, including:

- a review of governance and structures to increase transparency and accountability;
- increased involvement of lay people, especially women, in decision-making;
- changes to aspects of canon law;
- consideration to the abandonment of mandatory celibacy; and
- improvements to training, formation and professional development.

This comprehensive overview falls exclusively under the brief of ecclesial governance, including the role and influence of the Holy See.

The recommendation of a national review of diocesan structures, including the involvement of lay men and women in decision making, is central to the Royal Commission's approach in addressing clericalism.

### Formation and initial and ongoing training

The Royal Commission spent considerable time exploring the many facets of formation and training for priests and religious. Evidence was presented throughout Vol 16, Part D, Institutional Responses to Child Sexual Abuse in Religious Institutions, Chapter 13, Catholic Church and in particular Sections 13.11.8 through to 13.11.9. This area encompassed not only the selection, screening and training in seminaries and houses of formation, but also the curricula and pastoral support for candidates. The topic was extended to the broader interface with the clericalist culture and the lack of supervision for priests and religious in workplaces and private lives.

Extensive evidence was taken from experts in the field of human development and the psychological sciences. Most of this concentrated on matters to do with psychosexual and emotional development and their contribution to the incidence of child sexual abuse.

Church witnesses presented similar assessments of the current state of training and education programs, the extent of pastoral supervision and the contemporary suitability of the seminary curriculum. There was significant uniformity over the need to professionalise the support and supervision for priests and religious and to introduce more transparency and accountability for all personnel in the Church.

The Royal Commission concluded that the inadequacies of selection, screening and initial formation contributed to the incidence of child sexual abuse. Moreover, the Royal Commission was satisfied with the evidence that inadequate accountability and support of priests and religious in their working ministries contributed to the historical problem of child sexual abuse.

The Royal Commission has recommended measures that will ensure greater accountability in the exercise of priestly and religious ministries, including mandatory national standards in areas such as professional supervision, performance reviews and professional development.

The Royal Commission found that the introduction of accountability measures will be essential if there is to be a reduction in clericalism and its influence on the incidence of child sexual abuse.

Just as noteworthy is the fact that proper formation and training for lay people in positions of responsibility and leadership will be essential. The establishment of CPSL was motivated, in part, to develop, monitor and report on standards in this area of formation, training and supervision. The Royal Commission's recommendations in this area are generally supported as they either echo or develop the positions submitted by the Council. The subsequent actions suggested by the Council usually recommend that CPSL develop identified standards.

### Structural and governance issues

The Royal Commission's terms of reference direct it to ascertain the role and effectiveness of governance structures in institutions and their response to child sexual abuse. Unlike other institutions churches have a dual governance structure. In the case of the Church some of its works are incorporated entities while others are unincorporated associations. In addition, the Church is an ecclesial reality, with theological and spiritual essence that cannot be confined to contemporary legal structures as an expression of itself.

The degree to which the Royal Commission understood this complexity is a moot point. At best, the Royal Commission sought to understand the authority structures in the Church in a similar way to those of corporate legal entities and found them at times to be wanting on the grounds of best practice accountability and transparency. The theological appreciations of the Church and the implications for relationships within it were beyond the competency of the Royal Commission. While the attempt to equate Church structures and processes to those of a commercial entity were misconceived, it is hard to argue against the Royal Commission's findings in this area as many Church witnesses agreed that there were gross instances of mismanagement, poor judgement, a lack of accountability and very little transparency in responding to incidences of child sexual abuse.

The Royal Commission has approached the Church on two main fronts. Firstly, as another secular institution responding to cases of child sexual abuse. Secondly, as a particular institution with a unique culture and belief structure that underpins its activities, attitudes and behaviours. As a consequence, the Council has classified some of the recommendations as 'ecclesial governance', to make the distinction.

The Church's history in handling child sexual abuse is characterised by poor governance and mismanagement. The Royal Commission's critique reflects that history. The Church itself is calling for improved episcopal and religious leadership accountabilities along with greater organisational and administrative transparency. The establishment of CPSL was envisaged as a way to begin to address these gross shortcomings and the Council's response to the Royal Commission's recommendations often directs further development of standards, monitoring and reporting.

### Working with Children Checks

The Council provided a submission to the Royal Commission in response to Issues Paper No 1: Working with Children Checks on 12 August 2013 and participated on the Royal Commission's roundtable discussion in June 2014.

Throughout Australia the Church engages directly with children through parish, education, health, welfare and disability services and a range of other child-related activities.

The working with children check is a required, important element of a comprehensive and effective system to protect children, but it is just part of the overall system that needs to be in place to create safe environments for children.

The Council supports a national working with children check which would:

- identify and implement best practice from Australian states and territories and from overseas experience;
- include all adults living in the homes of children in OOHC, parent volunteers and to all workers in child-related workplaces – there should be no exemptions; (clarification is needed as to what 'living in' actually means)
- be simple and cost effective so as not to dissuade people who might otherwise volunteer or depend on volunteers;
- include criminal record checks; and
- include juvenile records relating to serious offences.

Such a scheme would:

- provide greater transparency and consistency across jurisdictions;
- help close loopholes that currently pose a threat to the safety of children;

- enable the sharing of intelligence across jurisdictions;
- ensure continuous monitoring of relevant records across jurisdictions;
- provide greater 'portability' for workers, enabling them to travel from state to state; and
- limit burdensome red tape that currently exists for workers travelling across states and territories.

The Royal Commission published its report in July 2015.

The Council supports the recommendations made in that report, including the establishment of a centralised data base, and associated recommendations; standards regarding child-related work, exemptions, offences, criminal history information, disciplinary information, response to records returned, assessing risk, eligibility to work while an application is assessed, clearance types, appeals, portability, duration and continuous monitoring and monitoring compliance; and governance; with the following exceptions and additions.

### **Exemptions**

The Council reiterates concerns regarding exemptions from the WWCC.

The Council has submitted that WWCC should apply to all adults living in the homes of children in OOHC, parent volunteers and to all workers in child-related workplaces – including those who are under 18 years of age, and the police – that there should be no exemptions.

The Council includes its reasons for this position from page 26 in its submission to Issues Paper No 11.

### **Eligibility to work while an application is assessed**

The Council submitted that WWCC applicants might begin child-related work before the outcome of their application is known, provided additional supervision is in place and the needs of children are prioritised.

### **Appeals**

The Council submitted that guidelines for appeals should be publicly available to ensure transparency and consistency.

### **Children with harmful sexual behaviours**

Volume 10 provides insights into yet another complex and problematic area of concern in relation to abuse and harmful sexual behaviour – that of the very problematic child to child abuse. It is interesting that the term 'youth' is not used at all in this chapter and yet it is abuse by youth rather than younger children that is most prevalent.

The chapter highlights the quite dramatic evidence of the presence of such abuse historically and its tragic prevalence in contemporary Australia. It is interesting how little attention has been given to this matter in media commentary to date. Given the restricted focus of the Royal Commission insofar as its focus was institutional



abuse, it is heartening it was able to incorporate the data and evidence about child to child abuse and to place it within the broader context of sexualised behaviour.

Given the restricted focus of the Royal Commission it is also understandable that the family context of child sexual abuse was not addressed in any detail – and yet it is in the family and friendship networks that most sexual abuse occurs and wherein early behaviours are generally learned.

The recommendations are narrow and confined largely to the important areas of early intervention, prevention and treatment. Their remit appears to be to frame a national strategy to prevent abuse and harmful sexualised behaviour of children and yet there is minimal understanding / appreciation how this has been problematised in isolation from other contributing factors that if attenuated, could reduce the problematic and abusive behaviours. The recommendations are all useful, although those related to therapeutic interventions seem unusually and problematically prescriptive.

Prevention of abuse is going to require much deeper understanding of the issue and is a matter of some priority in research, treatment and public policy in general. As the final report notes, early prevention requires early identification and yet young people and their families are unlikely to self-identify such problem behaviours when the result is a mandatory report and the risk of a young person being placed on sex offender register – perhaps for life.

## Redress and Civil Litigation

### **Redress**

The Royal Commission released its Redress and Civil Litigation report in September 2015. The redress elements of that report have moved on from the Royal Commission and are now in the political arena. Church leaders have publicly declared support for a national redress scheme along the lines recommended by the Royal Commission. Only a national scheme can afford victims equal opportunity of access, regardless of where they live, to independently determine reparation and counselling support. A national scheme will also cater for religious orders with services in a number of states.

Legislation before the Federal Parliament is based on the current response from the Commonwealth Government after receipt of the Royal Commission's recommendations. The scheme is limited to Commonwealth-run services and churches are restricted from entry due to constitutional arrangements between the levels of government. Once state governments have transferred powers to the Commonwealth to administer redress on their behalf, churches and other non-government institutions can join the scheme. During February and March, 2018 the proposed redress scheme will be examined by the Senate Community Affairs Legislative Committee. Submissions on behalf of Church authorities have been presented to the Committee by the Council.

## Civil Litigation

In its final report, the Royal Commission reiterated its criticism of Church authorities for their approach to civil litigation. For example, in Vol 16, Book 1 p41:

*In case studies we also considered the experiences of survivors of child sexual abuse who pursued civil litigation against Catholic Church authorities or negotiated redress directly with Catholic Church authorities. We heard that particular challenges arise in such cases, including the operation of statutory limitation periods and the need to identify a responsible party against whom to bring legal proceedings. We heard from a number of survivors who pursued civil litigation that Catholic Church authorities took advantage of the legal defences available to them and conducted litigation in a manner that did not adequately take account of the pastoral and other needs of survivors of child sexual abuse.*

So far as concerns civil litigation, the recommendations in the earlier report fell into four areas:

- limitation periods,
- model litigant guidelines,
- the 'entity to sue' problem, and
- a new duty of care on institutions.

In relation to limitation periods, all states and territories except South Australia have enacted, or have drafted legislation abolishing limitation periods in child sexual abuse litigation. They have done so (or will do so) retrospectively and the change will therefore affect all claims, whenever the abuse occurred.

Model Litigant Guidelines for use by Church authorities responding to civil claims for child sexual abuse were released by the Council in November 2015 with the endorsement of the Supervisory Group. The Guidelines provide each Church authority with advice about how they should interact with child sexual abuse survivors wishing to commence civil proceedings, including assistance to identify a proper defendant, with the intent that the so-called 'Ellis defence' is no longer used by the Church. The Guidelines do not prohibit the use of a statutory limitation defence (if available) in cases where the lapse of time was so serious that a fair trial would not be possible. Although that would no longer be operative (where the limitation periods have been abolished), in all states and territories the legislation has preserved the discretion of a trial judge to make an order to similar effect.

CPSL should conduct a review of the Model Litigant Guidelines to ensure they continue to comply with best practice standards.

The Council also promulgated guidelines to assist Church authorities in deciding whether, and on what terms, to revisit past settlements.

The 'entity to sue problem' (the so-called 'Ellis defence') is only a problem in Western Australia, New South Wales and Victoria. In Western Australia, there is a bill presently before parliament that addresses the issue. The Council understands that much work is being done in both New South Wales and Victoria towards a feasible solution for their circumstances.

The duty of care issue is problematic. The Redress and Civil Litigation report contained the following recommendations:

*89. State and territory governments should introduce legislation to impose a non-delegable duty on certain institutions for institutional child sexual abuse despite it being the deliberate criminal act of a person associated with the institution.*

*90. The non-delegable duty should apply to institutions that operate the following facilities or provide the following services and be owed to children who are in the care, supervision or control of the institution in relation to the relevant facility or service:*

...

*f. any facilities or services operated or provided by religious organisations, including activities or services provided by religious leaders, officers or personnel of religious organisations but not including foster care or kinship care.*

*91. Irrespective of whether state and territory parliaments legislate to impose a non-delegable duty upon institutions, state and territory governments should introduce legislation to make institutions liable for institutional child sexual abuse by persons associated with the institution unless the institution proves it took reasonable steps to prevent the abuse. The 'reverse onus' should be imposed on all institutions, including those institutions in respect of which we do not recommend a non-delegable duty be imposed.*

The Council argued against these recommendations and remains opposed to them. If adopted, the legislation would apply prospectively (that is, only to incidents of abuse applying after the legislation comes into effect) but it would institute a regime akin to strict liability. Further, it creates a two-tier system: a strict liability regime for some institutions and a different one for others. Quite apart for anything else, it would mean treating victims differently according to the nature of the institution where the abuse occurred. For example, a child abused at cricket training after school at the local suburban cricket club would be disadvantaged in comparison to her or his peer abused at after-school training for the school cricket team. In the Council's view, and as a matter of principle, this lacks balance and is not good public policy.

The Council is not aware of any proposed legislation in any jurisdiction to this effect. However, if Church authorities are of a similar view to the Council on these questions, they should have a case ready to be put if governments move in that direction.



## Criminal Justice Report

The Criminal Justice report was released in August 2017. It is a substantial document, consisting of more than 2,000 pages. As the name suggests, it deals with the administration of the criminal justice system and addresses, among other things, the creation of new offences concerning, and the investigation and prosecution of, abuse offences and post-conviction handling of offenders. As much of the report discusses technical matters of criminal law and procedure the Council does not intend to examine it in detail in this report. Instead, it will describe the content in general terms and concentrate on a few discrete areas that have a more direct impact on the Church.

### Structure

The report consists of three volumes.

Volume 1 includes a preface and executive summary and Parts I and II and covers:

- the role and operation of the criminal justice system,
- the role of victims,
- recovered memory and allied matters,
- historical and current police responses to abuse allegations,
- issues in police responses, investigations and charging decisions, and
- blind reporting.

Volume 2 includes Parts III to VI and includes:

- abuse offences,
- limitation periods,
- third party offences (failure to report and failure to protect offences),
- prosecution issues, and
- tendency and coincidence evidence in joint trials.

Volume 3 includes Parts VII to X and includes:

- trial processes (evidence of victims, informing juries, delays and case management),
- post-conviction issues (sentencing appeals, parole considerations),
- juvenile offenders, and
- interaction between criminal justice and regulatory responses.

### Third party offences, mandatory reporting and reportable conduct schemes

The new 'failure to report' offence (discussed in Vol 2, Ch 16 of the Criminal Justice report) are part of the many recommendations about the extension of mandatory reporting regimes and reportable conduct schemes. The new 'failure to protect offence' is discussed in the same volume. They are the subject of Recommendations 32 to 36. The Council deals with both these recommendations in its analysis of Recommendations 7.4, 16.26 and 16.48 of the final report.

In addition to the creation of the 'failure to report' offence, the tenor of the Royal Commission's approach to mandatory reporting and reportable conduct schemes can be seen from the following recommendations, all of which are dealt with later in this analysis:

- Recommendations 7.4 to 7.6,
- Recommendations 7.9 to 7.12,
- Recommendation 16.10, and
- Recommendation 16.50.

The report includes recommendations addressing practical issues with reporting. In the main, they are directed to police services but Church authorities should be aware of them when considering their reporting obligations. They are dealt with in Recommendations 4, 5, 6, 12 and 13 and are the subject of specific comment by the Council later in this document.

The Royal Commission considered, but ultimately rejected, the proposition that these offences should extend to the institution, that is, at the institution itself, as well as individuals within the institution, could be guilty of a relevant offence (see Vol 2, Ch 18).

### 'Position of authority' offences

The criminal law has long regarded abuse committed by persons in a position of authority over the victim as being more heinous. For example, where the age of consent for particular sexual conduct was set in Criminal Codes at 16 years of age, the law customarily extended the age to 18 where the offender was in a position of trust or authority in relation to the other person.

The Royal Commission has suggested clarification of some aspects of the relevant laws in the several jurisdictions: see Recommendations 27, 28 and 29, with which is dealt with later in this document.

### Blind reporting

Blind reporting has been a vexed question for Church authorities over many years. The existence or introduction of comprehensive mandatory reporting regimes will not necessarily eliminate the problem, as the Royal Commission noted (Vol1, p567):

*If the failure to report offence we recommended is implemented, there will still be circumstances in which the institution or survivor advocacy and support groups receive allegations of institutional child sexual abuse that they are not legally obliged to report to police. Therefore, the issue of blind reporting remains relevant.*



In any event, it is an issue that has to be considered by Church authorities, particularly in the light of directives such as cl. 37 of *Towards Healing*.

The discussion about blind reporting is to be found in Vol1, Ch 9.3. In essence, the Royal Commission has come down in favour of blind reporting in certain circumstances and its conclusions can be found in Vol 1, Ch 9.3.7. The precise recommendations (16 to 20) are dealt with later in this document.

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## Volume 2, Nature and cause

Volume 2, Nature and cause details the nature and cause of child sexual abuse in institutional contexts. It also describes what is known about the extent of child sexual abuse and the limitations of existing studies.

The volume discusses factors that affect the risk of child sexual abuse in institutions and the legal and political changes that have influenced how children have interacted with institutions over time.

The Royal Commission made one recommendation in this volume.

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## Recommendation 2.1

### Royal Commission recommendation

The Australian Government should conduct and publish a nationally representative prevalence study on a regular basis to establish the extent of child maltreatment in institutional and non-institutional contexts in Australia.

### Area of implication for the Church

#### Civil Governance

#### Overview

This recommendation is to be found in Vol 2: Nature and Cause, Ch3: The extent of child sexual abuse in institutional contexts, Section 3.3.1: Best approach to a national representative prevalence study, p78.

#### Council comment

The Council recognises that this recommendation may contribute to the development of public policy.

#### Action

No action is required at this time.

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## Volume 6, Making institutions child safe

Volume 6, Making institutions child safe looks at the role community prevention could play in making communities and institutions child safe, the child safe standards that will make institutions safer for children, and how regulatory oversight and practice could be improved to facilitate the implementation of these standards in institutions.

It also examines how to prevent and respond to online sexual abuse in institutions in order to create child safe online environments.

The Royal Commission made 24 recommendations in this volume.

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## Recommendation 6.1

The Australian Government should establish a mechanism to oversee the development and implementation of a national strategy to prevent child sexual abuse. This work should be undertaken by the proposed National Office for Child Safety (see Recommendations 6.16 and 6.17) and be included in the National Framework for Child Safety (see Recommendation 6.15).

### Area of implication for the Church

Civil Governance.

### Overview

This recommendation is to be found in Vol 6: Making institutions child safe, Ch 2: Creating child safe communities through prevention, Section 2.5.8: Common considerations for community prevention initiatives, p107.

### Council comment

Council policy positions consistently called for national policies within national frameworks to overcome the current inconsistencies and shortcomings operative within states and territories.

A national strategic approach encourages consistency of application and outcomes across the country. Church leadership should actively support measures to establish a national strategic framework for child safety and its implementation within Church services.

### Action

Children services are a core policy area CSSA. This agency should hold a watching brief on activities that are aimed to deliver a national strategic framework for child safety.

This will necessarily involve the Catholic schools sector and the oversight of NCEC as well as CPSL and CSSA.

## Recommendations 6.2 and 6.3

### Recommendation 6.2

The national strategy to prevent child sexual abuse should encompass the following complementary initiatives:

- (a) social marketing campaigns to raise general community awareness and increase knowledge of child sexual abuse, to change problematic attitudes and behavior relating to such abuse, and to promote and direct people to related prevention initiatives, information and help-seeking services
- (b) prevention education delivered through preschool, school and other community institutional settings that aims to increase children's knowledge of child sexual abuse and build practical skills to assist in strengthening self-protective skills and strategies. The education should be integrated into existing school curricula and link with related areas such as respectful relationships education and sexuality education. It should be mandatory for all preschools and schools
- (c) prevention education for parents delivered through day care, preschool, school, sport and recreational settings, and other institutional and community settings. The education should aim to increase knowledge of child sexual abuse and its impacts, and build skills to help reduce the risks of child sexual abuse
- (d) online safety education for children, delivered via schools. Ministers for education, through the Council of Australian Governments, should establish a nationally consistent curriculum for online safety education in schools. The Office of the eSafety Commissioner should be consulted on the design of the curriculum and contribute to the development of course content and approaches to delivery (see Recommendation 6.19)
- (e) online safety education for parents and other community members to better support children's safety online. Building on their current work, the Office of the eSafety Commissioner should oversee the delivery of this education nationally (see Recommendation 6.20)
- (f) prevention education for tertiary students studying university, technical and further education, and vocational education and training courses before entering child related occupations. This should aim to increase awareness and understanding of the prevention of child sexual abuse and potentially harmful sexual behaviours in children
- (g) information and help-seeking services to support people who are concerned they may be at risk of sexually abusing children. The design of these services should be informed by the Stop It Now! model implemented in Ireland and the United Kingdom
- (h) information and help seeking services for parents and other members of the community concerned that:
  - (i) an adult they know may be at risk of perpetrating child sexual abuse
  - (ii) ii. a child or young person they know may be at risk of sexual abuse or harm
  - (iii) iii. a child they know may be displaying harmful sexual behaviours.

### Recommendation 6.3

The design and implementation of these initiatives should consider:

- (a) aligning with and linking to national strategies for preventing violence against adults and children, and strategies for addressing other forms of child maltreatment
- (b) tailoring and targeting initiatives to reach, engage and provide access to all communities, including children, Aboriginal and Torres Strait Islander communities, culturally and linguistically diverse communities, people with disability, and regional and remote communities
- (c) Involving children and young people in the strategic development, design, implementation and evaluation of initiatives
- (d) using research and evaluation to:
  - (i) build the evidence base for using best practices to prevent child sexual abuse and harmful sexual behaviours in children
  - (ii) guide the development and refinement of interventions, including the piloting and testing of initiatives before they are implemented.

### Area of implication for the Church

Civil Governance and Schools.

### Overview

These recommendations are to be found in Vol 6: Making institutions child safe, Ch 2: Creating child safe communities through prevention, Section 2.5.8: Common considerations for community prevention initiatives, p107.

### Council comment

A national approach is consistent with Council policy positions presented to the Royal Commission.

The elements of the national strategy rely on best practice curriculum and content education. This will need to meet the needs of students, respectful of their local circumstances and contexts whilst being consistent with the national strategy's proposed outcomes.

The national strategy as outlined is supported. It will be important to maintain the capacity for the curriculum development and the content teaching to remain with the Catholic education sector.

The national strategy applies across all Church activities and will need to be implemented consistent with Church principles of respect and dignity for all persons.



## Action

This should be referred to the NCEC and the ACBC secretariat for Aboriginal and Torres Strait Islander peoples.

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## Recommendations 6.4, 6.5 and 6.6

### **Recommendation 6.4**

All institutions should uphold the rights of the child. Consistent with Article 3 of the United Nations Convention on the Rights of the Child, all institutions should act with the best interests of the child as a primary consideration. In order to achieve this, institutions should implement the Child Safe Standards identified by the Royal Commission.

### **Recommendation 6.5**

The Child Safe Standards are:

1. Child safety is embedded in institutional leadership, governance and culture
2. Children participate in decisions affecting them and are taken seriously
3. Families and communities are informed and involved
4. Equity is upheld and diverse needs are taken into account
5. People working with children are suitable and supported
6. Processes to respond to complaints of child sexual abuse are child focused
7. Staff are equipped with the knowledge, skills and awareness to keep children safe through continual education and training
8. Physical and online environments minimise the opportunity for abuse to occur
9. Implementation of the Child Safe Standards is continuously reviewed and improved
10. Policies and procedures document how the institution is child safe.

### **Recommendation 6.6**

Institutions should be guided by the following core components when implementing the Child Safe Standards:

#### **Standard 1: Child safety is embedded in institutional leadership, governance and culture**

- (a) The institution publicly commits to child safety and leaders champion a child safe culture.
- (b) Child safety is a shared responsibility at all levels of the institution.
- (c) Risk management strategies focus on preventing, identifying and mitigating risks to children.
- (d) Staff and volunteers comply with a code of conduct that sets clear behavioural standards towards children.

- (e) Staff and volunteers understand their obligations on information sharing and recordkeeping.

**Standard 2: Children participate in decisions affecting them and are taken seriously**

- (a) Children are able to express their views and are provided opportunities to participate in decisions that affect their lives.
- (b) The importance of friendships is recognised and support from peers is encouraged, helping children feel safe and be less isolated.
- (c) Children can access sexual abuse prevention programs and information.
- (d) Staff and volunteers are attuned to signs of harm and facilitate child-friendly ways for children to communicate and raise their concerns.

**Standard 3: Families and communities are informed and involved**

- (a) Families have the primary responsibility for the upbringing and development of their child and participate in decisions affecting their child.
- (b) The institution engages in open, two-way communication with families and communities about its child safety approach and relevant information is accessible.
- (c) Families and communities have a say in the institution's policies and practices.
- (d) Families and communities are informed about the institution's operations and governance.

**Standard 4: Equity is upheld and diverse needs are taken into account**

- (a) The institution actively anticipates children's diverse circumstances and responds effectively to those with additional vulnerabilities.
- (b) All children have access to information, support and complaints processes.
- (c) The institution pays particular attention to the needs of Aboriginal and Torres Strait Islander children, children with disability, and children from culturally and linguistically diverse backgrounds.

**Standard 5: People working with children are suitable and supported**

- (a) Recruitment, including advertising and screening, emphasises child safety.
- (b) Relevant staff and volunteers have Working With Children Checks.
- (c) All staff and volunteers receive an appropriate induction and are aware of their child safety responsibilities, including reporting obligations.
- (d) Supervision and people management have a child safety focus.

**Standard 6: Processes to respond to complaints of child sexual abuse are child focused**

- (a) The institution has a child-focused complaint handling system that is understood by children, staff, volunteers and families.
- (b) The institution has an effective complaint handling policy and procedure which clearly outline roles and responsibilities, approaches to dealing with different types of complaints and obligations to act and report.
- (c) Complaints are taken seriously, responded to promptly and thoroughly, and reporting, privacy and employment law obligations are met.

**Standard 7: Staff are equipped with the knowledge, skills and awareness to keep children safe through continual education and training**

- (a) Relevant staff and volunteers receive training on the nature and indicators of child maltreatment, particularly institutional child sexual abuse.
- (b) Staff and volunteers receive training on the institution's child safe practices and child protection.
- (c) Relevant staff and volunteers are supported to develop practical skills in protecting children and responding to disclosures.

**Standard 8: Physical and online environments minimise the opportunity for abuse to occur**

- (a) Risks in the online and physical environments are identified and mitigated without compromising a child's right to privacy and healthy development.
- (b) The online environment is used in accordance with the institution's code of conduct and relevant policies.

**Standard 9: Implementation of the Child Safe Standards is continuously reviewed and improved**

- (a) The institution regularly reviews and improves child safe practices.
- (b) The institution analyses complaints to identify causes and systemic failures to inform continuous improvement.

**Standard 10: Policies and procedures document how the institution is child safe**

- (a) Policies and procedures address all Child Safe Standards.
- (b) Policies and procedures are accessible and easy to understand.
- (c) Best practice models and stakeholder consultation inform the development of policies and procedures.
- (d) Leaders champion and model compliance with policies and procedures.
- (e) Staff understand and implement the policies and procedures.

## Area of implication for the Church

Child safe standards, civil governance

### Overview

These recommendations are found in Vol 6: Making institutions child safe, Ch 3: What makes institutions safer for children, Section 3.5: Applying the Child Safe Standards, pp211-214.

They relate to community-based prevention strategies for institutional child safety, and the establishment and content of ten Child Safe Standards identified by the Royal Commission for implementation by institutions engaged with children.

The Royal Commission identified through its case studies, and in private sessions, aspects of culture and practices in institutions including those of the Church which allowed abuse to occur and inhibited its detection and response. Characteristics of organisational culture such as flawed governance structures, secrecy, power and control could increase the likelihood of harm to children.

The Royal Commission identified that there continues to be a lack of understanding of abuse in institutional settings and a tendency to believe adults over children. Abuse continues to occur today and is not a problem of the past.

In response, the Royal Commission has identified ten Child Safe Standards, underpinned by the United Nations Convention on the Rights of the Child, which are directed to institutional risk factors and changing institutional culture and practice.

In developing the Child Safe Standards promulgated in these recommendations the Royal Commission made it clear that the risk of abuse can never be eliminated. However, creating environments that are so risk averse that healthy and positive relationships between children and adults are inhibited, or work with children is curtailed should also be avoided. 'Balancing caution and caring' is required (Final Report Vol 6, p135).

Children's rights, safety wellbeing and best interests must be at the core of an institution's operations and culture. This involves creating an environment where any and all harm to children, including abuse, or behaviours that generate a risk of abuse are prevented, identified, reported and responded to. Applying the Child Safe Standards, the protection of children is everybody's business.

The Royal Commission has provided assistance on what institutions can do to implement the Child Safe Standards at Appendix A to Vol 6 of the Final Report (repeated at Appendix B to Vol 16 of the Final Report).

### Council comment

In October 2011 the Council submitted its response to the Royal Commission's issues paper 3: Child Safe Institutions, in which it identified nine essential elements of child safe institutions stemming from the United Nations Convention on the Rights of the Child, including the necessity for a protective, child-centred organisational culture.



These elements have been fully subsumed into the ten Child Safe Standards of the Royal Commission.

Recommendations 6.4, 6.5 and 6.6 are consistent with Council policy as presented to the Royal Commission and are supported.

### Action

Church authorities should implement recommendation 6.4, guided by the content of recommendations 6.5 and 6.6.

Recommendations 6.4, 6.5 and 6.6 should be referred to CPSL for consideration and development of appropriate standards.

Implementation progress by Church authorities and CPSL should be monitored by the Implementation Advisory Group.

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## Recommendation 6.7

### Recommendation

The national Child Safe Standards developed by the Royal Commission and listed at Recommendation 6.5 should be adopted as part of the new National Statement of Principles for Child Safe Organisations described by the Community Services Ministers' Meeting in November 2016. The National Statement of Principles for Child Safe Organisations should be endorsed by the Council of Australian Governments.

### Area of implication for the Church

Child Safe Standards.

### Overview

These recommendations are found in Vol 6: Making institutions child safe, Ch 4: Improving child safe approaches, Section 4.5.5: Capacity building and support, p 292.

### Council comment

The Council recognises that this recommendation may contribute to the development of public policy.

### Action

The implementation of this recommendation by government should be monitored by CPSL.

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## Recommendations 6.8 and 6.9

### Recommendations 6.8

State and territory governments should require all institutions in their jurisdictions that engage in child-related work to meet the Child Safe Standards identified by the Royal Commission at Recommendation 6.5.

### Recommendations 6.9

Legislative requirements to comply with the Child Safe Standards should cover institutions that provide:

- (a) accommodation and residential services for children, including overnight excursions or stays
- (b) activities or services of any kind, under the auspices of a particular religious denomination or faith, through which adults have contact with children
- (c) childcare or childminding services
- (d) child protection services, including out-of-home care
- (e) activities or services where clubs and associations have a significant membership of, or involvement by, children
- (f) coaching or tuition services for children
- (g) commercial services for children, including entertainment or party services, gym or play facilities, photography services, and talent or beauty competitions
- (h) services for children with disability
- (i) education services for children
- (j) health services for children
- (k) justice and detention services for children, including immigration detention facilities I. transport services for children, including school crossing services.

### Area of implication for the Church

Child Safe Standards.

### Overview

These recommendations are found in Vol 6: Making institutions child safe, Ch 4: Improving child safe approaches, Section 4.5.5: Capacity building and support, p 292.



## Council comment

The Council recognises that these recommendations may contribute to the development of public policy.

## Action

The implementation of these recommendations by government should be monitored by CPSL.

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## Recommendations 6.10 and 6.11

### Recommendations 6.10

State and territory governments should ensure that:

- (a) an independent oversight body in each state and territory is responsible for monitoring and enforcing the Child Safe Standards. Where appropriate, this should be an existing body.
- (b) the independent oversight body is able to delegate responsibility for monitoring and enforcing the Child Safe Standards to another state or territory government body, such as a sector regulator.
- (c) regulators take a responsive and risk-based approach when monitoring compliance with the Child Safe Standards and, where possible, utilise existing regulatory frameworks to monitor and enforce the Child Safe Standards.

### Recommendations 6.11

Each independent state and territory oversight body should have the following additional functions:

- (a) provide advice and information on the Child Safe Standards to institutions and the community
- (b) collect, analyse and publish data on the child safe approach in that jurisdiction and provide that data to the proposed National Office for Child Safety
- (c) partner with peak bodies, professional standards bodies and (or) sector leaders to work with institutions to enhance the safety of children
- (d) provide, promote or support education and training on the Child Safe Standards to build the capacity of institutions to be child safe
- (e) coordinate ongoing information exchange between oversight bodies relating to institutions' compliance with the Child Safe Standards.

### Area of implication for the Church

Child Safe Standards, civil governance.

### Overview

These recommendations are found in Vol 6: Making institutions child safe, Ch 4: Improving child safe approaches, Section 4.5.5: Capacity building and support, p 293.



### Council comment

The Council recognises that these recommendations may contribute to the development of public policy. Should these recommendations be fully implemented, the function of CPSL, which was not intended to duplicate the operation of civil regulatory processes, should be reviewed accordingly.

### Action

The implementation of these recommendations by government should be monitored by CPSL.

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## Recommendation 6.12

With support from governments at the national, state and territory levels, local governments should designate child safety officer positions from existing staff profiles to carry out the following functions:

- (a) developing child safe messages in local government venues, grounds and facilities
- (b) assisting local institutions to access online child safe resources
- (c) providing child safety information and support to local institutions on a needs basis
- (d) supporting local institutions to work collaboratively with key services to ensure child safe approaches are culturally safe, disability aware and appropriate for children from diverse backgrounds.

### Area of implication for the Church

#### Child Safe Standards

#### Overview

These recommendations are found in Vol 6: Making institutions child safe, Ch 4: Improving child safe approaches, Section 4.5.6: Other ways to improve practice, p 303.Council comment

The Council recognises that this recommendation may contribute to the development of public policy.

#### Action

The implementation of this recommendation by government should be monitored by CPSL.

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## Recommendation 6.13

The Australian Government should require all institutions that engage in child-related work for the Australian Government, including Commonwealth agencies, to meet the Child Safe Standards identified by the Royal Commission at Recommendation 6.5.

### Area of implication for the Church

#### Child Safe Standards

#### Overview

These recommendations are found in Vol 6: Making institutions child safe, Ch 4: Improving child safe approaches, Section 4.6.2: Evaluation and continuous improvement, p 312.

#### Council comment

The Council recognises that this recommendation may contribute to the development of public policy.

#### Action

The implementation of this recommendation by government should be monitored by CPSL.

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## Recommendation 6.14

The Australian Government should be responsible for the following functions:

- (a) evaluate, publicly report on, and drive the continuous improvement of the implementation of the Child Safe Standards and their outcomes
- (b) coordinate the direct input of children and young people into the evaluation and continuous improvement of the Child Safe Standards
- (c) coordinate national capacity building and support initiatives and opportunities for collaboration between jurisdictions and institutions
- (d) develop and promote national strategies to raise awareness and drive cultural change in institutions and the community to support child safety.

### Area of implication for the Church

#### Child Safe Standards

#### Overview

These recommendations are found in Vol 6: Making institutions child safe, Ch 4: Improving child safe approaches, Section 4.6.2: Evaluation and continuous improvement, p 312. Council comment

The Council recognises that this recommendation may contribute to the development of public policy.

#### Action

The implementation of this recommendation by government should be monitored by CPSL.

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## Recommendation 6.15

The Australian Government should develop a new National Framework for Child Safety in collaboration with state and territory governments. The Framework should:

- (a) commit governments to improving the safety of all children by implementing long term child safety initiatives, with appropriate resources, and holding them to account
- (b) be endorsed by the Council of Australian Governments and overseen by a joint ministerial body
- (c) commence after the expiration of the current National Framework for Protecting Australia's Children, no later than 2020
- (d) cover broader child safety issues, as well as specific initiatives to better prevent and respond to institutional child sexual abuse including initiatives recommended by the Royal Commission
- (e) include links to other related policy frameworks.

### Area of implication for the Church

#### Child Safe Standards

#### Overview

These recommendations are found in Vol 6: Making institutions child safe, Ch 4: Improving child safe approaches, Section 4.6.3: National framework for child safety, p 321.Council comment

The Council recognises that this recommendation may contribute to the development of public policy.

#### Action

The implementation of this recommendation by government should be monitored by CPSL.

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## Recommendations 6.16, 6.17 and 6.18

### **Recommendation 6.16**

The Australian Government should establish a National Office for Child Safety in the Department of the Prime Minister and Cabinet, to provide a response to the implementation of the Child Safe Standards nationally, and to develop and lead the proposed National Framework for Child Safety. The Australian Government should transition the National Office for Child Safety into an Australian Government statutory body within 18 months of this Royal Commission's Final Report being tabled in the Australian Parliament.

### **Recommendation 6.17**

The National Office for Child Safety should report to Parliament and have the following functions:

- (a) a. develop and lead the coordination of the proposed National Framework for Child Safety, including national coordination of the Child Safe Standards
- (b) b. collaborate with state and territory governments to lead capacity building and continuous improvement of child safe initiatives through resource development, best practice material and evaluation
- (c) c. promote the participation and empowerment of children and young people in the National Framework and child safe initiatives
- (d) d. perform the Australian Government's Child Safe Standards functions as set out at Recommendation 6.15
- (e) e. lead the community prevention initiatives as set out in Recommendation 6.2.

### **Recommendation 6.18**

The Australian Government should create a ministerial portfolio with responsibility for children's policy issues, including the National Framework for Child Safety.

### **Area of implication for the Church**

Child Safe Standards

Overview



These recommendations are found in Vol 6: Making institutions child safe, Ch 4: Improving child safe approaches, Section 4.6.4: National Office for Child Safety, pp 323-324. Council comment

The Council recognises that these recommendations may contribute to the development of public policy.

### Action

The implementation of these recommendations by government should be monitored by CPSL.

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## Recommendations 6.19, 6.20, 6.21, 6.22 and 6.23

### **Recommendation 6.19**

Ministers for education, through the Council of Australian Governments, should establish a nationally consistent curriculum for online safety education in schools. The Office of the eSafety Commissioner should be consulted on the design of the curriculum and contribute to the development of course content and approaches to delivery. The curriculum should:

- (a) be appropriately staged from Foundation year to Year 12 and be linked with related content areas to build behavioural skills as well as technical knowledge to support a positive and safe online culture
- (b) involve children and young people in the design, delivery and piloting of new online safety education, and update content annually to reflect evolving technologies, online behaviours and evidence of international best practice approaches
- (c) be tailored and delivered in ways that allow all Australian children and young people to reach, access and engage with online safety education, including vulnerable groups that may not access or engage with the school system.

### **Recommendation 6.20**

Building on its current work, the Office of the eSafety Commissioner should oversee the delivery of national online safety education aimed at parents and other community members to better support children's safety online. These communications should aim to:

- (a) keep the community up to date on emerging risks and opportunities for safeguarding children online
- (b) build community understanding of responsibilities, legalities and the ethics of children's interactions online
- (c) encourage proactive responses from the community to make it 'everybody's business' to intervene early, provide support or report issues when concerns for children's safety online are raised
- (d) increase public awareness of how to access advice and support when online incidents occur.

### **Recommendation 6.21**

Pre-service education and in-service staff training should be provided to support child-related institutions in creating safe online environments. The Office of the eSafety Commissioner should advise on and contribute to program design and content. These programs should be aimed at:

- (a) tertiary students studying university, technical and further education, and vocational education and training courses, before entering child-related occupations; and could be provided as a component of a broader program of child sexual abuse prevention education (see Recommendation 6.2)

- (b) staff and volunteers in schools and other child-related organisations, and could build on the existing web-based learning programs of the Office of the eSafety Commissioner.

### **Recommendation 6.22**

In partnership with the proposed National Office of Child Safety (see Recommendations 6.16 and 6.17), the Office of the eSafety Commissioner should oversee the development of an online safety framework and resources to support all schools in creating child safe online environments. This work should build on existing school-based e-safety frameworks and guidelines, drawing on Australian and international models.

The school-based online safety framework and resources should be designed to:

- (a) support schools in developing, implementing and reviewing their online codes of conduct, policies and procedures to help create an online culture that is safe for children
- (b) guide schools in their response to specific online incidents, in coordination with other agencies. This should include guidance in complaint handling, understanding reporting requirements, supporting victims to minimise further harm, and preserving digital evidence to support criminal justice processes.

### **Recommendation 6.23**

State and territory education departments should consider introducing centralised mechanisms to support government and non-government schools when online incidents occur. This should result in appropriate levels of escalation and effective engagement with all relevant entities, such as the Office of the eSafety Commissioner, technical service providers and law enforcement.

Consideration should be given to:

- (a) adopting the promising model of the Queensland Department of Education and Training's Cyber Safety and Reputation Management Unit, which provides advice and a centralised coordination function for schools, working in partnership with relevant entities to remove offensive online content and address other issues
- (b) strengthening or re-establishing multi-stakeholder forums and case-management for effective joint responses involving all relevant agencies, such as police, education, health and child protection.

### **Area of implication for the Church**

#### **Schools**

#### **Overview**

These recommendations are found in Vol 6: Making institutions child safe, Ch 5: Improving child safe approaches, 5.4.2: Opportunities for effective prevention and response to online child sexual abuse, pp 389-397.



### Council comment

The Council provides in-principle support for these recommendations. Operational and policy issues will need to be established in consultation with Catholic schools and their parent bodies and with Catholic universities.

### Action

These recommendations will have to be addressed by the NCEC and state education offices and commissions.

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## Recommendation 6.24

In consultation with the eSafety Commissioner, police commissioners from states and territories and the Australian Federal Police should continue to ensure national capability for coordinated, best practice responses by law enforcement agencies to online child sexual abuse. This could include through:

- (a) establishing regular meetings of the heads of cyber safety units in all Australian police departments to ensure a consistent capacity to respond to emerging incidents and share best practice approaches, tools and resources
- (b) convening regular forums and conferences to bring together law enforcement, government, the technology industry, the community sector and other relevant stakeholders to discuss emerging issues, set agendas and identify solutions to online child sexual abuse and exploitation
- (c) building capability across police departments, through in-service training for:
  - (i) i. frontline police officers to respond to public complaints relating to issues of online child sexual abuse or harmful sexual behaviours
  - (ii) ii. police officers who liaise with young people in school and community settings.

### Area of implication for the Church

#### Child Safe Standards

#### Overview

These recommendations are found in Vol 6: Making institutions child safe, Ch 5: Improving child safe approaches, 5.4.2: Opportunities for effective prevention and response to online child sexual abuse, pp 389-397.

#### Council comment

The Council recognises that this recommendation may contribute to the development of public policy.

#### Action

The implementation of this recommendation by government should be monitored by CPSL.

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## Volume 7, Improving institutional responding and reporting

Volume 7, Improving institutional responding and reporting examines the reporting of child sexual abuse to external government authorities by institutions and their staff and volunteers, and how institutions have responded to complaints of child sexual abuse.

It outlines guidance for how institutions should handle complaints, and the need for independent oversight of complaint handling by institutions.

The Royal Commission made 12 recommendations in this volume.

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## Recommendations 7.1, 7.2 and 7.3

### **Recommendation 7.1**

State and territory governments that do not have a mandatory reporter guide should introduce one and require its use by mandatory reporters.

### **Recommendation 7.2**

Institutions and state and territory governments should provide mandatory reporters with access to experts who can provide timely advice on child sexual abuse reporting obligations.

### **Recommendation 7.3**

State and territory governments should amend laws concerning mandatory reporting to child protection authorities to achieve national consistency in reporter groups. At a minimum, state and territory governments should also include the following groups of individuals as mandatory reporters in every jurisdiction:

- (a) out-of-home care workers (excluding foster and kinship/relative carers)
- (b) youth justice workers
- (c) early childhood workers
- (d) registered psychologists and school counsellors
- (e) people in religious ministry.

### **Area of implication for the Church**

Civil Governance, Professional standards

### **Overview**

These recommendations appear in Vol 7: Improving institutional responding and reporting, Ch 2: Reporting institutional abuse to external authorities, Section 2.5: Improving institutional reporting, p 90, 100.

The Royal Commission said (Vol 7, p 40) that its research indicated ongoing community support for mandatory reporting in Australia.

### **Council comment**

While the Council did not make a submission concerning mandatory reporting, in some jurisdictions these obligations already cover priests (for example, the Northern Territory).

In the Council's view:

- there should be consistency across the jurisdictions in the laws relating to mandatory reporting but there should be a principled approach to identifying the best legislative option rather than adopting the lowest (or highest) common denominator,
- mandatory reporters should have available to them guidelines or protocols that are published by competent authorities, and
- it would be difficult to argue that any of the categories of persons mentioned in recommendation 7.3 should be exempt from mandatory reporting laws.

### Action

This is a matter for government and nothing is required of Church authorities at this time.

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## Recommendations 7.4, 16.26, 16.48 and Criminal Justice report recommendations 32, 33, 35 and 36

### Final report

#### **Recommendation 7.4**

Laws concerning mandatory reporting to child protection authorities should not exempt persons in religious ministry from being required to report knowledge or suspicions formed, in whole or in part, on the basis of information disclosed in or in connection with a religious confession.

#### **Recommendation 16.26**

The Australian Catholic Bishops Conference should consult with the Holy See, and make public any advice received, in order to clarify whether:

- (a) information received from a child during the sacrament of reconciliation that they have been sexually abused is covered by the seal of confession
- (b) if a person confesses during the sacrament of reconciliation to perpetrating child sexual abuse, absolution can and should be withheld until they report themselves to civil authorities.

#### **Recommendation 16.48**

Religious institutions which have a rite of religious confession for children should implement a policy that requires the rite only be conducted in an open space within the clear line of sight of another adult. The policy should specify that, if another adult is not available, the rite of religious confession for the child should not be performed.

### Criminal Justice report

#### **Recommendation 32**

Any person associated with an institution who knows or suspects that a child is being or has been sexually abused in an institutional context should report the abuse to police (and, if relevant, in accordance with any guidelines the institution adopts in relation to blind reporting under recommendation 16).

#### **Recommendation 33**

Each state and territory government should introduce legislation to create a criminal offence of failure to report targeted at child sexual abuse in an institutional context as follows:

- (a) The failure to report offence should apply to any adult person who:

- (i) is an owner, manager, staff member or volunteer of a relevant institution – this includes persons in religious ministry and other officers or personnel of religious institutions
- (ii) otherwise requires a Working with Children Check clearance for the purposes of their role in the institution

but it should not apply to individual foster carers or kinship carers.

- (b) The failure to report offence should apply if the person fails to report to police in circumstances where they know, suspect, or should have suspected (on the basis that a reasonable person in their circumstances would have suspected and it was criminally negligent for the person not to suspect), that an adult associated with the institution was sexually abusing or had sexually abused a child.

[remainder of Recommendation 33 omitted]

### **Recommendation 35**

Each state and territory government should ensure that the legislation it introduces to create the criminal offence of failure to report recommended in recommendation 33 addresses religious confessions as follows:

- (a) The criminal offence of failure to report should apply in relation to knowledge gained or suspicions that are or should have been formed, in whole or in part, on the basis of information disclosed in or in connection with a religious confession.
- (b) The legislation should exclude any existing excuse, protection or privilege in relation to religious confessions to the extent necessary to achieve this objective.
- (c) Religious confession should be defined to include a confession about the conduct of a person associated with the institution made by a person to a second person who is in religious ministry in that second person's professional capacity according to the ritual of the church or religious denomination concerned

### **Recommendation 36**

State and territory governments should introduce legislation to create a criminal offence of failure to protect a child within a relevant institution from a substantial risk of sexual abuse by an adult associated with the institution as follows:

- (a) The offence should apply where:
  - (i) an adult person knows that there is a substantial risk that another adult person associated with the institution will commit a sexual offence against:
    - (A) a child under 16
    - (B) a child of 16 or 17 years of age if the person associated with the institution is in a position of authority in relation to the child

- (ii) the person has the power or responsibility to reduce or remove the risk
  - (iii) the person negligently fails to reduce or remove the risk.
- (b) The offence should not be able to be committed by individual foster carers or kinship carers.
- (c) Relevant institutions should be defined to include institutions that operate facilities or provide services to children in circumstances where the children are in the care, supervision or control of the institution. Foster care and kinship care services should be included, but individual foster carers and kinship carers should not be included. Facilities and services provided by religious institutions, and any service or functions performed by persons in religious ministry, should be included.
- (d) State and territory governments should consider the Victorian offence in section 49C of the *Crimes Act 1958* (Vic) as a useful precedent, with an extension to include children of 16 or 17 years of age if the person associated with the institution is in a position of authority in relation to the child.

### Area of implication for the Church

Sacrament of Confession, Civil governance, Professional standards

### Overview

These recommendations are to be found in:

- Vol 7, Ch 2, Reporting institutional abuse to external authorities, Sect 2.5, Improving institutional reporting (Recommendation 7.4),
- Vol 16, Book 2, Part D, Religious institutions, Ch 13, Catholic Church, Section 13.11, Contributing factors in the Catholic Church, Sub-section 13.11.10, The sacrament of reconciliation (Recommendation 16.26)
- Vol 16, Book 3, Part E, Creating child safe religious institutions, Ch 20, Making religious institutions safe, Sect 20.4.8, Physical and online environments (Recommendation 16.48),
- Criminal Justice report, Vol 2, Part IV, Third party offences, Ch 16, Failure to report offences (Recommendations 32 and 33),
- Criminal Justice report, Ch 16, Sect 16.7.2, Treatment of religious confessions (Recommendations 35),
- Criminal Justice report, Vol 2, Part IV, Ch 17, Failure to protect offences, (Recommendation 36),

## Council comment

The Council supported, and continues to support, retention of the civil law protection for the seal of the confessional but it should be accompanied by a comprehensive review of the issues discussed in the introduction.

In relation to mandatory reporting, the Council supported, and supports, the attainment of consistency across the jurisdictions and, subject to protection for the seal, the inclusion of persons in religious ministry in the class of mandatory reporters.

The relevant policy positions advanced by the Council are described in the section of the introductory chapter entitled 'The sacrament of confession'.

In opposing recommendation 7.4, the Council repeats its earlier comment about the need for a review of the theology of the sacrament and the practical operation of the seal and reporting obligations. Its reasons are set out in the section in the introductory chapter under the heading 'The sacrament of confession'.

### **The operation of the sacrament**

Given the evidence in the Catholic Church Final Hearing about the reach of the seal (in particular, the disclosure by a child that she or he has been abused) and the availability of conditional absolution it is hard to argue against Recommendation 16.26. The same can be said for Recommendation 16.48.

In general terms the Council supports both recommendations. There may be elements of the detail with which issue can be taken. For example, the suggestion in Recommendation 16.26 that any advice from the Holy See should be made public is all very well but it depends on the manner and extent of publicity. It should go beyond providing information for dissemination in the media. Part of the problem is the 'pastoral' aspect, one element of which is the understanding and expectation of the lay faithful about the extent of the seal. Another aspect which became clear during the gathering of evidence for the Catholic Church Final Hearing and the evidence given by seminary directors in the public hearing is that the instruction of seminarians about the theological underpinnings and the pastoral and practical elements is deficient. It is difficult to see how either of those problems could be remedied without meaningful communications with the public.

In relation to the vexed question whether the seal covers a disclosure by a child (Recommendation 16.26), the Council understands that Archbishop Wilson, in his private capacity rather than on behalf of ACBC, wrote to the Holy See requesting clarification but, to date, has not received a reply. The delegation that went to Rome in October 2017 raised the issue in the meeting with the Secretary of State and others but there was no discussion about the substance or the process. In other words, the Holy See is already aware of the issue but, for the reasons set out in the section in the introductory chapter headed 'Canon law', the recommendations should be brought formally to the attention of the Holy See.

So far as concerns 'line of sight' (Recommendation 16.48), the Council understands that this is unlikely to present practical difficulties for sacramental participation that is arranged for or by a school. It may be more problematic for individual participation by a child, for example, when she or he attends alone at regular parish confessional session.

## Failure to report and failure to protect offences

It is difficult to argue against the strengthening of the mandatory reporting regime and its extension to include persons in religious ministry. In some jurisdictions, for example, the Northern Territory, this is already the case and consistency across the country is highly desirable. However, as with many such initiatives, both at the level of principle and in the detail of how they may be implemented there are some aspects of the proposed legislation that are of concern, for example:

- The words in recommendation 33 that a failure to report offences arises when a *should have suspected* (on the basis that a reasonable person in their circumstances would have suspected and it was criminally negligent for the person not to suspect)’ abuse imports a highly objective standard, which is unusual in the criminal law,
- The words in recommendation 36 that failure to protect offence arises where substantial risk that another adult person associated with the institution *will commit* a sexual offence against a child are unclear.

It is beyond the scope of this initial analysis to delve deeply into those issues but it is clear that much work remains to be done.

It is also to be hoped that in pursuing the goal of consistency across jurisdictions in relation to mandatory reporting regimes, there is a principled approach to the search for the best legislative framework and not simply an adoption of the highest or lowest common denominator.

## Action

### The seal

The Implementation Advisory Group should commission research, probably in conjunction with the Canon Law Society of Australia and New Zealand, concerning:

- The theological underpinning of, and the practices relating to the delivery of, the sacrament with particular reference to the seal of the confessional and the extent to which reporting obligations can be complied with and, allied with it, the theology of the child.
- Improvements to formation and training of clergy about these matters and education programs for the faithful about the sacrament.
- Ways and means in which the concerns identified by the Royal Commission about the dangers to children inherent in the present manner of operation of the sacrament and concerning its coverage of confessions by a perpetrator and disclosure by a child that she or he has been abused.

The Implementation Advisory Group should also commission research, including an opinion from senior counsel, about the extent to which legislation of the type proposed in Recommendation 7.4 would be inimical to freedom of religion.

The ACBC should establish a committee or working group to develop strategies for articulating the position of the Church in relation to the seal and for dealing with governments if (when) legislation is proposed.

### Confusion about the sacrament

In addition to the communications initiated by Archbishop Wilson and the October 2017 delegation to the Holy See, all of these recommendations should be brought to the attention of the Holy See working group with a suggestion that they be referred to, among other bodies, the Pontifical Commission for the Protection of Minors.

The Implementation Advisory Group should also commission work to improve the instruction of seminarians and professional development for clergy about the theological underpinnings and the pastoral and practical elements. There will also be a role for CPSL in this respect when it looks at the broader aspects of formation and seminary curricular.

### Physical environment of the confessional

Many dioceses have already issued guidelines or directives along the lines of Recommendation 16.48. Again, the Implementation Advisory Group should encourage the others to follow suit and for a consistent approach to be adopted. However, work will have to be done on the practicalities of ensuring 'line of sight' and the presence of an independent adult at regular parish (as well as school-initiated) sacramental participation.

### Mandatory reporting regimes

The issues dealt with in Recommendations 33, 35 and 36 are largely state and territory based. Nonetheless, there are matters of principle that will be of general application. The Implementation Advisory Group should commission research on those questions for the benefit of individual diocese (or provinces) if (when) the issue arises.

As indicated, the Council supported, and continues to support, retention of the civil law protection for the seal of the confessional. In relation to mandatory reporting, the Council supported, and supports, the attainment of consistency across the jurisdictions and, subject to protection for the seal, the inclusion of persons in religious ministry in the class of mandatory reporters.

The relevant policy positions advanced by the Council are described in the section of the introductory chapter entitled 'The sacrament of confession'.

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## Recommendations 7.5 and 7.6

### **Recommendation 7.5**

The Australian Government and state and territory governments should ensure that legislation provides comprehensive protection for individuals who make reports in good faith about child sexual abuse in institutional contexts. Such individuals should be protected from civil and criminal liability and from reprisals or other detrimental action as a result of making a complaint or report, including in relation to:

- (a) mandatory and voluntary reports to child protection authorities under child protection legislation
- (b) notifications concerning child abuse under the Health Practitioner Regulation National Law.

### **Recommendation 7.6**

State and territory governments should amend child protection legislation to provide adequate protection for individuals who make complaints or reports in good faith to any institution engaging in child-related work about:

- (a) child sexual abuse within that institution or
- (b) the response of that institution to child sexual abuse.

Such individuals should be protected from civil and criminal liability and from reprisals or other detrimental action as a result of making a complaint or report.

### Area of implication for the Church

Civil governance

### Overview

These recommendations are to be found in Vol 7: Improving institutional responding and reporting, Ch 2: Reporting institutional abuse to external authorities, Sect 2.5: Improving institutional reporting, p 107. They advocate the extension of 'whistle blower' protections to persons reporting abuse.

### Council comment

All States and Territories have whistle blower protection legislation, although it differs widely in content and reach and is directed more to the public sector than private organisations. Given the trend of legislative change in this country it is difficult to argue against these recommendations. However, as is so often the case, much will depend on the content of the legislation.



## Action

The Implementation Advisory Group should monitor the situation closely and, in the meantime, commission research as to how an extension of whistle blower protections might affect other aspects of the work of Catholic institutions and entities.

## Recommendations 7.7 and 7.8

### **Recommendation 7.7**

Consistent with Child Safe Standard 6: Processes to respond to complaints of child sexual abuse are child focused, institutions should have a clear, accessible and child-focused complaint handling policy and procedure that sets out how the institution should respond to complaints of child sexual abuse. The complaint handling policy and procedure should cover:

- (a) making a complaint
- (b) responding to a complaint
- (c) investigating a complaint
- (d) providing support and assistance
- (e) achieving systemic improvements following a complaint.

### **Recommendation 7.8**

Consistent with Child Safe Standard 1: Child safety is embedded in institutional leadership, governance and culture, institutions should have a clear code of conduct that:

- a. outlines behaviours towards children that the institution considers unacceptable, including concerning conduct, misconduct or criminal conduct
- b. includes a specific requirement to report any concerns, breaches or suspected breaches of the code to a person responsible for handling complaints in the institution or to an external authority when required by law and (or) the institution's complaint handling policy
- c. outlines the protections available to individuals who make complaints or reports in good faith to any institution engaging in child-related work (see Recommendation 7.6 on reporter protections).

### **Area of implication for the Church**

Child Safety Standards, Professional Standards

### **Overview**

These recommendations are to be found in Vol 7: Improving institutional responding and reporting, Ch 3: Improving institutional response to complaints, Section 3.5: Child focused complaint procedures, p 217.

Chapter 3 is predicated on an assumption that institutions will continue to be engaged in complaints handling. This extract from Sect 3.1 in Vol 7 indicates the Commissioners thinking:

*Throughout our case studies and private sessions, we heard many cases of institutions that were deficient in appropriately responding to complaints of child sexual abuse. In particular, we heard that many institutions had not developed or implemented clear and accessible complaint handling policies and procedures that could guide them on how to respond to complaints. We were told many institutions would benefit from guidance on how to respond well to child sexual abuse complaints.*

This should be read in conjunction with our discussion of recommendations 16.51 to 16.54 which deal with complaint handling regimes in religious institutions.

#### Council comment

The Council's position is encapsulated in the oft-quoted comment:

*The days of the Church investigating itself must be over.*

It has become apparent that, while the sentiment is laudable, it is unlikely to be achieved because (among other things):

- a national (or other) redress scheme based on the Royal Commission's recommendations will be limited to historic events, and
- subject to whatever may arise in relation to mandatory reporting, some complainants may still want the Church authority to deal with their issues.

In the discussion about Recommendation 6.6 the Council set out the text of Child Safe Standards 1 and 6. The Council supports Recommendations 7.7 and 7.8 and makes the comments that follow.

It will be necessary to re-examine *Towards Healing, The Melbourne Response* and complaints handling regimes utilised by individual Church authorities to ensure that they comply with the nominated standards. For example, and although it is not the subject of a discrete recommendation, In Vol 16, Book 3, Part E, Ch 22, Redress for survivors of abuse in religious institutions, p509, the Royal Commission says this:

*The Catholic Church, through Catholic Professional Standards Limited, should develop a new standard for pastoral response to survivors, outside of the national redress scheme, which incorporates best practice, having regard to the recommendations set out in our Redress and Civil Litigation report and those processes already in operation in particular Catholic Church authorities.*

It should be noted that Standard 6 includes a requirement that, among other things, complaints are 'responded to promptly and thoroughly'.

Standard 1 requires the formulation of a code of conduct. To some extent, *Integrity in Ministry* has elements of a code and there may be other documents of similar import. However, it may be necessary to devise a code (or codes) to cover the specific matters envisaged in Recommendation 7.8.



## Action

Church authorities should review their existing complaint handling policies and procedures to ensure these recommendations are fully articulated and implemented (see also recommendations 16.51 to 16.54).

The Implementation Advisory Group should commission a re-examination of *Towards Healing* and *The Melbourne Response* and should coordinate revisions of other complaints handling regimes and the development of appropriate codes of conduct. This should include the recommendation of the Royal Commission concerning a more pastoral approach to survivors (see above).

The Council always envisaged that CPSL would develop standards of best practice in relation to complaints handling. It, too, should be involved in this work.

All Church authorities who have a complaints handling regime should review the relevant policies and procedures to ensure that these recommendations are properly articulated and implemented (see also Recommendations 16.51 to 16.54).

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## Recommendations 7.9, 7.10, 7.11 and 7.12

### Recommendation 7.9

State and territory governments should establish nationally consistent legislative schemes (reportable conduct schemes), based on the approach adopted in New South Wales, which oblige heads of institutions to notify an oversight body of any reportable allegation, conduct or conviction involving any of the institution's employees.

### Recommendation 7.10

Reportable conduct schemes should provide for:

- (a) an independent oversight body
- (b) obligatory reporting by heads of institutions
- (c) a definition of reportable conduct that covers any sexual offence, or sexual misconduct, committed against, with, or in the presence of, a child
- (d) a definition of reportable conduct that includes the historical conduct of a current employee
- (e) a definition of employee that covers paid employees, volunteers and contractors
- (f) protection for persons who make reports in good faith
- (g) oversight body powers and functions that include:
  - (i) scrutinising institutional systems for preventing reportable conduct and for handling and responding to reportable allegations, or reportable convictions
  - (ii) monitoring the progress of investigations and the handling of complaints by institutions
  - (iii) conducting, on its own motion, investigations concerning any reportable conduct of which it has been notified or otherwise becomes aware
  - (iv) power to exempt any class or kind of conduct from being reportable conduct
  - (v) capacity building and practice development, through the provision of training, education and guidance to institutions
  - (vi) public reporting, including annual reporting on the operation of the scheme and trends in reports and investigations, and the power to make special reports to parliaments.

### Recommendation 7.11

State and territory governments should periodically review the operation of reportable conduct schemes, and in that review, determine whether the schemes should cover additional institutions that exercise a high degree of responsibility for children and involve a heightened risk of child sexual abuse.

### **Recommendation 7.12**

Reportable conduct schemes should cover institutions that:

- exercise a high degree of responsibility for children
- engage in activities that involve a heightened risk of child sexual abuse, due to institutional characteristics, the nature of the activities involving children, or the additional vulnerability of the children the institution engages with.

At a minimum, these should include institutions that provide:

- (a) accommodation and residential services for children, including:
  - (i) housing or homelessness services that provide overnight beds for children and young people
  - (ii) providers of overnight camps
- (b) activities or services of any kind, under the auspices of a particular religious denomination or faith, through which adults have contact with children
- (c) childcare services, including:
  - (i) approved education and care services under the Education and Care Services National Law
  - (ii) approved occasional care services
- (d) child protection services and out-of-home care, including:
  - (i) child protection authorities and agencies
  - (ii) providers of foster care, kinship or relative care
  - (iii) providers of family group homes
  - (iv) providers of residential care
- (e) disability services and supports for children with disability, including:
  - (i) disability service providers under state and territory legislation
  - (ii) registered providers of supports under the National Disability Insurance Scheme
- (f) education services for children, including:
  - (i) government and non-government schools
  - (ii) TAFEs and other institutions registered to provide senior secondary education or training, courses for overseas students or student exchange programs
- (g) health services for children, including:

- (i) government health departments and agencies, and statutory corporations
  - (ii) public and private hospitals
  - (iii) providers of mental health and drug or alcohol treatment services that have inpatient beds for children and young people
- (h) justice and detention services for children, including:
- (i) youth detention centres
  - (ii) immigration detention facilities.

### Area of implication for the Church

#### Professional Standards

#### Overview

These recommendations are found in Vol 7: Improving institutional responding and reporting, Ch 4: Oversight of institutional complaint handling, Section 4.5: Implementing reportable conduct schemes, p 283 (Recommendations 7.9, 7.10, 7.11) and Section 4.6: Scope of reportable conduct schemes, p 294 (Recommendation 7.12).

#### Council comment

The Council recognises that this recommendation may contribute to the development of public policy. Should these recommendations be fully implemented, the function of CPSL, which was not intended to duplicate the operation of civil regulatory processes, should be reviewed accordingly.

#### Action

The implementation of this recommendation by government should be monitored by CPSL, which should link in with Catholic health and community services as well as the education sector in responding to these matters.

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## Volume 8 - Recordkeeping and information sharing

Volume 8, Recordkeeping and information sharing examines records and recordkeeping by institutions that care for or provide services to children; and information sharing between institutions with responsibilities for children's safety and wellbeing and between those institutions and relevant professionals.

It makes recommendations to improve records and recordkeeping practices within institutions and information sharing between key agencies and institutions.

The Royal Commission made 23 recommendations in this volume.

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## Recommendation 8.1

To allow for delayed disclosure of abuse by victims and take account of limitation periods for civil actions for child sexual abuse, institutions that engage in child-related work should retain, for at least 45 years, records relating to child sexual abuse that has occurred or is alleged to have occurred.

### Area of implication for the Church

Civil governance, professional standards

### Overview

In several of the Royal Commission case studies inadequate record keeping and destruction of records was highlighted as causing or contributing to issues with the institutional response provided to survivors.

Proper record keeping, particularly for Church institutions that are no longer in operation, has been a contentious issue with survivor advocacy groups.

The Royal Commission considers that issues with poor record keeping are not limited to the past and current practices need to improve to ensure greater institutional accountability.

Church authorities with responsibility for records relating to their work with children in historic and current settings have a responsibility to maintain appropriate records for extended periods of time and ensure that access for individuals to records which relate to them is provided in a timely and efficient way.

### Council comment

As a general principle the Council supports record keeping for an extended period of time, to enable more certainty for survivors seeking to access personal records with a view to being able to verify allegations of historical abuse within Church institutions.

### Action

Church authorities should implement recommendation 8.1.

Recommendation 8.1 should be referred to CPSL for consideration and development of appropriate standards.

Implementation progress by Church authorities and CPSL should be monitored by the Implementation Advisory Group.

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## Recommendations 8.2 and 8.3

### **Recommendation 8.2**

The National Archives of Australia and state and territory public records authorities should ensure that records disposal schedules require that records relating to child sexual abuse that has occurred or is alleged to have occurred be retained for at least 45 years.

### **Recommendation 8.3**

The National Archives of Australia and state and territory public records authorities should provide guidance to government and non-government institutions on identifying records which, it is reasonable to expect, may become relevant to an actual or alleged incident of child sexual abuse; and on the retention and disposal of such records.

#### Area of implication for the Church

Civil governance

#### Overview

These recommendations are found in Vol 8, Sect 2.11

#### Action

The implementation of these recommendations by government should be monitored by CPSL and reflected in standards as appropriate.

## Recommendation 8.4

All institutions that engage in child-related work should implement the following principles for records and recordkeeping, to a level that responds to the risk of child sexual abuse occurring within the institution.

**Principle 1: Creating and keeping full and accurate records relevant to child safety and wellbeing, including child sexual abuse, is in the best interests of children and should be an integral part of institutional leadership, governance and culture.**

Institutions that care for or provide services to children must keep the best interests of the child uppermost in all aspects of their conduct, including recordkeeping. It is in the best interest of children that institutions foster a culture in which the creation and management of accurate records are integral parts of the institution's operations and governance.

**Principle 2: Full and accurate records should be created about all incidents, responses and decisions affecting child safety and wellbeing, including child sexual abuse.**

Institutions should ensure that records are created to document any identified incidents of grooming, inappropriate behaviour (including breaches of institutional codes of conduct) or child sexual abuse and all responses to such incidents.

Records created by institutions should be clear, objective and thorough. They should be created at, or as close as possible to, the time the incidents occurred, and clearly show the author (whether individual or institutional) and the date created.

**Principle 3: Records relevant to child safety and wellbeing, including child sexual abuse, should be maintained appropriately.**

Records relevant to child safety and wellbeing, including child sexual abuse, should be maintained in an indexed, logical and secure manner. Associated records should be collocated or cross-referenced to ensure that people using those records are aware of all relevant information.

**Principle 4: Records relevant to child safety and wellbeing, including child sexual abuse, should only be disposed of in accordance with law or policy.**

Records relevant to child safety and wellbeing, including child sexual abuse, must only be destroyed in accordance with records disposal schedules or published institutional policies. Records relevant to child sexual abuse should be subject to minimum retention periods that allow for delayed disclosure of abuse by victims, and take account of limitation periods for civil actions for child sexual abuse.

**Principle 5: Individuals' existing rights to access, amend or annotate records about themselves should be recognised to the fullest extent.**

Individuals whose childhoods are documented in institutional records should have a right to access records made about them. Full access should be given unless contrary to law. Specific, not generic, explanations should be provided in any case where a record, or part of a record, is withheld or redacted. Individuals should

be made aware of, and assisted to assert, their existing rights to request that records containing their personal information be amended or annotated, and to seek review or appeal of decisions refusing access, amendment or annotation.

### Area of implication for the Church

Civil governance, professional standards

#### Overview

These recommendations are found in Vol 8, Sect 2.13.

#### Council comment

The Royal Commission identified that inadequate record keeping has contributed to institutional failures in identifying and responding to risks and incidents of abuse.

The Royal Commission considers that issues with poor record keeping are not limited to the past and current practices need to improve to ensure greater institutional accountability.

Church authorities with responsibility for records relating to their work with children in historic and (or) current settings have a responsibility to maintain appropriate records and ensure that access for individuals to records which relate to them is provided in a timely and efficient way.

In its response to the consultation paper on Records and Record Keeping (November 2016) the Council supported the five principles for record keeping identified by the Royal Commission.

A sixth suggested principle around 'enforcement' was not supported by the Council and has not formed part of the Royal Commission's recommendations.

#### Action

Church authorities should implement Recommendation 8.4.

Recommendation 8.4 should be referred to CPSL for consideration and development of appropriate standards.

Implementation progress by Church authorities and CPSL should be monitored by the Implementation Advisory Group.

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## Recommendation 8.5

State and territory governments should ensure that non-government schools operating in the state or territory are required to comply, at a minimum, with standards applicable to government schools in relation to the creation, maintenance and disposal of records relevant to child safety and wellbeing, including child sexual abuse.

### Area of implication for the Church

Schools

### Overview

This recommendation is found in Vol 8, Section 2, 2.14.1, p 112.

### Council comment

The Council provides in-principle support for this recommendation which would form part of registration requirements.

### Action

Recommendation 8.5 should be referred to CPSL, the NCEC and state Catholic education commissions and offices for consideration and implementation.

## Recommendations 8.6, 8.7 and 8.8

### **Recommendation 8.6**

The Australian Government and state and territory governments should make nationally consistent legislative and administrative arrangements, in each jurisdiction, for a specified range of bodies (prescribed bodies) to share information related to the safety and wellbeing of children, including information relevant to child sexual abuse in institutional contexts (relevant information). These arrangements should be made to establish an information exchange scheme to operate in and across Australian jurisdictions.

### **Recommendation 8.7**

In establishing the information exchange scheme, the Australian Government and state and territory governments should develop a minimum of nationally consistent provisions to:

- (a) enable direct exchange of relevant information between a range of prescribed bodies, including service providers, government and non-government agencies, law enforcement agencies, and regulatory and oversight bodies, which have responsibilities related to children's safety and wellbeing
- (b) permit prescribed bodies to provide relevant information to other prescribed bodies without a request, for purposes related to preventing, identifying and responding to child sexual abuse in institutional contexts
- (c) require prescribed bodies to share relevant information on request from other prescribed bodies, for purposes related to preventing, identifying and responding to child sexual abuse in institutional contexts, subject to limited exceptions
- (d) explicitly prioritise children's safety and wellbeing and override laws that might otherwise prohibit or restrict disclosure of information to prevent, identify and respond to child sexual abuse in institutional contexts
- (e) provide safeguards and other measures for oversight and accountability to prevent unauthorised sharing and improper use of information obtained under the information exchange scheme
- (f) require prescribed bodies to provide adversely affected persons with an opportunity to respond to untested or unsubstantiated allegations, where such information is received under the information exchange scheme, prior to taking adverse action against such persons, except where to do so could place another person at risk of harm.

### **Recommendation 8.8**

The Australian Government, state and territory governments and prescribed bodies should work together to ensure that the implementation of our recommended information exchange scheme is supported with education, training and guidelines. Education, training and guidelines should promote understanding of, and confidence in, appropriate information sharing to better prevent, identify and respond to child sexual abuse in institutional contexts, including by addressing:

- (a) impediments to information sharing due to limited understanding of applicable laws

(b) unauthorised sharing and improper use of information.

## Area of implication for the Church

Civil governance

### Overview

These recommendations are found in Vol 8, Sect 3.3.

### Council comment

The Council recognises that these recommendations may contribute to the development of public policy. Should these recommendations be fully implemented, the function of CPSL, which was not intended to duplicate the operation of civil regulatory processes, should be reviewed accordingly.

### Action

The implementation of these recommendations by government should be monitored by CPSL.

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## Recommendation 8.9

The Council of Australian Governments (COAG) Education Council should consider the need for nationally consistent state and territory legislative requirements about the types of information recorded on teacher registers. Types of information that the council should consider, with respect to a person's registration and employment as a teacher, include:

- (a) the person's former names and aliases
- (b) the details of former and current employers
- (c) where relating to allegations or incidents of child sexual abuse:
  - (i) current and past disciplinary actions, such as conditions on, suspension of, and cancellation of registration
  - (ii) grounds for current and past disciplinary actions
  - (iii) pending investigations
  - (iv) findings or outcomes of investigations where allegations have been substantiated
  - (v) resignation or dismissal from employment.

### Area of implication for the Church

#### Schools

#### Overview

This recommendation is found Vol 8, Section 4, 4.2.1 on page 296: Information sharing about teachers.

#### Council comment

The Council provided a response to the Royal Commission's discussion paper: Strengthening Information Sharing Arrangements in April 2017 (see Chapter 3 pp 17-21).

The Council supports a national approach to teacher registration.

The Council noted its support of any initiative that promotes a register of teachers containing information about potential risk that can be checked. Working with children checks alone are not adequate to alert employers about past conduct issues of teachers who may pose a risk to children.

It is imperative that information regarding pending investigations is maintained by teacher registration authorities to address the current problem of grooming and other harmful behaviours that are reported but not



substantiated and (or) teachers resigning before the investigation of a complaint against them has concluded, and moving to a different jurisdiction to continue working with children. Provided access to and sharing of information maintained in the register is subject to safeguards, as discussed elsewhere in this response, the Council considers that for information of this nature the principle of ensuring children's safety and wellbeing should take precedence over that of 'innocent until proven guilty'.

The Council supports this recommendation.

### Action

For the consideration of CPSL, the NCEC and state Catholic education offices and commissions.

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## Recommendation 8.10

The COAG Education Council should consider the need for nationally consistent provisions in state and territory teacher registration laws providing that teacher registration authorities may, and (or) must on request, make information on teacher registers available to:

- (a) teacher registration authorities in other states and territories
- (b) teachers' employers.

### Area of implication for the Church

Schools

### Overview

This recommendation is found Vol 8, Section 4, 4.2.1 on page 303 of the Royal Commission's final report: Information sharing about teachers.

### Council comment

The Council responded to the Royal Commission's discussion paper: *Strengthening Information Sharing Arrangements* in April 2017. (See Chapter 3 p 18). The Council noted its support for the stronger of the propositions put by the Royal Commission that state and territory teacher registration legislation should provide that teacher registration authorities must on request, provide access to information on teacher registers to employers where the information relates to allegations or incidents of child sexual abuse by current or prospective teacher employees, and those authorities must, on request, provide access to information on teacher registers to other state and territory registering authorities where it relates to allegations or incidents of child sexual abuse.

Teacher employers should also be required to check their jurisdictional teacher register before employing a teacher, and state and territory registering authorities should be required to check teacher registers in other jurisdictions before registering a teacher. If these requirements are not compulsory, current gaps in information sharing between employers regarding high risk individuals will continue. Clear standards and guidelines will be required to clearly spell out obligations and overcome any reluctance.

The Council agrees with this recommendation.

### Action

For the consideration of CPSL, the NCEC and state Catholic education offices and commissions.

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## Recommendation 8.11

The COAG Education Council should consider the need for nationally consistent provisions

- (a) in state and territory teacher registration laws or
- (b) in administrative arrangements, based on legislative authorisation for information sharing under our recommended information exchange scheme providing that teacher registration authorities may or must notify teacher registration authorities in other states and territories and teachers' employers of information they hold or receive about the following matters where they relate to allegations or incidents of child sexual abuse:
  - (i) disciplinary actions, such as conditions or restrictions on, suspension of, and cancellation of registration, including with notification of grounds
  - (ii) investigations into conduct, or into allegations or complaints
  - (iii) findings or outcomes of investigations
  - (iv) resignation or dismissal from employment.

### Area of implication for the Church

Schools

### Overview

This recommendation is found Vol 8, Section 4, 4.2.1, p 303.

### Council comment

The Council responded to the Royal Commission's discussion paper: *Strengthening Information Sharing Arrangements* in April 2017. (See chapter 3 p. 18) The Council supports information sharing that allows for mutual, intra and cross-jurisdictional access and disclosure of information on teacher registration between employing authorities.

The Council submitted that there should be no limit on information sharing between state and territory registration authorities. For employers, the usual obligations of confidentiality attaching to a recruitment process should apply, such that access to information obtained from registration authorities or other prescribed bodies is limited to principals and others to whom the information necessarily needs to be disclosed, who are placed under a similar obligation of confidentiality.

The Council agrees with this recommendation.



## Action

For the consideration of CPSL, the NCEC and state Catholic education offices and commissions.

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## Recommendation 8.12

In considering improvements to teacher registers and information sharing by registration authorities, the COAG Education Council should also consider what safeguards are necessary to protect teachers' personal information.

### Area of implication for the Church

Schools

### Overview

This recommendation is found Vol 8, Section 4, 4.2.1 on page 306 of the Royal Commission's final report: Information sharing about teachers.

### Council comment

The Council responded to the Royal Commission's discussion paper: *Strengthening Information Sharing Arrangements* in April 2017. (See Chapter 3 pp 18-19). For employers, the usual obligations of confidentiality attaching to a recruitment process should apply, such that access to information obtained from registration authorities or other prescribed bodies is limited to principals and others to whom the information necessarily needs to be disclosed, who are placed under a similar obligation of confidentiality.

The Council noted that there should also be an obligation for employers to share information with both regulatory bodies and other prospective employers. A related issue not raised in the discussion paper is the management of referee checking between employers, the inconsistent approaches to the types of questions and process utilised and the cases where employers may be reluctant to provide negative information through concern of recourse by the applicant, such as civil proceedings for defamation. Reference checking could be significantly improved through provision of standards and guidelines for this process.

The Council agrees with this recommendation.

### Action

For the consideration of CPSL, the NCEC and state Catholic education offices and commissions.

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## Recommendation 8.13

State and territory governments should ensure that policies provide for the exchange of a student's information when they move to another school, where:

- (a) the student may pose risks to other children due to their harmful sexual behaviours or may have educational or support needs due to their experiences of child sexual abuse and
- (b) the new school needs this information to address the safety and wellbeing of the student or of other students at the school.

State and territory governments should give consideration to basing these policies on our recommended information exchange scheme (Recommendations 8.6 to 8.8).

### Area of implication for the Church

Schools

### Overview

This recommendation is found Vol 8, Section 4, 4.3.6, p 322.

Reference should also be made to Case Study 45 which included the examination of the response of St Ignatius' College Riverview to a student who is alleged to have been sexually abused at another school.

### Council comment

The Council responded to the Royal Commission's discussion paper: *Strengthening Information Sharing Arrangements* in April 2017. (See Chapter 3 p 20). The Council submits that the principle of ensuring children's safety and wellbeing would indicate that state and territory legislation and policy should require provision of transfer notes when a student transfers from one (government or non-government) school to another, whether they are within the same jurisdiction or moving to a different jurisdiction. Transfer notes should include information to assist the new school to identify and address needs and risks arising out of, or related to the transferring student's experience of sexual abuse or exhibition of harmful sexual behaviours. Transfer notes should include information about both the transferring student's educational and support needs and risks the transferring student may pose to the safety and wellbeing of other students.

The Council agrees with this recommendation in-principle. Operational and policy issues need clarification in consultation with the schools sector to ensure these recommendations work well, and as intended. Some schools have already implemented or begun to implement the recommendations.



## Action

For the consideration of CPSL, the NCEC and state Catholic education offices and commissions.

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## Recommendation 8.14

State and territory governments should ensure that policies for the exchange of a student's information when they move to another school:

- (a) provide that the principal (or other authorised information sharer) at the student's previous school is required to share information with the new school in the circumstances described in Recommendation 8.13 and
- (b) apply to schools in government and non-government systems.

### Area of implication for the Church

Schools

#### Overview

This recommendation is found Vol 8, Section 4, 4.3.6, p 323.

#### Council comment

The Council responded to the Royal Commission's discussion paper: *Strengthening Information Sharing Arrangements* in April 2017. (See Chapter 3 p 21). The Council agrees that the process currently in place in non-government schools is effective, and state and territory education authorities should provide for policies and protocols that require schools to issue standard collection notices informing parents, guardians and students about the collection, use and disclosure of information, including that: a. prior to and during the period of a student's enrolment at the school, personal (including sensitive) information about the student will be collected, and b. this information may be passed on to another school (as well as to other relevant entities and persons) to facilitate the transfer of a student, for educational and support purposes and to assist the new school to exercise its duty of care.

The development of a standard collection notice compliant with federal, state and territory privacy legislation would be useful as a consistent guide across jurisdictions and school sectors. Consistency in the approach taken to these issues between jurisdictions and education systems, whether government or non-government, is to be preferred.

The Council agrees in-principle with this recommendation.

#### Action

For the consideration of CPSL, the NCEC and state Catholic education offices and commissions.

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## Recommendation 8.15

State and territory governments should ensure that policies about the exchange of a student's information (as in Recommendations 8.13 and 8.14) provide the following safeguards, in addition to any safeguards attached to our recommended information exchange scheme:

- (a) information provided to the new school should be proportionate to its need for that information to assist it in meeting the student's safety and wellbeing needs, and those of other students at the school
- (b) information should be exchanged between principals, or other authorised information sharers, and disseminated to other staff members on a need-to-know basis.

### Area of implication for the Church

Schools

### Overview

This recommendation is found Vol 8, Section 4, 4.3.6, p 323.

### Council comment

The Council responded to the Royal Commission's discussion paper: *Strengthening Information Sharing Arrangements* in April 2017. (See Chapter 3 p 21). There is a clear need for information pertaining to the behaviour of high risk students transferring between schools to be shared by the transferor school with the transferee school. Stringent safeguards are required to conserve the confidentiality of students' personal information when it is transferred between schools. It is a very difficult and complex problem, as it is important to balance the welfare of the child transferring with the welfare of the children already at the school.

The Council agrees with this recommendation.

### Action

For the consideration of CPSL, the NCEC and state Catholic education offices and commissions.

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## Recommendation 8.16

The COAG Education Council should review the Interstate Student Data Transfer Note and Protocol in the context of the implementation of our recommended information exchange scheme (Recommendations 8.6 to 8.8).

### Area of implication for the Church

Schools

### Overview

This recommendation is found Vol 8, Section 4, 4.3.6, p 324.

### Council comment

The Council agrees with this recommendation.

### Action

For the consideration of CPSL, the NCEC and state Catholic education offices and commissions.

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## Recommendation 8.17

State and territory governments should introduce legislation to establish carers registers in their respective jurisdictions, with national consistency in relation to:

- (a) the inclusion of the following carer types on the carers register:
  - (i) foster carers
  - (ii) relative/kinship carers
  - (iii) residential care staff
- (b) the types of information which, at a minimum, should be recorded on the register
- (c) the types of information which, at a minimum, must be made available to agencies or bodies with responsibility for assessing, authorising or supervising carers, or other responsibilities related to carer suitability and safety of children in out-of-home care.

### Area of implication for the Church

Child Safe Standards, Out of Home Care

### Overview

This recommendation is found in Vol 8, Ch 4, Sect 4.4.1, p 334, Sharing information about carers,

### Council comment

This section of the report deals with a nationally consistent approach to registration and monitoring of foster carers and residential carers.

Many state jurisdictions maintain registers of foster carers and residential carers. At this time, the datasets included in the registers are inconsistent and there are limited options to share information between jurisdictions.

In its response to Issues Paper No 4: Institutional Responses to Child Sexual Abuse in Out-of-Home Care (2016), the Council supported for the introduction of a Carers Register in each jurisdiction with nationally consistent dataset and with appropriate safeguards, the introduction of information sharing provisions across jurisdictions.

The strategy to introduce a comprehensive carer registers, including a nationally consistent dataset with mechanisms to allow the cross jurisdictional information sharing is supported. The proposed model will



significantly improve the ability of out-of-home care services to access the information required to support the screening, assessment and management of carers.

The Council makes the additional comment that the proposed register will require an investment by providers to ensure capacity to comply with register data entry and update requirements.

#### Action

For the attention of CSSA ( OOHC providers ) and CPSL

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## Recommendation 8.18

Carers registers should be maintained by state and territory child protection agencies or bodies with regulatory or oversight responsibility for out-of-home care in that jurisdiction.

### Area of implication for the Church

Child Safe Standards, Out of Home Care

### Overview

This recommendation is found in Vol 8, Ch 4, Sect 4.4.1, p334, Sharing information about carers,

### Council comment

This section of the report deals with recommendations for a carer register to be managed by the agency responsible for the accreditation of OOHC organisations.

There are currently differences in how each jurisdiction manages carer registers. In some jurisdiction (e.g. Victoria) the register is managed by the funding body Department of Health and Human Services, in others (e.g. NSW) the register is managed by the Children's Guardian.

In its response to the Consultation Paper - *Institutional Responses to Child Sexual Abuse in Out-of-Home Care* (2016), the Council provided support for the accreditation of out-of-home care organisations to be separate from the funding body (e.g. following the NSW Children's Guardian model). This support should be extended to include the management of carer registers by such bodies.

The strategy for responsibility for carer registers to be maintained by the accrediting body for out-of-home providers is supported.

### Action

For the attention of CPSL and CSSA ( OOHC providers).

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## Recommendation 8.19

State and territory governments should consider the need for carers registers to include, at a minimum, the following information (register information) about, or related to, applicant or authorised carers, and persons residing on the same property as applicant/authorised home-based carers (household members):

- (a) lodgement or grant of applications for authorisation
- (b) status of the minimum checks set out in Recommendation 12.6 as requirements for authorisation, indicating their outcomes as either satisfactory or unsatisfactory
- (c) withdrawal or refusal of applications for authorisation in circumstances of concern (including in relation to child sexual abuse)
- (d) cancellation or surrender of authorisation in circumstances of concern (including in relation to child sexual abuse)
- (e) previous or current association with an out-of-home care agency, whether by application for authorisation, assessment, grant of authorisation, or supervision
- (f) the date of reportable conduct allegations, and their status as either current, finalised with ongoing risk-related concerns, and (or) requiring contact with the reportable conduct oversight body.

### Area of implication for the Church

Child Safe Standards, Out of Home Care

### Overview

This recommendation is found in Vol 8, Ch 4, Sect 4.4.1, p 343, Sharing information about carers.

### Council comment

This section of the report calls for a nationally consistent approach to registration and monitoring of carers

Many state jurisdictions maintain registers of foster carers and residential carers. At this time the datasets included in the registers is inconsistent and there are limited options to share information between jurisdictions.

As noted in the Council's response to the Consultation Paper - Institutional Responses to Child Sexual Abuse in OOHC (2016), support was provided for the introduction of a carers register in each jurisdiction with a nationally consistent dataset. The Council also supported, with appropriate safeguards, the introduction of information sharing provisions across jurisdictions.



The strategy to introduce a comprehensive carer register including a nationally consistent dataset is supported. The proposed model will significantly improve the ability of OOHC services to access information required to support high quality OOHC.

### Action

For the attention of CPSL and CSSA (OOHC providers).

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## Recommendation 8.20

State and territory governments should consider the need for legislative and administrative arrangements to require responsible agencies to:

- (a) record register information in minimal detail
- (b) record register information as a mandatory part of carer authorisation
- (c) update register information about authorised carers.

### Area of implication for the Church

Child Safe Standards, Out of Home Care

#### Overview

This recommendation is found in Vol 8, Ch 4, Sect 4.4.1, p 345, Sharing information about carers.

#### Council comment

Many state jurisdictions maintain registers of foster carers and residential carers. At this time, the datasets included in the registers is inconsistent.

The Royal commission found that jurisdictional carers registers are likely to promote children's safety in out-of-home care more effectively if they operate beyond databases of carer records to function as legislatively mandated tools for implementing minimum carer assessment and authorisation requirements.

As noted in the Council's response to the Consultation Paper - Institutional Responses to Child Sexual Abuse in OOHC (2016), the Council provided support for the introduction of a Carers Register in each jurisdiction with nationally consistent dataset. Also support, with appropriate safeguards, the introduction of information sharing provisions across jurisdictions.

The strategy to introduce a comprehensive carer registers including a nationally consistent dataset is supported. The proposed model will significantly improve the ability of OOHC services to access the information required to support high quality OOHC.

#### Action

For the attention of CPSL and CSSA (OOHC providers).

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## Recommendation 8.21

State and territory governments should consider the need for legislative and administrative arrangements to require responsible agencies:

- (a) before they authorise or recommend authorisation of carers, to:
  - (i) undertake a check for relevant register information, and
  - (ii) seek further relevant information from another out-of-home care agency where register information indicates applicant carers, or their household members (in the case of prospective home-based carers) have a prior or current association with that other agency
- (b) in the course of their assessment, authorisation, or supervision of carers, to:
  - (i) seek further relevant information from other agencies or bodies, where register information indicates they hold, or may hold, additional information relevant to carer suitability, including reportable conduct information.

State and territory governments should give consideration to enabling agencies to seek further information for these purposes under our recommended information exchange scheme (Recommendations 8.6 to 8.8).

### Area of implication for the Church

Child Safe Standards, Out of Home Care

### Overview

This recommendation is found in Vol 8, Ch 4, Sect 4.4.1, p 345, Sharing information about carers.

### Council comment

This section of the report recommends a nationally consistent approach to registration and monitoring of foster carers and residential carers.

Many state jurisdictions maintain registers of foster carers and residential carers. At this time, the datasets included in the registers is inconsistent and there are limited options to share information between jurisdictions.

As noted in the Council's response to the Consultation Paper - Institutional Responses to Child Sexual Abuse in OOHC (2016), the Council provided support for the introduction of a Carers Register in each jurisdiction with nationally consistent dataset. The Council also supported, with appropriate safeguards, the introduction of information sharing provisions across jurisdictions.



The strategy to introduce a comprehensive carer registers including a nationally consistent dataset is supported. The proposed model will significantly improve the ability of OOHC services to access the information required to support high quality OOHC.

### Action

For the attention of CPSL and CSSA ( OOHC providers).

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## Recommendation 8.22

State and territory governments should consider the need for effective mechanisms to enable agencies and bodies to obtain relevant information from registers in any state or territory holding such information.

Consideration should be given to legislative and administrative arrangements, and digital platforms, which will enable:

- (a) agencies responsible for assessing, authorising or supervising carers
- (b) other agencies, including jurisdictional child protection agencies and regulatory and oversight bodies, with responsibilities related to the suitability of persons to be carers and the safety of children in out-of-home care

to obtain relevant information from their own and other jurisdictions' registers for the purpose of exercising their responsibilities and functions.

### Area of implication for the Church

Child Safe Standards, Out of Home Care

### Overview

This recommendation is found in Vol 8, Ch 4, Sect 4.4.1, p 349, Sharing information about carers.

### Council comment

This section of the report recommends a nationally consistent approach to registration and monitoring of foster carers and residential carers.

Many state jurisdictions maintain registers of foster carers and residential carers. At this time the datasets included in the registers is inconsistent and there are limited options to share information between jurisdictions.

As noted in the Council's response to the Consultation Paper - Institutional Responses to Child Sexual Abuse in OOHC (2016), the Council provided support for the introduction of a Carers Register in each jurisdiction with nationally consistent dataset. The Council also supported, with appropriate safeguards, the introduction of information sharing provisions across jurisdictions.

The strategy to introduce a comprehensive carer registers including a nationally consistent dataset is supported. The proposed model will significantly improve the ability of OOHC services to access the information required to support high quality OOHC.



## Action

For the attention of CPSL and CSSA (OOHC providers).

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## Recommendation 8.23

In considering the legislative and administrative arrangements required for carers registers in their jurisdiction, state and territory governments should consider the need for guidelines and training to promote the proper use of carers registers for the protection of children in out-of-home care. Consideration should also be given to the need for specific safeguards to prevent inappropriate use of register information.

### Area of implication for the Church

Child Safe Standards, Out of Home Care

#### Overview

This recommendation is found in Vol 8, Ch 4, Sect 4.4.1, p 354, Sharing information about carers.

#### Council comment

This section of the report recommends a nationally consistent approach to registration and monitoring of foster carers and residential carers. It deals with a nationally consistent approach to registration and monitoring of foster carers and residential carers.

Many state jurisdictions maintain registers of foster carers and residential carers. At this time the datasets included in the registers is inconsistent and there are limited options to share information between jurisdictions.

As noted in the Council's response to the Consultation Paper - Institutional Responses to Child Sexual Abuse in OOHC (2016), the Council provided support for the introduction of a Carers Register in each jurisdiction with nationally consistent dataset. Also support, with appropriate safeguards, the introduction of information sharing provisions across jurisdictions.

The strategy to introduce a comprehensive carer registers including a nationally consistent dataset is supported. The proposed model will significantly improve the ability of OOHC services to access the information required to support high quality OOHC.

#### Action

For the attention of CPSL and CSSA (OOHC providers).

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## Volume 9, Advocacy, support and therapeutic treatment services

Volume 9, Advocacy, support and therapeutic treatment services examines what the Royal Commission learned about the advocacy and support and therapeutic treatment service needs of victims and survivors of child sexual abuse in institutional contexts, and outlines recommendations for improving service systems to better respond to those needs and assist survivors towards recovery.

The Royal Commission made nine recommendations in this volume.

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## Recommendations 9.1, 9.2 and 9.3

### **Recommendation 9.1**

The Australian Government and state and territory governments should fund dedicated community support services for victims and survivors in each jurisdiction, to provide an integrated model of advocacy and support and counselling to children and adults who experienced childhood sexual abuse in institutional contexts. Funding and related agreements should require and enable these services to:

- (a) be trauma-informed and have an understanding of institutional child sexual abuse
- (b) be collaborative, available, accessible, acceptable and high quality
- (c) use case management and brokerage to coordinate and meet service needs
- (d) support and supervise peer-led support models.

### **Recommendation 9.2**

The Australian Government and state and territory governments should fund Aboriginal and Torres Strait Islander healing approaches as an ongoing, integral part of advocacy and support and therapeutic treatment service system responses for victims and survivors of child sexual abuse. These approaches should be evaluated in accordance with culturally appropriate methodologies, to contribute to evidence of best practice.

### **Recommendation 9.3**

The Australian Government and state and territory governments should fund support services for people with disability who have experienced sexual abuse in childhood as an ongoing, integral part of advocacy and support and therapeutic treatment service system responses for victims and survivors of child sexual abuse.

#### **Area of implication for the Church**

Civil Governance

Overview

These recommendations can be found in Vol 9, Section:5, pp.162-174.

#### **Council comment**

Council contributed to the Royal Commission consultation on advocacy, treatment and support services for victims of childhood sexual abuse. An integrated, clinically informed, comprehensive package of services should form the array of support available for victims and survivors. The Church has either directly developed services of this type or fund outsourced services to achieve similar outcomes.



This recommendation is consistent with Council policy. It is important to emphasise that Catholic services designed to provide trauma informed professional clinical and pastoral services be included in the community support services envisaged in this recommendation.

### Action

The Implementation Advisory Group should monitor the envisaged roll out of community based support program. The brief should pay particular attention to the role of Catholic support services.

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## Recommendation 9.4

The Australian Government should establish and fund a legal advice and referral service for victims and survivors of institutional child sexual abuse. The service should provide advice about accessing, amending and annotating records from institutions, and options for initiating police, civil litigation or redress processes as required. Support should include advice, referrals to other legal services for representation and general assistance for people to navigate the legal service system.

Funding and related agreements should require and enable these services to be:

- (a) trauma-informed and have an understanding of institutional child sexual abuse
- (b) collaborative, available, accessible, acceptable and high quality.

### Area of implication for the Church

#### Civil Governance

#### Overview

This recommendation is found in Vol 9, Section 5.3.1 pp 168 to 174.

#### Council comment

The Council recognises that this recommendation may contribute to the development of public policy.

#### Action

No action for Church authorities at this time.

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## Recommendation 9.5

The Australian Government should fund a national website and helpline as a gateway to accessible advice and information on childhood sexual abuse. This should provide information for victims and survivors, particularly victims and survivors of institutional child sexual abuse, the general public and practitioners about supporting children and adults who have experienced sexual abuse in childhood and available services. The gateway may be operated by an existing service with appropriate experience and should:

- (a) be trauma-informed and have an understanding of institutional child sexual abuse
- (b) be collaborative, available, accessible, acceptable and high quality
- (c) provide telephone and online information and initial support for victims and survivors, including independent legal information and information about reporting to police
- (d) provide assisted referrals to advocacy and support and therapeutic treatment services.

### Area of implication for the Church

#### Civil Governance

#### Overview

This recommendation is found in Vol 9, Section 5, pp 162 to 166

#### Council comment

The Council recognises that this recommendation may contribute to the development of public policy.

#### Action

No action for Church authorities at this time.

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## Recommendation 9.6

The Australian Government and state and territory governments should address existing specialist sexual assault service gaps by increasing funding for adult and child sexual assault services in each jurisdiction, to provide advocacy and support and specialist therapeutic treatment for victims and survivors, particularly victims and survivors of institutional child sexual abuse. Funding agreements should require and enable services to:

- (a) be trauma-informed and have an understanding of institutional child sexual abuse
- (b) be collaborative, available, accessible, acceptable and high quality
- (c) use collaborative community development approaches
- (d) provide staff with supervision and professional development.

### Area of implication for the Church

#### Civil Governance

#### Overview

This recommendation is found in Vol 9, Section 5, pp 162 to 166

#### Council comment

#### Action

No action for Church authorities at this time.

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## Recommendation 9.7

Primary Health Networks, within their role to commission joined up local primary care services, should support sexual assault services to work collaboratively with key services such as disability-specific services, Aboriginal and Torres Strait Islander services, culturally and linguistically diverse services, youth justice, aged care and child and youth services to better meet the needs of victims and survivors.

### Area of implication for the Church

#### Civil Governance

#### Overview

This recommendation is found in Vol 9, Section 5, pp 162 to 166

#### Council comment

The Council recognises that this recommendation may contribute to the development of public policy.

#### Action

No action for Church authorities at this time.

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## Recommendation 9.8

The Australian Government and state and territory government agencies responsible for the delivery of human services should ensure relevant policy frameworks and strategies recognise the needs of victims and survivors and the benefits of implementing trauma informed approaches.

### Area of implication for the Church

Civil Governance

### Overview

This recommendation is found in Vol 9, Advocacy, support and therapeutic treatment services, Ch 5, Improving service systems for victims and survivors, section 5.3, A responsive service system, sub section 5.3.5, responsive mainstream services pp 184 - 188

### Council comment

The Council recognises that this recommendation may contribute to the development of public policy.

### Action

No action for Church authorities at this time.

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## Recommendation 9.9

The Australian Government, in conjunction with state and territory governments, should establish and fund a national centre to raise awareness and understanding of the impacts of child sexual abuse, support help-seeking and guide best practice advocacy and support and therapeutic treatment. The national centre's functions should be to:

- (a) raise community awareness and promote destigmatising messages about the impacts of child sexual abuse
- (b) increase practitioners' knowledge and competence in responding to child and adult victims and survivors by translating knowledge about the impacts of child sexual abuse and the evidence on effective responses into practice and policy. This should include activities to:
  - (i) identify, translate and promote research in easily available and accessible formats for advocacy and support and therapeutic treatment practitioners
  - (ii) produce national training materials and best practice clinical resources
  - (iii) partner with training organisations to conduct training and workforce development programs
  - (iv) influence national tertiary curricula to incorporate child sexual abuse and trauma-informed care
  - (v) inform government policy making
- (c) lead the development of better service models and interventions through coordinating a national research agenda and conducting high-quality program evaluation.

The national centre should partner with survivors in all its work, valuing their knowledge and experience.

### Area of implication for the Church

#### Civil Governance

#### Overview

This recommendation is found in Vol 9, Section 6, pp 193 to 200

#### Council comment

The Council recognises that this recommendation may contribute to the development of public policy.



## Action

No action for Church authorities at this time.

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## Volume 10, Children with harmful sexual behaviours

Volume 10, Children with harmful sexual behaviours examines what the Royal Commission learned about institutional responses to children with harmful sexual behaviours. It discusses the nature and extent of these behaviours and the factors that may contribute to children sexually abusing other children.

The volume then outlines how governments and institutions should improve their responses and makes recommendations about improving prevention and increasing the range of interventions available for children with harmful sexual behaviours.

The Royal Commission made seven recommendations in this volume.

### General Council comment Chapter 10

The subject of this chapter is a matter of significance already to CSSA and Catholic education offices and commissions. They will continue their consideration of these issues.

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## Recommendation 10.1

The Australian Government and state and territory governments should ensure the issue of children's harmful sexual behaviours is included in the national strategy to prevent child sexual abuse that we have recommended (see Recommendations 6.1 to 6.3). Harmful sexual behaviours by children should be addressed through each of the following:

- (a) primary prevention strategies to educate family, community members, carers and professionals (including mandatory reporters) about preventing harmful sexual behaviours
- (b) secondary prevention strategies to ensure early intervention when harmful sexual behaviours are developing
- (c) tertiary intervention strategies to address harmful sexual behaviours.

### Area of implication for the Church

Child Safe Standards and Out of Home Care

### Overview

This recommendation is found Vol 10, Ch 4, Sect 4.2.2, p136, A range of interventions.

Section 4 describes a framework for improving responses to children with harmful sexual behaviours. The Royal Commission describes how a public health approach to prevention can be applied to prevent harmful sexual behaviours occurring, intervene early when harmful sexual behaviours first emerge and provide appropriate therapeutic intervention.

### Council comment

The Council supports this recommendation.

### Action

For the attention of CPSL and CSSA.

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## Recommendation 10.2

The Australian Government and state and territory governments should ensure timely expert assessment is available for individual children with problematic and harmful sexual behaviours, so they receive appropriate responses, including therapeutic interventions, which match their particular circumstances.

### Area of implication for the Church

Child Safe Standards and Out of Home Care

### Overview

This recommendation is found Vol 10, Ch 5, Sect 5.2.4, p 173, Improving Assessment.

Chapter 5 provides a detailed discussion of tertiary interventions for children with harmful sexual behaviours. Tertiary interventions include therapeutic assessment and intervention, as well as child protection and criminal justice system responses.

The Royal Commission focuses its discussion on the benefits of responding to children with harmful sexual behaviours with therapeutic intervention. It outlines how to improve access to and the quality of assessment and therapeutic interventions for children with harmful sexual behaviours. And it outlines that sometimes the identification of harmful sexual behaviours will trigger a child protection or criminal justice response, which it believes may be necessary for a small proportion of children with harmful sexual behaviours.

There is a need to improve the types of assessment tools available for the diverse range of children with harmful sexual behaviours. This section looks at internet, technology and pornography and OOHC.

### Council comment

The Council supports this recommendation.

### Action

For the attention of CPSL and CSSA.

## Recommendation 10.3

The Australian Government and state and territory governments should adequately fund therapeutic interventions to meet the needs of all children with harmful sexual behaviours. These should be delivered through a network of specialist and generalist therapeutic services. Specialist services should also be adequately resourced to provide expert support to generalist services.

### Area of implication for the Church

Child Safe Standards and Out of Home Care

#### Overview

This recommendation is found Vol 10, Ch 5, Sect 5.3.4: Improving access to therapeutic intervention, p 188 of the Royal Commission's final report.

Chapter 5 provides a detailed discussion of tertiary interventions for children with harmful sexual behaviours. Tertiary interventions include therapeutic assessment and intervention, as well as child protection and criminal justice system responses.

The Royal Commission focuses its discussion on the benefits of responding to children with harmful sexual behaviours with therapeutic intervention. It outlines how to improve access to and the quality of assessment and therapeutic interventions for children with harmful sexual behaviours. And it outlines that sometimes the identification of harmful sexual behaviours will trigger a child protection or criminal justice response, which it believes may be necessary for a small proportion of children with harmful sexual behaviours.

This section looks at improving access to therapeutic intervention, including increasing the number of therapeutic services.

#### Council comment

In its submission to the Royal Commission's Consultation paper: Institutional responses to child sexual abuse in OOHC, the Council noted there are insufficient therapeutic intervention services for children in OOHC who exhibit harmful sexual behaviours. The Council said that the placement and treatment options for children with sexually harmful behaviours need to be identified and strengthened urgently as they are largely nonexistent.

The Council acknowledges the Commission's finding that there is an insufficient treatment response for children who display sexually harmful behaviours and a shortage of expert advice and assistance for foster and kinship/relative carers. The impact this has on the sector is concerning, particularly for children, young people and carers who received little to no appropriate trauma-informed therapeutic intervention or support which often contributes to multiple placement changes for the young person involved.

The Council supports this recommendation.



## Action

For the attention of CPSL and CSSA (OOHC providers).

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## Recommendation 10.4

State and territory governments should ensure that there are clear referral pathways for children with harmful sexual behaviours to access expert assessment and therapeutic intervention, regardless of whether the child is engaging voluntarily, on the advice of an institution or through their involvement with the child protection or criminal justice systems.

### Area of implication for the Church

Child Safe Standards and Out of Home Care

#### Overview

This recommendation is found Vol 10, Ch 5, Sect 5.3.4, p191, Improving access to therapeutic intervention.

Chapter 5 provides a detailed discussion of tertiary interventions for children with harmful sexual behaviours. Tertiary interventions include therapeutic assessment and intervention, as well as child protection and criminal justice system responses.

The Royal Commission focuses its discussion on the benefits of responding to children with harmful sexual behaviours with therapeutic intervention. It outlines how to improve access to and the quality of assessment and therapeutic interventions for children with harmful sexual behaviours. And it outlines that sometimes the identification of harmful sexual behaviours will trigger a child protection or criminal justice response, which it believes may be necessary for a small proportion of children with harmful sexual behaviours.

This section describes improving assessment and therapeutic intervention, focusing on improving referral pathways to therapeutic services, including criminal justice pathways, child protection pathways, voluntary referrals from institutions and caregivers and the Victorian model which appears to enable more children with harmful sexual behaviours to access therapeutic interventions than other jurisdictions.

#### Council comment

The Council supports the recommendation.

#### Action

For the attention of CPSL and CSSA

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## Recommendation 10.5

Therapeutic intervention for children with harmful sexual behaviours should be based on the following principles:

- (a) a contextual and systemic approach should be used
- (b) family and carers should be involved
- (c) safety should be established
- (d) there should be accountability and responsibility for the harmful sexual behaviours
- (e) there should be a focus on behaviour change
- (f) developmentally and cognitively appropriate interventions should be used
- (g) the care provided should be trauma-informed
- (h) therapeutic services and interventions should be culturally safe
- (i) therapeutic interventions should be accessible to all children with harmful sexual behaviours.

### Area of implication for the Church

Child Safe Standards and Out of Home Care

#### Overview

This recommendation is found Vol 10, Ch 5, Sect 5.4.9, p 199, Therapeutic intervention should be accessible to all children with harmful sexual behaviours. Chapter 5 provides a detailed discussion of tertiary interventions for children with harmful sexual behaviours. Tertiary interventions include therapeutic assessment and intervention, as well as child protection and criminal justice system responses.

The Royal Commission focuses its discussion on the benefits of responding to children with harmful sexual behaviours with therapeutic intervention. It outlines how to improve access to and the quality of assessment and therapeutic interventions for children with harmful sexual behaviours. And it outlines that sometimes the identification of harmful sexual behaviours will trigger a child protection or criminal justice response, which it believes may be necessary for a small proportion of children with harmful sexual behaviours.

This section looks at best practice principles for therapeutic intervention.

#### Council comment

The Council supports the recommendation.



## Action

For the attention of CPSL and CSSA

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## Recommendation 10.6

The Australian Government and state and territory governments should ensure that all services funded to provide therapeutic intervention for children with harmful sexual behaviours provide professional training and clinical supervision for their staff.

### Area of implication for the Church

Child Safe Standards and Out of Home Care

#### Overview

This recommendation is found Vol 10, Ch 5, Sect 5.5.2, p 201, Supervision. Chapter 5 provides a detailed discussion of tertiary interventions for children with harmful sexual behaviours. Tertiary interventions include therapeutic assessment and intervention, as well as child protection and criminal justice system responses.

The Royal Commission focuses its discussion on the benefits of responding to children with harmful sexual behaviours with therapeutic intervention. It outlines how to improve access to and the quality of assessment and therapeutic interventions for children with harmful sexual behaviours. And it outlines that sometimes the identification of harmful sexual behaviours will trigger a child protection or criminal justice response, which it believes may be necessary for a small proportion of children with harmful sexual behaviours.

This section looks at developing the therapeutic workforce, including training and supervision.

#### Council comment

In its submissions to the Royal Commission's consultation paper on out-of-home care, the Council noted that children's harmful sexual behaviours in contemporary out-of-home care have been increasingly recognised as an issue of concern by people working in the field.

The Council supports the recommendation.

#### Action

For the attention of CPSL and CSSA.

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## Recommendation 10.7

The Australian Government and state and territory governments should fund and support evaluation of services providing therapeutic interventions for problematic and harmful sexual behaviours by children.

### Area of implication for the Church

Child Safe Standards and Out of Home Care

### Overview

This recommendation is found Vol 10, Ch 5, Sect 5.6, p 203, Improving evaluation of therapeutic interventions.

Chapter 5 provides a detailed discussion of tertiary interventions for children with harmful sexual behaviours. Tertiary interventions include therapeutic assessment and intervention, as well as child protection and criminal justice system responses.

The Royal Commission focuses its discussion on the benefits of responding to children with harmful sexual behaviours with therapeutic intervention. It outlines how to improve access to and the quality of assessment and therapeutic interventions for children with harmful sexual behaviours. And it outlines that sometimes the identification of harmful sexual behaviours will trigger a child protection or criminal justice response, which it believes may be necessary for a small proportion of children with harmful sexual behaviours.

This section looks at improving evaluation of therapeutic interventions.

### Council comment

The Council supports the recommendation.

### Action

For the attention of CPSL and CSSA.

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## Volume 12, Contemporary out-of-home care

Volume 12, Contemporary out-of-home care examines what the Royal Commission learned about institutional responses to child sexual abuse in contemporary out-of-home care. The volume examines the nature and adequacy of institutional responses and draws out common failings. It makes recommendations to prevent child sexual abuse from occurring in out-of-home care and, where it does occur, to help ensure effective responses.

The Royal Commission made 22 recommendations in this volume.

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## Recommendation 12.1

The Australian Government and state and territory governments should develop nationally agreed key terms and definitions in relation to child sexual abuse for the purpose of data collection and reporting by the Australian Institute of Health and Welfare (AIHW) and the Productivity Commission.

### Area of implication for the Church

Out of Home Care

### Overview

This recommendation is found Vol 12, Ch 5, Sect 5.2.1, p 255, Strengthening data collection and reporting.

### Council comment

The Royal Commission noted that state and territory representatives all acknowledged the need for immediate investment in new or upgraded administrative records systems to facilitate better recordkeeping.

There is significant scope for improved data collection and dissemination at a state and national level. It is difficult to calculate rates of abuse in care without first ensuring consistent definitions and data collection methods across jurisdictions. For example, in Australia there is no uniform definition of "sexual assault" with various legislative definitions across the states and territories.

Similarly, the Australian Institute of Health and Welfare Child Protection Australia Report 2011/12 (2013) presents data highlighting the considerable variation between jurisdictions in the proportion of sexual abuse substantiations as a proportion of all abuse substantiations. For example, the proportion of abuse substantiations recorded as sexual abuse was 3 per cent in Northern Territory and 22 per cent in Western Australia. Such data strongly suggests considerable variation in definitions and (or) practice.

As noted in the Council's response to the Consultation Paper - Institutional Responses to Child Sexual Abuse in OOHC (2016), support was provided to improve the reporting of the incidence of abuse in out-of-home care. Currently there is limited data publicly available. Jurisdictional differences in the response to allegations of abuse in OOHC, along with the lack of consistent data are significant impediments to monitoring the safety of children and assessing the efficacy of interventions.

The Council supports the recommendation as agreement across jurisdictions on definitions in relation to child sexual abuse will allow more consistent identification and reporting of child sexual abuse in OOHC.

### Action

For the attention of CPSL and CSSA (OOHC providers)

## Recommendation 12.2

The Australian Government and state and territory governments should prioritise enhancements to the Child Protection National Minimum Data Set to include:

- (a) data identifying children with disability, children from culturally and linguistically diverse backgrounds and Aboriginal and Torres Strait Islander children
- (b) the number of children who were the subject of a substantiated report of sexual abuse while in out-of-home care
- (c) the demographics of those children
- (d) the type of out-of-home care placement in which the abuse occurred
- (e) information about when the abuse occurred
- (f) information about who perpetrated the abuse, including their age and their relationship to the victim, if known.

### Area of implication for the Church

Out of Home Care

### Overview

This recommendation is found Vol 12, Ch 5, Sect 5.2.1: Strengthening data collection and reporting, p 256

### Council comment

The Royal Commission noted the importance of progressing work on the Child Protection National Minimum Data Set and acknowledged that state and territory representatives all highlighted the need for immediate investment in new or upgraded administrative records systems to facilitate better recordkeeping.

There is significant scope for improved data collection and dissemination at a state and national level. It is difficult to calculate rates of abuse in care without first ensuring consistent definitions and data collection methods across jurisdictions. For example, in Australia there is no uniform definition of "sexual assault" with various legislative definitions across the states and territories.

Similarly, the Australian Institute of Health and Welfare Child Protection Australia Report 2011/12 (2013) presents data highlighting the considerable variation between jurisdictions in the proportion of sexual abuse substantiations as a proportion of all abuse substantiations. For example, the proportion of abuse substantiations recorded as sexual abuse was 3 per cent in Northern Territory and 22 per cent in Western Australia. Such data strongly suggests considerable variation in definitions and (or) practice.



As noted in the Council's response to the Consultation Paper - Institutional Responses to Child Sexual Abuse in OOHC (2016), support was provided to improve the reporting of the incidence of abuse in out-of-home care. Currently there is limited data publicly available. Jurisdictional differences in the response to allegations of abuse in out-of-home care, along with the lack of consistent data are significant impediments to monitoring the safety of children and assessing the efficacy of interventions.

The Council supports the recommendation as agreement across jurisdictions on definitions in relation to child sexual abuse, based on enhancements to the Child Protection National Minimum Data Set, will allow more consistent identification and reporting of child sexual abuse in OOHC.

### Action

For the attention of CPSL and CSSA (OOHC providers).

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## Recommendation 12.3

State and territory governments should agree on reporting definitions and data requirements to enable reporting in the Report on government services on outcome indicators for 'improved health and wellbeing of the child', 'safe return home' and 'permanent care'..

### Area of implication for the Church

#### Out of Home Care

#### Overview

This recommendation is found Vol 12, Ch 5, Sect 5.2.1: Strengthening data collection and reporting, p 257

#### Council comment

There is a need for a sustained commitment to develop and implement measures – such as measures of life outcomes – and then to incorporate those measures in the Child Protection National Minimum Data Set.

The Royal Commission noted that out-of-home care service providers need to know whether the services and support they are providing to vulnerable children who may have been removed from their families of birth are giving those children the best possible life opportunities. The lack of reliable indicators, even at an individual level, currently make this assessment difficult.

As noted in the the Council's response to the Consultation Paper - Institutional Responses to Child Sexual Abuse in OOHC (2016), progress towards national consistency across the areas of training for carers, therapeutic care, leaving care and evaluation of outcomes are welcome.

The Council supports the recommendation as agreement outcomes measures across jurisdictions will support improved practice in OOHC.

#### Action

For the attention of CPSL and CSSA (OOHC providers).

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## Recommendation 12.4

Each state and territory government should revise existing mandatory accreditation schemes to:

- (a) incorporate compliance with the Child Safe Standards identified by the Royal Commission
- (b) extend accreditation requirements to both government and non-government out-of-home care service providers.

### Area of implication for the Church

Out of Home Care

#### Overview

This recommendation is found Vol 12, Ch 5, Sect 5.2.2: Child safe standards, p 262

#### Council comment

The Royal Commission noted that all Australian out-of-home care service providers should have the same Child Safe Standards in place to protect all children.

The Royal Commission found that inconsistent regulation between states and territories regarding the responsibilities of institutions and individuals to keep children safe in OOHC. This inconsistency means that children may have more or less protection depending on where they live.

As noted in the Council's response to the Consultation Paper - Institutional Responses to Child Sexual Abuse in OOHC (2016), the most effective way to embed child safe elements and to ensure they can be implemented by OOHC providers is to place them within the proposed nationally consistent standards. The Council also provided support for mechanisms that enable the voice of children to be heard. This is a key protective mechanism against sexual abuse.

The Council supports the recommendation as the proposed changes would provide for greater consistency and higher quality OOHC services.

#### Action

For the attention of CPSL and CSSA (OOHC providers).

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## Recommendation 12.5

In each state and territory, an existing statutory body or office that is independent of the relevant child protection agency and out-of-home care service providers, for example a children's guardian, should have responsibility for:

- (a) receiving, assessing and processing applications for accreditation of out-of-home care service providers
- (b) conducting audits of accredited out-of-home care service providers to ensure ongoing compliance with accreditation standards and conditions.

### Area of implication for the Church

Out of Home Care

### Overview

This recommendation is found Vol 12, Ch 5, Sect 5.2.2: Child safe standards, p 263

### Council comment

This section deals with a proposal modelled on the NSW system of out-of-home care accreditation – where a body separate from the funder is responsible for the accreditation of out-of-home care providers.

The Royal Commission found the child protection department in each state and territory is responsible for the accreditation of out-of-home care service agencies, except in New South Wales. Submissions to Institutional Responses to Child Sexual Abuse in OOHC (2016) expressed considerable support for the accreditation of out-of-home care service providers being undertaken by an agency independent of the child protection department, in line with the New South Wales model

As noted in the Council's response to the Consultation Paper - Institutional Responses to Child Sexual Abuse in OOHC (2016), the Council supports assessment systems for accreditation that are undertaken by an agency that is independent of the lead department as is the case in NSW with the Children's Guardian. All OOHC services, including those services that may be provided by lead departments, should be subject to the same accreditation requirements and associated monitoring systems.

The Council supports the recommendation as the proposed change would provide for consistent accountabilities and remove the potential conflict of interest in situations where the funder is also the accrediting body.



## Action

For the attention of CPSL and CSSA (OOHC providers).

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## Recommendation 12.6

In addition to a National Police Check, Working with Children Check and referee checks, authorisation of all foster and kinship/relative carers and all residential care staff should include:

- (a) community services checks of the prospective carer and any adult household members of home-based carers
- (b) documented risk management plans to address any risks identified through community services checks
- (c) at least annual review of risk management plans as part of carer reviews and more frequently as required.

### Area of implication for the Church

#### Out of Home Care

#### Overview

This recommendation is found Vol 12, Ch 5, Sect 5.2.3: Accountability for safety of children in out-of-home care, p 269

#### Council comment

This section deals with a proposal to augment existing checks required of foster carers and residential carers.

The Royal Commission noted that carers are the bedrock of the contemporary out-of-home care system. Ensuring that the carers authorised to care for Australia's children are the right people is essential.

As noted in the Council response to the Consultation Paper - Institutional Responses to Child Sexual Abuse in OOHC (2016), satisfactory probity, criminal and working with vulnerable persons checks should be conducted for all carers including members of the carer household over the age of 16.

The Council supports the recommendation the proposed additions to the checks for carers would provide for a more robust system of checks.

#### Action

For the attention of CPSL and CSSA ( OOHC providers).

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## Recommendation 12.7

All out-of-home care service providers should conduct annual reviews of authorised carers that include interviews with all children in the placement with the carer under review, in the absence of the carer.

### Area of implication for the Church

Out of Home Care

### Overview

This recommendation is found Vol 12, Ch 5, Sect 5.2.3: Accountability for safety of children in out-of-home care, p 271

### Council comment

The Royal Commission noted that foster and kinship/relative carers are reviewed annually in most jurisdictions, with the exceptions being in Queensland and the ACT.

As noted in the Council's response to the Consultation Paper - Institutional Responses to Child Sexual Abuse in OOHC (2016), the Council supports the regular review of carers including giving children the opportunity to provide feedback out the placement.

The Council supports the recommendation regarding comprehensive annual reviews for carers including residential care staff.

### Action

For the attention of CPSL and CSSA.

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## Recommendation 12.8

Each state and territory government should adopt a model of assessment appropriately tailored for kinship/relative care. This type of assessment should be designed to:

- (a) better identify the strengths as well as the support and training needs of kinship/relative carers
- (b) ensure holistic approaches to supporting placements that are culturally safe
- (c) include appropriately resourced support plans.

### Area of implication for the Church

#### Out of Home Care

#### Overview

This recommendation is found Vol 12, Ch 5, Sect 5.2.3: Accountability for safety of children in out-of-home care, p 274.

#### Council comment

The Royal Commission acknowledged there was considerable support for the development of specific models of screening, assessment and authorisation for kinship/relative carers in OOHC.

The Royal Commission noted the rapid increase in the proportion of children in kinship care placements across all Australian states and territories in recent years and that while the standards applied to assessment and authorisation of kinship/relative carers need to be equivalent to those applied to other carers, the Commission acknowledged there are essential differences that need to be acknowledged and incorporated into the assessment of kinship/ relative carers.

As noted in the Council's response to the Consultation Paper - Institutional Responses to Child Sexual Abuse in OOHC (2016), the placement type should not be a determinant of safety. Children and young people in kinship care are entitled to the same levels of safety as those in other types of care. However, kinship care requires a different approach for a number of reasons. For example, kinship placements may occur before a detailed assessment has taken place.

Additionally, kinship carers have to negotiate family dynamics and their responsibility to protect the child. In the experience of some OOHC providers, kinship carers are often older, single grandparents who may struggle with the burden of caring for a child or young person. The Council therefore advocates for kinship carers to receive sustained case management and in-home support.



The Council supports the recommendation regarding tailored screening and assessment processes for relative/kinship careers noting the importance of cultural safety and including provision of supports for carers.

### Action

For the attention of CPSL and CSSA (OOHC providers).

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## Recommendation 12.9

All state and territory governments should collaborate in the development of a sexual abuse prevention education strategy, including online safety, for children in out-of-home care that includes:

- (a) input from children in out-of-home care and care-leavers
- (b) comprehensive, age-appropriate and culture-appropriate education about sexuality and healthy relationships that is tailored to the needs of children in out-of-home care
- (c) resources tailored for children in care, for foster and kinship/relative carers, for residential care staff and for caseworkers
- (d) resources that can be adapted to the individual needs of children with disability and their carers.

### Area of implication for the Church

#### Out of Home Care

#### Overview

This recommendation is found Vol 12, Ch 5, Sect 5.3.2: Investing in prevention through education, p 290.

#### Council comment

The Royal Commission notes that for institutions to be safe for children, the communities in which the institutions are located need to be safe for children. A well-informed and proactive community could help to create an environment that is hostile to child sexual abuse.

The Royal Commission found there was strong agreement expressed in submissions to its consultation paper that the best way to 'normalise' sexual abuse prevention education for children in contemporary out-of-home care is through schools delivering well-rounded, age-appropriate and accessible education programs about interpersonal relationships, sex and sexual relationships.

As noted in the Council's response to the Consultation Paper - Institutional Responses to Child Sexual Abuse in OOHC (2016), the Council outlined how the use of social media to support child exploitation and enable access to pornographic material on the internet puts children in out-of-home care at risk. The maintenance of safe online environments for children and young people will remain a challenge for providers of OOHC. This will continue as technology evolves.

The experience of OOHC providers suggests that strategies to manage this risk are not well developed at this time. An effective response requires an organisation to possess the resources to protect children when they are



engaging online, supported by a workforce with the knowledge and skills to moderate the risks presented by the internet, while not limiting access to the benefits.

The Council provided support for the development of a consistent national education strategy to prevent child sexual abuse in out-of-home care. MacKillop Family Services suggests the work of Our Watch may provide guidance on developing and implementing community education strategies.

A national education strategy for children and young people in care must be carefully tailored and delivered, taking into account the history of trauma experiences and the potential disengagement from the community and mainstream education. Any such approach must include a focus on engaging this vulnerable cohort of children and young people. Children and young people living in out-of-home care may not receive the full benefits of a mainstream healthy relationships program due to being disengaged from schooling.

The Council supports a nationally consistent training framework for all carers on prevention of child sexual abuse in care as outlined in the Consultation Paper.

The Council supports the proposal for the development and implementation of a comprehensive sexual abuse education strategy.

#### Action

For the attention of CPSL and CSSA (OOHC providers).

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## Recommendation 12.10

State and territory governments, in collaboration with out-of-home care service providers and peak bodies, should develop resources to assist service providers to:

- (a) provide appropriate support and mechanisms for children in out-of-home care to communicate, either verbally or through behaviour, their views, concerns and complaints
- (b) provide appropriate training and support to carers and caseworkers to ensure they hear and respond to children in out-of-home care, including ensuring children are involved in decisions about their lives
- (c) regularly consult with the children in their care as part of continuous improvement processes.

### Area of implication for the Church

#### Out of Home Care

#### Overview

This recommendation is found Vol 12, Ch 5, Sect 5.3.3: Creating a culture that supports disclosure and identification of child sexual abuse, p 295 or.

#### Council comment

The Royal Commission noted that a lack of participation by children is one of the contributors to an environment that enables sexual abuse to occur. Where children do not feel listened to, they are less likely to report abuse and to have their reports taken seriously. Children need easy access to an adult they can talk to, and a complaints system that is accessible and in which they can have confidence.

The Royal Commission highlighted the difficulties that children in out-of-home care experience in being heard and having their concerns taken seriously, not least because of the significant power imbalances between a child and their carer. Commissioned research supports this proposition. In addition, 56.4 per cent of survivors who attended private sessions spoke about barriers to disclosure. Of these survivors, 31.7 per cent said they did not report the sexual abuse they experienced in contemporary OOHC because they had no one to tell, 24.1 per cent said they felt shame or embarrassment as a barrier to disclosure, 22.1 per cent said they did not feel safe to disclose or feared retribution if they spoke out, and 18.6 per cent said they feared they would not be believed.

As noted in the Council's response to the Consultation Paper - Institutional Responses to Child Sexual Abuse in OOHC (2016), the Council is supportive of mechanisms that enable the voice of children to be heard. The Council views this as a key protective mechanism against sexual abuse. Some organisations will require support to develop child safe policies and practices.



The Council supports the recommendation to promote the voice and participation of children and young people in out-of-home care.

### Action

For the attention of CPSL and CSSA (OOHC providers).

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## Recommendation 12.11

State and territory governments and out-of-home care service providers should ensure that training for foster and relative/kinship carers, residential care staff and child protection workers includes an understanding of trauma and abuse, the impact on children and the principles of trauma-informed care to assist them to meet the needs of children in out-of-home care, including children with harmful sexual behaviours.

### Area of implication for the Church

#### Out of Home Care

#### Overview

This recommendation is found Vol 12, Ch 5, Sect 5.3.3: Creating a culture that supports disclosure and identification of child sexual abuse, p 299.

#### Council comment

The recommendation is aimed at strengthening the capacity of those working in the OOHC system – principally foster and kinship/relative carers, residential care staff, and child protection caseworkers – to support and meet the needs of children in care, including those who have been sexually abused and children with harmful sexual behaviours

The Royal Commission noted that dislocation from family and community as a result of being placed in OOHC may, in itself, lead to further harm unless the care provided recognises and addresses the needs of individual children arising from prior trauma.

As noted in the Council's response to the Consultation Paper - Institutional Responses to Child Sexual Abuse in OOHC (2016), there is a range of mechanisms to better support children who have been sexually abused in out-of-home care. Progress towards national consistency across the areas of training for carers, therapeutic care, leaving care and evaluation of outcomes are welcome.

The National Therapeutic Residential Care Alliance (NTRCA) has developed a definition of therapeutic residential care (TRC) that the Council proposes should be adopted in the development of a nationally consistent framework:

*Therapeutic Residential Care is intensive and time-limited care for a child or young person in statutory care that responds to the complex impacts of abuse, neglect and separation from family. This is achieved through the creation of positive, safe, healing relationships and experiences informed by a sound understanding of trauma, damaged attachment, and developmental needs.*

The Council supports the recommendation to resource training for foster and relative/kinship carers, residential care staff and child protection workers to develop trauma informed practice.



## Action

For the attention of CPSL and CSSA (OOHC providers)

## Recommendation 12.12

When placing a child in OOHC, state and territory governments and out-of-home care service providers should take the following measures to support children with harmful sexual behaviours:

- (a) undertake professional assessments of the child with harmful sexual behaviours, including identifying their needs and appropriate supports and interventions to ensure their safety
- (b) establish case management and a package of support services
- (c) undertake careful placement matching that includes:
  - (i) i. providing sufficient relevant information to the potential carer/s and residential care staff to ensure they are equipped to support the child, and additional training as necessary
  - (ii) ii. rigorously assessing potential threats to the safety of other children, including the child's siblings, in the placement.

### Area of implication for the Church

#### Out of Home Care

##### Overview

This recommendation is found Vol 12, Ch 5, Sect 5.3.5: Identifying, assessing and supporting children with harmful sexual behaviours, p 304.

##### Council comment

This section suggests a comprehensive set of interventions is required to better address the risk of child-to-child sexual abuse in OOHC.

The Royal Commission heard from experts, practitioners and survivors that institutions did not protect children from sexual abuse by other children; that institutions often did not respond effectively to the complaints of children and their families who said another child had been sexually abusing them; and that institutions did not provide appropriate support and intervention to either victims or the children who exhibited harmful sexual behaviours.

As noted in the Council's response to the Consultation Paper - Institutional Responses to Child Sexual Abuse in OOHC (2016), placement matching mechanisms are a critical element in the prevention of child-to-child sexual abuse including a therapeutic assessment of the child or young person.

The Council supports the recommendations to improve the provision of therapeutic supports and the matching of children in OOHC.



## Action

For the attention of CPSL and CSSA (OOHC providers).

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## Recommendation 12.13

State and territory governments and out-of-home care service providers should provide advice, guidelines and ongoing professional development for all foster and kinship/relative carers and residential care staff about preventing and responding to the harmful sexual behaviours of some children in OOHC.

### Area of implication for the Church

Out of Home Care

#### Overview

This recommendation is found Vol 12, Ch 5, Sect 5.3.5: Identifying, assessing and supporting children with harmful sexual behaviours, p 304.

#### Council comment

The Royal Commission identified significant gaps in the response to children exhibiting harmful sexual behaviours.

It noted the gap in expert advice and assistance for foster and kinship/relative carers regarding harmful sexual behaviours displayed by children, including for carers of children with disability who exhibit harmful sexual behaviours.

As noted in the Council's response to the Consultation Paper - Institutional Responses to Child Sexual Abuse in OOHC (2016), there is a number of factors that can inhibit the accurate identification of child-to-child sexual abuse. Organisational staff often do not have a consistent understanding of these complexities. Clear learning and development strategies are required to ensure staff are equipped to navigate these issues with the children in their care.

The Council supports the recommendation for advice, guidelines and ongoing professional development for foster and kinship/relative carers and residential care staff about preventing and responding to the harmful sexual behaviours

#### Action

For the attention of CPSL and CSSA (OOHC providers).

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## Recommendation 12.14

All state and territory governments should develop and implement coordinated and multi-disciplinary strategies to protect children in residential care by:

- (a) identifying and disrupting activities that indicate risk of sexual exploitation
- (b) supporting agencies to engage with children in ways that encourage them to assist in the investigation and prosecution of sexual exploitation offences.

### Area of implication for the Church

#### Out of Home Care

#### Overview

This recommendation is found Vol 12, Ch 5, Sect 5.3.6: Preventing and responding to child sexual exploitation, p 305.

#### Council comment

The Royal Commission recommends the adoption of a model to address the risk of sexual exploitation.

The Royal Commission heard that children in OOHC may be at increased risk of sexual exploitation compared to children not in care – that is, being manipulated or coerced to participate in sexual activity by an adult outside the placement in exchange for, or for the promise of, an incentive.

As noted in the Council's response to the Consultation Paper - Institutional Responses to Child Sexual Abuse in OOHC (2016), the Council welcomes the approach that would increase awareness of child sexual exploitation (the Victorian partnership between Police, the Department of Health and Human Services and out-of-home care agencies is a good example). In Victoria, state-wide forums and cross-disciplinary joint training sessions have been underway for some time.

A key factor in the increased understanding of the issue of child sexual exploitation was the adoption of shared language and definitions and a commitment to a multi-agency approach involving police, child protection services and community service organisations.

In the final report, the Royal Commission highlights a case study of the Victorian initiative provided by MacKillop Family Services as an example to highlight the potential benefits of a coordinated response to apparent sexual exploitation risks in Australia.

The Council supports this recommendation.



## Action

For the attention of CPSL and CSSA (OOHC providers).

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## Recommendation 12.15

Child protection departments in all states and territories should adopt a nationally consistent definition for child sexual exploitation to enable the collection and reporting of data on sexual exploitation of children in out-of-home care as a form of child sexual abuse.

### Area of implication for the Church

#### Out of Home Care

#### Overview

This recommendation is found Vol 12, Ch 5, Sect 5.3.6: Preventing and responding to child sexual exploitation, p 308.

#### Council comment

In this section the Royal Commission says the collection of data on sexual exploitation of children in out-of-home care will enable governments to evaluate the success of strategies to reduce the sexual exploitation of children in out-of-home care.

The Royal Commission heard that an important step towards preventing and responding to child sexual exploitation is for agencies from different sectors (for example, police, child protection services and out-of-home care service providers) to participate in cross-disciplinary training to develop a common understanding of the issues and the language used to describe child sexual exploitation.

As noted in the Council's response to the Consultation Paper - Institutional Responses to Child Sexual Abuse in OOHHC (2016), a key factor in the increased understanding of the issue of child sexual exploitation was the adoption of shared language and definitions and a commitment to a multi-agency approach involving police, child protection services and community service organisations. In Victoria, stakeholders moved away from characterising child sexual exploitation as 'prostitution'. This outdated description carries the implication that a vulnerable and traumatised child is capable of consenting to sex with an adult who is likely to hold a great deal of power and resources compared with the child.

The Council supports the recommendation.

#### Action

For the attention of CPSL and CSSA

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## Recommendation 12.16

All institutions that provide OOHC should develop strategies that increase the likelihood of safe and stable placements for children in care. Such strategies should include:

- (a) improved processes for 'matching' children with carers and other children in a placement, including in residential care
  - the provision of necessary information to carers about a child, prior to and during their placement, to enable carers to properly support the child
- (b) support and training for carers to deal with the different developmental needs of children as well as managing difficult situations and challenging behaviour.

### Area of implication for the Church

#### Out of Home Care

#### Overview

This recommendation is found Vol 12, Ch 5, Sect 5.4.1: Increasing the stability of placements, p 316 .

#### Council comment

The Royal Commission learned that poorly matched placements, insufficient information being provided to the carers about the child being placed and insufficient ongoing support for carers to deal with the individual needs of the children in their care are factors that are very likely to lead to the breakdown of placements.

As noted in the Council's response to the Consultation Paper - Institutional Responses to Child Sexual Abuse in OOHC (2016), placement matching mechanisms are a critical element in the prevention of child-to-child sexual abuse including a therapeutic assessment of the child or young person. The Council also noted that clear learning and development strategies are required to ensure staff are equipped to respond to the developmental needs of children in their care.

The Council noted that where a child or young person has engaged in sexually harmful behaviour, there can be a tension between adequate sharing of information among service providers, including out-of-home care providers, and 'labelling' a child or young person as a perpetrator. Agencies need factual information about the child in order to place them appropriately. Honest, transparent and timely information sharing will ultimately enhance cooperation between agencies.

The Council supports the recommendation.



## Action

For the attention of CPSL and CSSA (OOHC providers).

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## Recommendation 12.17

Each state and territory government should ensure that:

- (a) the financial support and training provided to kinship/relative carers is equivalent to that provided to foster carers
- (b) the need for any additional supports are identified during kinship/relative carer assessments and are funded
- (c) additional casework support is provided to maintain birth family relationships.

### Area of implication for the Church

#### Out of Home Care

#### Overview

This recommendation is found Vol 12, Ch 5, Sect 5.4.1: Increasing the stability of placements, p 319.

#### Council comment

This recommendation would provide additional supports to relative/kinship carers and provide casework assistance to better support the engagement with family.

The Royal Commission noted that despite the value of kinship/relative care and its increasing use, during the OOHC public hearing it heard about a lack of support currently being provided to kinship carers across jurisdictions. In particular it heard that greater support is needed for kinship carers in terms of training and financial support, in particular for Aboriginal and Torres Strait Islander carers and for grandparents who are the most common kinship carers.

The Council supports the recommendation.

#### Action

For the attention of CPSL and CSSA (OOHC providers).

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## Recommendation 12.18

The key focus of residential care for children should be based on an intensive therapeutic model of care framework designed to meet the complex needs of children with histories of abuse and trauma.

### Area of implication for the Church

#### Out of Home Care

#### Overview

This recommendation is found Vol 12, Ch 5, Sect 5.4.3: Residential care, p 325.

#### Council comment

This section recommends aligning residential care as an intensive support option for children who have multiple or complex needs.

The Royal Commission noted that despite the risks commonly associated with residential care, research suggests there is an ongoing need for 'appropriately designed residential and group care' as part of the 'continuum of care options' provided by OOHC services.

As noted in the Council's response to the Consultation Paper - Institutional Responses to Child Sexual Abuse in OOHC (2016), the elements of therapeutic care to support children who have experienced complex trauma (careful matching of young people in the units, attention to the clinical training of staff so they could understand and respond effectively to trauma, clear practice leadership, ongoing supervision and regular reflective practice sessions for carers facilitated by a clinician) and provided a number of additional elements.

The Council supports this recommendation.

#### Action

For the attention of CPSL and CSSA (OOHC providers).

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## Recommendation 12.19

All residential care staff should be provided with regular training and professional supervision by appropriately qualified clinicians.

### Area of implication for the Church

#### Out of Home Care

#### Overview

This recommendation is found Vol 12, Ch 5, Sect 5.4.3: Residential care, p 326.

#### Council comment

This section recommends providing greater clinical and specialist support for residential carers.

The Royal Commission found there is a need for residential care staff to be provided with guidelines and ongoing professional development to improve responses to the harmful sexual behaviours of some children in out-of-home care. One of the most effective ways of ensuring these approaches is reflected in day-to-day practice and that staff are properly supported to provide the necessary level of care is to involve experienced clinicians in the training, mentoring and professional supervision of caregivers.

The Council's response to the Consultation Paper - Institutional Responses to Child Sexual Abuse in OOHC (2016) noted that regular team reflective practice sessions for staff led by a therapeutic specialist was an essential element of therapeutic residential care.

The Council supports this recommendation.

#### Action

For the attention of CPSL and CSSA (OOHC providers).

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## Recommendation 12.20

Each state and territory government, in consultation with appropriate Aboriginal and Torres Strait Islander organisations and community representatives, should develop and implement plans to:

- (a) fully implement the Aboriginal and Torres Strait Islander Child Placement Principle
- (b) improve community and child protection sector understanding of the intent and scope of the principle
- (c) develop outcome measures that allow quantification and reporting on the extent of the full application of the principle, and evaluation of its impact on child safety and the reunification of Aboriginal and Torres Strait Islander children with their families
- (d) invest in community capacity building as a recognised part of kinship care, in addition to supporting individual carers, in recognition of the role of Aboriginal and Torres Strait Islander communities in bringing up children.

### Area of implication for the Church

#### Out of Home Care

#### Overview

This recommendation is found Vol 12, Ch 5, Sect 5.5.1: Aboriginal and Torres Strait Islander children, p 334.

#### Council comment

Aboriginal and Torres Strait Islander children are increasingly over-represented in out-of-home care. Recommendations focus on improving the cultural safety and connection in OOHC through improving performance against the Aboriginal Child Placement Principle.

The Royal Commission noted that empirical data now supports the idea that connection to culture is associated with improved emotional, social and physical health for Aboriginal and Torres Strait Islander peoples. Positive cultural connection can increase the protective factors available to Aboriginal and Torres Strait Islander children by helping them to develop their identities, fostering high self-esteem, emotional strength and resilience.

As noted in the Council's response to the Consultation Paper - Institutional Responses to Child Sexual Abuse in OOHC (2016) the implementation of, and compliance with, the Aboriginal Child Placement Principle (ACPP) could be improved by ensuring funding for implementation of, and compliance with, the ACPP is commensurate with the needs and numbers of Aboriginal children entering OOHC.

The Council supports the recommendation.



## Action

For the attention of CPSL and CSSA ( OOHC providers).

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## Recommendation 12.21

Each state and territory government should ensure:

- (a) the adequate assessment of all children with disability entering out-of-home care
- (b) the availability and provision of therapeutic support
- (c) support for disability-related needs
- (d) the development and implementation of care plans that identify specific risk-management and safety strategies for individual children, including the identification of trusted and safe adults in the child's life.

### Area of implication for the Church

Out of Home Care

### Overview

This recommendation is found Vol 12, Ch 5, Sect 5.5.2: Children with a disability, p 336.

### Council comment

This section recommends implementing an individualised approach to better address the diverse needs of children entering out-of-home care.

The Royal Commission found that improving the safety of children requires mainstream out-of-home care services to develop competence in working with children with disability. Research into the needs of children with disability notes that interventions that target their needs are required, otherwise there is a risk that they will be ignored. In the case of therapeutic residential care, therapeutic models involve cognitive-behavioural strategies that may not be suitable for, or may require adaptation for, children with intellectual disabilities.

All children entering OOHC should have individualised care plans. The individualised care plans for children with disability in OOHC need to include institution-level and individual-level strategies to manage risk for these children.

As noted in the Council's response to the Consultation Paper - Institutional Responses to Child Sexual Abuse in OOHC (2016), the provision of responsive and therapeutic care that ensures that services are tailored to the child or young person's individual needs was a key element of high quality OOHC.

The Council supports the recommendation.



## Action

For the attention of CPSL and CSSA (OOHC providers).

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## Recommendation 12.22

State and territory governments should ensure that the supports provided to assist all care-leavers to safely and successfully transition to independent living include:

- (a) strategies to assist care-leavers who disclose that they were sexually abused while in out-of-home care to access general post-care supports
- (b) the development of targeted supports to address the specific needs of sexual abuse survivors, such as help in accessing therapeutic treatment to deal with impacts of abuse, and for these supports to be accessible until at least the age of 25.

### Area of implication for the Church

#### Out of Home Care

#### Overview

This recommendation is found Vol 12, Ch 5, Sect 5.5.3: Care-leavers, p 341.

#### Council comment

This section recommends the provision of better support for young people who have left care who may have experienced sexual abuse while in care.

The Royal Commission found that among the 3,100 or more Australian children who transition from out-of-home care each year, it is highly likely that there will be some who were sexually abused as children in out-of-home care, and who have already disclosed the abuse; some who were sexually abused in care, and who are yet to disclose the abuse; and some who were not sexually abused directly, but who may have witnessed or been affected by the sexual abuse of other children. For many children who experienced or were affected by sexual abuse in care and who are yet to disclose that abuse, information gathered by the Royal Commission through private sessions, submissions and research suggests that it may sometimes be many years before such disclosures are made

As noted in the Council's response to the Consultation Paper - Institutional Responses to Child Sexual Abuse in OOHC (2016), the Council agrees that a greater emphasis should be placed on support for young people when they turn 18 up to age 25. In relation to the experience of abuse in care, young people must be informed about what supports are available. OOHC providers must be resourced to meet the responsibility to be available to offer support to young people should they need to return.

The Council supports the recommendation and assist in service provider advocacy with relevant state and territory governments to implement the change.



## Action

For the attention of CPSL and CSSA (OOHC providers).

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## Volume 13, Schools

Volume 13, Schools examines what the Royal Commission learned about institutional responses to child sexual abuse in schools. The volume examines the nature and adequacy of institutional responses and draws out the contributing factors to child sexual abuse in schools. It makes recommendations to prevent child sexual abuse from occurring in schools and, where it does occur, to help ensure effective responses to that abuse.

The Royal Commission made eight recommendations in this volume.

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## Recommendation 13.1

All schools should implement the Child Safe Standards identified by the Royal Commission.

### Area of implication for the Church

Schools

### Overview

This recommendation is found in Vol 13, Ch 5, Sect 5.2.2: Implementing the Child Safe Standards in Schools, p 222.

The Council welcomed the release of two related Royal Commission reports in August 2016.

*Key Elements of a child-safe organisation* will assist institutions to prevent, identify and improve responses to physical, sexual, emotional and psychological abuse and neglect of children.

*Creating Child Safe Institutions* outlines the 10 elements that make an organisation child safe.

The Council contributed to the work through its submission to the Royal Commission's Issues Paper No 3: Child Safe Institutions in October 2013 where it submitted nine essential elements of a child safe organisation which are reflected in the Royal Commission's 10 elements.

The Council participated in private roundtable discussions: Making Institutions Child Safe in April 2016.

The Council also responded to the Royal Commission's Issues Paper No 9: Addressing the risk of child sexual abuse in primary and secondary schools, in September 2015.

### Council comment

The Council agrees with this recommendation, noting that all schools should demonstrate compliance or alignment with the standards.

### Action

For consideration by CPSL, NCEC and state Catholic education offices and commissions.

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## Recommendation 13.2

State and territory independent oversight authorities responsible for implementing the Child Safe Standards (see Recommendation 6.10) should delegate to school registration authorities the responsibility for monitoring and enforcing the Child Safe Standards in government and non-government schools.

### Area of implication for the Church

#### Schools

#### Overview

This recommendation is found in Vol 13, Ch 5, Sect 5.2.3: Monitoring and enforcing the Child Safe Standards in schools, p 226.

#### Council comment

The Council agrees with this recommendation.

#### Action

For the consideration of CPSL, NCEC and state Catholic education offices and commissions.

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## Recommendation 13.3

School registration authorities should place particular emphasis on monitoring government and non-government boarding schools to ensure they meet the Child Safe Standards. Policy guidance and practical support should be provided to all boarding schools to meet these standards, including advice on complaint handling.

### Area of implication for the Church

Schools

#### Overview

This recommendation is found in Vol 13, Ch 5, Sect 5.2.4: Supporting boarding schools to meet the Child Safe Standards, p 228.

#### Council comment

The Council agrees with this recommendation.

#### Action

For the consideration of CPSL, NCEC and state Catholic education offices and commissions.

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## Recommendation 13.4

The Australian Government and state and territory governments should ensure that needs-based funding arrangements for Aboriginal and Torres Strait Islander boarding students are sufficient for schools and hostels to create child safe environments.

### Area of implication for the Church

Schools

### Overview

This recommendation is found in Vol 13, Ch 5, Sect 5.2.4: Supporting boarding schools to meet Child Safe Standards, p 233.

### Council comment

The Council agrees with this recommendation.

### Action

For the consideration of CPSL, NCEC and state Catholic education offices and commissions.

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## Recommendation 13.5

Boarding hostels for children and young people should implement the Child Safe Standards identified by the Royal Commission. State and territory independent oversight authorities should monitor and enforce the Child Safe Standards in these institutions.

### Area of implication for the Church

Schools

### Overview

This recommendation is found Vol 13, Ch 5, Sect 5.2.4: Supporting boarding schools to meet child safe standards, p 233 of the Royal Commission's final report.

### Council comment

The Council agrees with this recommendation.

### Action

For the consideration of CPSL, NCEC and state Catholic education offices and commissions.

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## Recommendation 13.6

Consistent with the Child Safe Standards, complaint handling policies for schools (see Recommendation 7.7) should include effective policies and procedures for managing complaints about children with harmful sexual behaviours.

### Area of implication for the Church

Schools

### Overview

This recommendation is found Vol 13, Ch 5, Sect 5.4.2: Responding to complaints relating to children with harmful sexual behaviours, p 242.

### Council comment

The Council agrees in-principle with this recommendation.

### Action

For the consideration of CPSL, NCEC and state Catholic education offices and commissions.

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## Recommendation 13.7

State and territory governments should provide nationally consistent and easily accessible guidance to teachers and principals on preventing and responding to child sexual abuse in all government and non-government schools.

### Area of implication for the Church

Schools

### Overview

This recommendation is found Vol 13, Ch 5, Sect 5.6.2: Guidance for teachers and principals on preventing and responding to child sexual abuse, p 256.

### Council comment

The Council agrees with this recommendation, noting that this recommendation is already been broadly established nationally.

### Action

For the consideration of CPSL, NCEC and state Catholic education offices and commissions.

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## Recommendation 13.8

The Council of Australian Governments (COAG) should consider strengthening teacher registration requirements to better protect children from sexual abuse in schools. In particular, COAG should review minimum national requirements for assessing the suitability of teachers, and conducting disciplinary investigations.

### Area of implication for the Church

Schools

### Overview

This recommendation is found Vol 13, Ch 5, Sect 5.6.4: Teacher registration, p 258.

### Council comment

The Council agrees with this recommendation.

### Action

For the consideration of CPSL, NCEC and state Catholic education offices and commissions.

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## Volume 14, Sport, recreation, arts, culture, community and hobby groups

Volume 14, Sport, recreation, arts, culture, community and hobby groups examines what the Royal Commission learned about institutional responses to child sexual abuse in sport and recreation contexts.

The volume examines the nature and adequacy of institutional responses and draws out common failings. It makes recommendations to prevent child sexual abuse from occurring in sport and recreation and, where it does occur, to help ensure effective responses.

The Royal Commission made four recommendations in this volume.

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## Recommendation 14.1

All sport and recreation institutions, including arts, culture, community and hobby groups, that engage with or provide services to children should implement the Child Safe Standards identified by the Royal Commission.

### Area of implication for the Church

#### Civil Governance

#### Overview

This recommendation can be found in Vol. 14, Section 5 pp 172 to 194

#### Council comment

The Council recognises that this recommendation may contribute to the development of public policy.

#### Action

No action for Church authorities at this time.

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## Recommendation 14.2

The National Office for Child Safety should establish a child safety advisory committee for the sport and recreation sector with membership from government and non-government peak bodies to advise the national office on sector-specific child safety issues.

### Area of implication for the Church

Civil Governance

### Overview

This recommendation can be found in Vol. 14, Section 5 pp 172 to 194

### Council comment

The Council recognises that this recommendation may contribute to the development of public policy.

### Action

No action for Church authorities at this time.

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## Recommendation 14.3

The education and information website known as Play by the Rules should be expanded and funded to develop resources – in partnership with the National Office for Child Safety – that are relevant to the broader sport and recreation sector.

### Area of implication for the Church

#### Civil Governance

#### Overview

This recommendation can be found in Vol. 14, Section 5 pp 172 to 194

#### Council comment

The Council recognises that this recommendation may contribute to the development of public policy.

#### Action

No action for Church authorities at this time.

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## Recommendation 14.4

### Royal Commission recommendation

The independent state and territory oversight bodies that implement the Child Safe Standards should establish a free email subscription function for the sport and recreation sector so that all providers of these services to children can subscribe to receive relevant child safe information and links to resources.

### Area of implication for the Church

#### Civil Governance

#### Overview

This recommendation can be found in Vol. 14, Section 5 pp 172 to 194

#### Council comment

The Council recognises that this recommendation may contribute to the development of public policy.

#### Action

No action for Church authorities at this time.

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## Volume 15, Contemporary detention environments

Volume 15, Contemporary detention environments examines what the Royal Commission learned about institutional responses to child sexual abuse in contemporary detention environments, focusing on youth detention and immigration detention.

It recognises that children are generally safer in community settings than in closed detention. It also makes recommendations to prevent child sexual abuse from occurring in detention environments and, where it does occur, to help ensure effective responses.

The Royal Commission made 15 recommendations in this volume.

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## Recommendations 15.1 through to 15.15

### **Recommendation 15.1**

All institutions engaged in child-related work, including detention institutions and those involving detention and detention-like practices, should implement the Child Safe Standards identified by the Royal Commission.

### **Recommendation 15.2**

Given the Australian Government's commitment to ratify the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the National Preventive Mechanism(s) should be provided with the expertise to consider and make recommendations relating to preventing and responding to child sexual abuse as part of regularly examining the treatment of persons deprived of their liberty in places of detention.

### **Recommendation 15.3**

Youth justice agencies in each state and territory should review the building and design features of youth detention to identify and address elements that may place children at risk. This should include consideration of how to most effectively use technology, such as closed-circuit television (CCTV) cameras and body-worn cameras, to capture interactions between children and between staff and children without unduly infringing children's privacy.

### **Recommendation 15.4**

As part of efforts to mitigate risks of child sexual abuse in the physical environment of youth detention, state and territory governments should review legislation, policy and procedures to ensure:

- (a) appropriate and safe placements of children in youth detention, including a risk assessment process before placement decisions that identifies if a child may be vulnerable to child sexual abuse or if a child is displaying harmful sexual behaviours
- (b) children are not placed in adult prisons
- (c) frameworks take into account the importance of children having access to trusted adults, including family, friends and community, in the prevention and disclosure of child sexual abuse and provide for maximum contact between children and trusted adults through visitation, and use of the telephone and audio-visual technology
- (d) best practice processes are in place for strip searches and other authorised physical contact between staff and children, including sufficient safeguards to protect children such as:
  - (i) adequate communication between staff and the child before, during and after a search is conducted or other physical contact occurs
  - (ii) clear protocols detailing when such practices are permitted and how they should be performed. The key elements of these protocols should be provided to children in an accessible format

- (iii) staff training that highlights the potential for strip searching to re-traumatise children who have been sexually abused and how the misuse of search powers can lead to sexual humiliation or abuse.

State and territory governments should consider implementing strategies for detecting contraband, such as risk assessments or body scanners, to minimise the need for strip searching children.

#### **Recommendation 15.5**

State and territory governments should consider further strategies that provide for the cultural safety of Aboriginal and Torres Strait Islander children in youth detention including:

- (a) recruiting and developing Aboriginal and Torres Strait Islander staff to work at all levels of the youth justice system, including in key roles in complaint handling systems
- (b) providing access to interpreters, particularly with respect to induction and education programs, and accessing internal and external complaint handling systems
- (c) ensuring that all youth detention facilities have culturally appropriate policies and procedures that facilitate connection with family, community and culture, and reflect an understanding of, and respect for, cultural practices in different clan groups
- (d) employing, training and professionally developing culturally competent staff who understand the particular needs and experiences of Aboriginal and Torres Strait Islander children, including the specific barriers that Aboriginal and Torres Strait Islander children face in disclosing sexual abuse.

#### **Recommendation 15.6**

All staff should receive appropriate training on the needs and experiences of children with disability, mental health problems, and alcohol or other drug problems, and children from culturally and linguistically diverse backgrounds that highlights the barriers these children may face in disclosing sexual abuse.

#### **Recommendation 15.7**

State and territory governments should improve access to therapeutic treatment for survivors of child sexual abuse who are in youth detention, including by assessing their advocacy, support and therapeutic treatment needs and referring them to appropriate services, and ensure they are linked to ongoing treatment when they leave detention.

#### **Recommendation 15.8**

State and territory governments should ensure that all staff in youth detention are provided with training and ongoing professional development in trauma-informed care to assist them to meet the needs of children in youth detention, including children at risk of sexual abuse and children with harmful sexual behaviours.

### **Recommendation 15.9**

State and territory governments should review the current internal and external complaint handling systems concerning youth detention to ensure they are capable of effectively dealing with complaints of child sexual abuse, including so that:

- (a) children can easily access child-appropriate information about internal complaint processes and external oversight bodies that may receive or refer children's complaints, such as visitor's schemes, ombudsmen, inspectors of custodial services, and children's commissioners or guardians
- (b) children have confidential and unrestricted access to external oversight bodies
- (c) staff involved in managing complaints both internally and externally include Aboriginal and Torres Strait Islander peoples and professionals qualified to provide trauma-informed care
- (d) complaint handling systems are accessible for children with literacy difficulties or who speak English as a second language
- (e) children are regularly consulted about the effectiveness of complaint handling systems and systems are continually improved.

### **Recommendation 15.10**

State and territory governments should ensure they have an independent oversight body with the appropriate visitation, complaint handling and reporting powers, to provide oversight of youth detention. This could include an appropriately funded and independent Inspector of Custodial Services or similar body. New and existing bodies should have expertise in child-trauma, and the prevention and identification of child sexual abuse.

### **Recommendation 15.11**

The Department of Immigration and Border Protection should publicly report within 12 months on how it has implemented the Child Protection Panel's recommendations.

### **Recommendation 15.12**

- (a) The Australian Government should establish a mechanism to regularly audit the implementation of the Child Safe Standards in immigration detention by staff, contractors and agents of the Department of Immigration and Border Protection. The outcomes of each audit should be publicly reported.
- (b) The Department of Immigration and Border Protection should contractually require its service providers to comply with the Child Safe Standards identified by the Royal Commission, as applied to immigration detention.

### **Recommendation 15.13**

The Department of Immigration and Border Protection should identify the scope and nature of the need for support services for victims in immigration detention. The Department of Immigration and Border Protection should ensure that appropriate therapeutic and other specialist and support services are funded to meet the

identified needs of victims in immigration detention and ensure they are linked to ongoing treatment when they leave detention.

#### **Recommendation 15.14**

The Department of Immigration and Border Protection should designate appropriately qualified child safety officers for each place in which children are detained. These officers should assist and build the capacity of staff and service providers at the local level to implement the Child Safe Standards.

#### **Recommendation 15.15**

The Department of Immigration and Border Protection should implement an independent visitors program in immigration detention.

#### **Area of implication for the Church**

##### **Civil Governance**

##### **Overview**

These recommendations appear in Volume 15, Contemporary detention environments recommendations.

##### **Council comment**

The Council recognises that this recommendation may contribute to the development of public policy.

##### **Action**

No action required at this time however any church institution involved in detention issues should review their operations in light of these recommendations. There may be a role for CSSA in these matters given some member organisations have a role accommodating and supporting young people in detention.

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## Volume 16, Religious institutions

Volume 16, Religious institutions examines what the Royal Commission learned about institutional responses to child sexual abuse in religious institutions.

The volume discusses the nature and extent of child sexual abuse in religious institutions, the impacts of this abuse, and survivors' experiences of disclosing it. The volume examines the nature and adequacy of institutional responses to child sexual abuse in religious institutions, and draws out common factors contributing to the abuse and common failings in institutional responses.

It makes recommendations to prevent child sexual abuse from occurring in religious institutions and, where it does occur, to help ensure effective responses.

This volume was divided into three books as described in the introductory chapter of this document.

The Royal Commission made 58 recommendations in this volume.

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## Recommendation 16.1

The Anglican Church of Australia should adopt a uniform episcopal standards framework that ensures that bishops and former bishops are accountable to an appropriate authority or body in relation to their response to complaints of child sexual abuse.

### Area of implication for the Church

Other faith-based institutions.

### Overview

This recommendation pertains exclusively to the Anglican Church due to its specific legal governance structure. Episcopal accountability in the Catholic Church is structured very differently.

### Action

No action required at this time.

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## Recommendations 16.2, 16.3 16.4 and 16.5

### **Recommendation 16.2**

The Anglican Church of Australia should adopt a policy relating to the management of actual or perceived conflicts of interest that may arise in relation to allegations of child sexual abuse, which expressly covers:

- (a) members of professional standards bodies
- (b) members of diocesan councils (otherwise known as bishop-in-council or standing committee of synod)
- (c) members of the Standing Committee of the General Synod
- (d) chancellors and legal advisers for dioceses.

### **Recommendation 16.3**

The Anglican Church of Australia should amend *Being together* and any other statement of expectations or code of conduct for lay members of the Anglican Church to expressly refer to the importance of child safety.

### **Recommendation 16.4**

The Anglican Church of Australia should develop a national approach to the selection, screening and training of candidates for ordination in the Anglican Church.

### **Recommendation 16.5**

The Anglican Church of Australia should develop and each diocese should implement mandatory national standards to ensure that all people in religious or pastoral ministry (bishops, clergy, religious and lay personnel):

- (a) undertake mandatory, regular professional development, compulsory components being professional responsibility and boundaries, ethics in ministry and child safety
- (b) undertake mandatory professional/pastoral supervision
- (c) undergo regular performance appraisals.

### **Area of implication for the Church**

Other faith-based institutions.

### **Overview**

These recommendations appear in Vol 16, Book 1, Ch 12, Sect 12.6.4 pp 727-757.



### Council comment

The Council has no competency to address this recommendation, although the content of 16.4 and 16.5 are similar to some of the recommendations made about selection and ongoing professional development for those in religious ministry in the Catholic Church.

### Action

No action required at this time.

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## Recommendation 16.6

The bishop of each Catholic Church diocese in Australia should ensure that parish priests are not the employers of principals and teachers in Catholic schools.

### Area of implication for the Church

Ecclesial Governance and schools. It applies specifically to the dioceses in Victoria.

### Overview

Recommendation discussed in Volume 16, Book 2, section: 13.11.4

In the Archdiocese of Melbourne parochial primary schools have the parish priest as the employer of staff. This is not the case anywhere else in the Church in Australia. The Royal Commission explored this arrangement in Case Study 35 in particular the role of Searson as parish priest in Doveton with the staff of Holy Family Primary School and his relations with the Catholic Education Office of Melbourne.

The Royal Commission's conclusion is phrased in this way:

*We found that the position of parish priest as the employer of staff of diocesan schools has the potential to adversely impact on the open and effective reporting of complaints against priests. (Vol 16, Bk 2, p. 680)*

### Council comment

This is a matter for all Victorian dioceses, with the exception of Sale who has established a new employment entity, and in their consideration, they will no doubt take into account what was revealed in Case Study 35 and the interests of consistency and best practice across the Catholic school system nationally.

### Action

This is a matter for consideration by the Victorian dioceses.

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## Recommendation 16.7

The Australian Catholic Bishops Conference should conduct a national review of the governance and management structures of dioceses and parishes, including in relation to issues of transparency, accountability, consultation and the participation of lay men and women. This review should draw from the approaches to governance of Catholic health, community services and education agencies.

### Area of implication for the Church

#### Ecclesial Governance

#### Overview

This recommendation is based on the discussion in Volume 16, Book 2, Sects 13.1 to 13.11, and in particular Sect 13.11.4. The Royal Commission adopted a broad purview in its examination of organisational and structural issues of the Church, namely:

- The hierarchical and monarchical nature of church governance;
- The power, role and oversight of bishops;
- The independence and oversight of diocesan bishops;
- The concentration of personal power in the bishop;
- Consultation, transparency and due process in the decision-making of the bishop;
- Consultative, inclusive and transparent models in diocesan governance;
- The governance of religious institutes;
- The role of senior clergy and religious in advisory positions to bishops and provincials;
- The role of the Holy See;
- Decision-making by laity;
- The involvement of lay people including women in Church governance;
- Consultative governance structures that might include lay people in the Church;
- The introduction of more inclusive governance structures;
- The governance of Catholic community services;
- Incorporation;

- Governance of Catholic schools.

The Commission canvassed the opinions of various Church witnesses, either individually or in panel sessions on the selected themes as outlined above.

#### Council comment

The Council made a submission to the final hearing into the Catholic Church raising structural and governance issues. In particular the Council noted:

*Attempting to understand the structure of the Church by analogy to the more familiar structures of complex organisations in modern society runs the risk of failing to capture the actual responsibility relationships and true centres of agency within the Church.*

*Over time in Australia there has been a declining trend in the vocations to the priesthood and religious life. Consequently, more lay people have been engaged in administrative and ministry levels of the life of the Church and have assumed responsibilities, and asserted influence, in ways not experienced in past decades. However, this has not altered the structures and effective lines of authority of the Church. It still remains innately hierarchical. (The Catholic Church: Then and Now, submission to Case Study 50, p.15)*

The Royal Commission's concern for the structure and governance of the Catholic Church was based on the degree to which it influenced the protection of children from sexual abuse. The perspective adopted by the Commission can be found in Volume 6, *Making Institutions child safe*. That approach encompasses “*the systems, structures and policies that control the way an institution operates, and the mechanisms by which the institution, and its people, can be held to account*”. (Vol 16, Bk 2, p.643).

Moreover, the Commission has accepted the notion of best practice governance as proposed by the Australian Institute of Company Directors in its policy documents: *What is good corporate governance*, and *Good governance principles and guidance for non-profit organisations*.

In short, the Commission stated that *governance strongly influences an institution’s practices and decision-making processes. It is embedded in the good behavior and the good judgement of those responsible for running an institution. Integrity, transparency and accountability, risk management, culture and ethics are all important elements of good governance and can help an institution meet its objectives.*” (Vol16, Bk.2, p.643).

Importantly, in Vol 16, Bk2, Section 13.1, the Commission described the structure of the Catholic Church and included components related to ecclesial organisations, religious institutes, public juridic persons and broader ‘works’ of the Church. However, the Commission has chosen to limit its recommendation to the ecclesiastical arm of the Church. The Commission focused ‘*on the governance of the Catholic Church by clergy who, under canon 129 of the 1983 Code of Canon Law, have jurisdiction to exercise governance in the Catholic Church. This excludes the ‘laity’ from governance. The ‘laity’ are all those not ordained (that is, religious brothers and sisters and lay people)*. Vol 16, Bk2, p. 644.

The Royal Commission made a series of findings that were critical of the ecclesiastical structure and processes:

- It found instances where certain diocesan bishops responded inadequately to complaints of sexual abuse against priests of their dioceses and were not held accountable for their actions, placing children at risk of abuse (p.649)
- A system for responding to complaints of child sexual abuse in which exclusive authority for making decisions was vested in one person is deeply flawed (p.649)
- It is evident that too often individual bishops in fact acted as if they were accountable to no one, least of all to the children under their authority (p.650)
- A system without checks and balances has the obvious potential for mismanagement or abuse of that power and neglect of that responsibility (p.653)
- It is evident that, in some cases, bishops and provincials did not share their knowledge of allegations of child sexual abuse against priests and religious with other senior clergy or religious...however...senior clergy and religious in dioceses and religious institutes were aware of allegations of child sexual abuse but did not take action to challenge or attempt to influence the poor decisions taken by their bishop or provincial in responding to those allegations (p.655)
- It is obvious that the failure of senior clergy and religious in advisory positions to challenge bishops and provincials...allowed children to remain at risk and no doubt contributed to ongoing abuse (p.656 )
- To the extent that the hierarchical system of the Catholic Church led to a decision-making and administrative culture in which senior clergy and religious deferred to their bishop or provincial and did not challenge their poor decisions...that system is flawed (p.656)
- The challenge that the structural autonomy of Catholic Church authorities represents in relation to holding diocese, religious institutes and their leadership to account...is of concern to the Royal Commission (p.660)
- It believes that, to the extent that lay men and women are now involved in governance within the Catholic Church in Australia, and to the limited extent that participatory structures have been employed in the governance of the Catholic Church authorities and at the parish level, this is a positive development (p.668)
- It noted that the good practices evident in the management and oversight of staff in Catholic community services are in contrast to the management of clergy and religious in ministry (p.672).

The general position of the Royal Commission was summarised as:

*"In accordance with contemporary standards of good governance, we encourage the Catholic Church in Australia to explore and develop ways in which its structure and practices of governance may be made more accountable, more transparent, more meaningfully consultative and more participatory, including at the diocesan and parish level."* p.682

Its conclusions were summarised as:

- *The hierarchical structure of the Catholic Church created a culture of deferential obedience in which poor responses to child sexual abuse went unchallenged.*
- *The powers of governance held by individual diocesan bishops and provincials are not subject to adequate checks and balances.*
- *Diocesan bishops have not been sufficiently accountable to any other body for their decision-making in their handling of allegations of child sexual abuse or alleged perpetrators. There has been no requirement for their decisions to be made transparent or subject to due process.*
- *It is clear that where it has occurred the involvement of lay men and women in governance has had a positive impact on the governance of the Church. (pp.681-682)*

As mentioned in the introduction, the Royal Commission adopted a commercial/corporate model of governance when examining the organisational and administrative components of the Church. The Royal Commission's findings are damning of the Church's decision-making and accountability and their impact on the protection of children and the handling of complaints of child sexual abuse. The case for an independent review along the lines recommended by the Commission is compelling. In order to demonstrate that the Church has taken the findings of the Commission seriously, the review should be progressed as a matter of urgency and within a broader assessment of the effectiveness of governance and lay participation generally in the Church.

The themes explored by the Commission can form the assessment framework for the review. Although the Commission examined governance effectiveness in the light of how child abuse cases were managed, the areas explored have relevance for the future engagement of the Church with and in its service to the faith community.

The review should form part of the lead up work for the Plenary Council.

## Action

The ACBC should delegate the conduct of the review to the Implementation Advisory Group. The Implementation Advisory Group establish the terms of reference for the proposed review in accordance with the framework of analysis used by the Royal Commission. The review team should include both corporate and canon law experts, plus a recognised authority on ecclesiology. An extensive consultation process, including the Catholic organisations recognised as fulfilling the requirements of good governance, must accompany the review.

The review should be completed by mid-2019 with results made public during the lead up to the Plenary Council.

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## Recommendation 16.8

In the interests of child safety and improved institutional responses to child sexual abuse, the Australian Catholic Bishops Conference should request the Holy See to:

- (a) publish criteria for the selection of bishops, including relating to the promotion of child safety
- (b) establish a transparent process for appointing bishops which includes the direct participation of lay people.

### Area of implication for the Church

#### Ecclesial Governance

#### Overview

This recommendation can be found in Vol 16, Book 2, Sect 13.11.5

The Royal Commission stated, at p 690:

*We have concluded that the leadership of the Catholic Church in Australia frequently failed to appropriately respond to allegations of child sexual abuse. The results of that failure have been catastrophic.*

*It is apparent that, too often, Catholic Church leaders in Australia have been selected on the basis of their adherence to specific aspects of Church doctrine and their commitment to the defence and promotion of the institutional Catholic Church, rather than their capacity for leadership. This, along with other structural and cultural factors, contributed to a Church leadership that was ill-equipped to respond decisively to child sexual abuse.*

*It is obvious that more meaningful and direct consultation with, and participation of lay men and women in the appointment of bishops, as well as greater transparency in the process of selection, would make bishops more accountable and responsive to lay members of the Catholic Church, including in responding to the problem of child sexual abuse in Catholic Church institutions.*

#### Council comment

The Royal Commission report draws a direct causal link between the selection of bishops and the incidence and handling of child sexual abuse. The inadequacy of leadership, training and capacity of some bishops was highlighted. This is an area that needs to be addressed if the standard of safeguarding in the Church is to reach best practice levels. Specific training requirements for bishops and leaders should be developed by CPSL and monitored accordingly.

Lay participation is already possible in the selection process of bishops. It is difficult to say how frequently the views of lay people (including vowed religious) have been canvassed during the selection process but anecdotally this has been very restricted and seemingly ad hoc in its application. The Council supports a more comprehensive engagement with the Church community generally, particularly the laity, so as to broaden the range of views available for the appointment of bishops.

It can be anticipated that this issue will arise during the synodal process leading to the Plenary Council. Models of lay involvement in the selection of bishops should be canvassed. It is noted that changes in the criteria for selection of bishops is an issue for the Holy See. However, it does not preclude the Australian Catholic community from discussing the benefits of the concept in the Plenary Council consultations and discussions.

## Action

The Implementation Advisory Group should:

1. Consult with the Plenary Council organising group about consultations on transparency in the processes for the selection of bishops;
2. Advise the ACBC on models to present to the Holy See on the process for the selection of bishops.

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## Recommendation 16.9

The Australian Catholic Bishops Conference should request the Holy See to amend the 1983 Code of Canon Law to create a new canon or series of canons specifically relating to child sexual abuse, as follows:

- (a) All delicts relating to child sexual abuse should be articulated as canonical crimes against the child, not as moral failings or as breaches of the 'special obligation' of clerics and religious to observe celibacy.
- (b) All delicts relating to child sexual abuse should apply to any person holding a 'dignity, office or responsibility in the Church' regardless of whether they are ordained or not ordained.
- (c) In relation to the acquisition, possession, or distribution of pornographic images, the delict (currently contained in Article 6 §2 1° of the revised 2010 norms attached to the *motu proprio Sacramentorum sanctitatis tutela*) should be amended to refer to minors under the age of 18, not minors under the age of 14 years of age.

### Area of implication for the Church

#### Canon law

#### Overview

This recommendation appears in Vol 16, Book 2, Ch 13, Contributing factors in the Catholic Church, Sect 13.11.6, Canon law. Regard should also be had to Vol 16, Book 2, Sect 13.2 which contains a description of the history, development and content of the relevant canonical documents.

The comments in this section of the analysis should be read in conjunction with what has been said about canon law generally in the introductory chapter.

#### Council comment

It is difficult to argue against the proposition that child sexual abuse should be regarded other than as a crime (or a delict, to adopt the terminology of the canons). The Council supports Recommendation 16.9(a).

The purport of Recommendation 16.9(b) seems to be to equate persons in the clerical state with non-ordained religious. As the Royal Commission noted (Vol 16, Sect 13.11.6, p695), the 1983 Code is not clear as to who can commit the canonical offence of child sexual abuse and whether the offence is limited to clerics or includes non-ordained religious. However, in the evidence given to the Royal Commission by Dr Rodger Austin, it was explained that according to the 1983 Code only those who are ordained, that is clerics, can commit the canonical crime of child sexual abuse. Further, the 2011 draft schema for changes to canon law proposed an amendment to the canons that would extend its reach to 'any other person holding a dignity, office or responsibility in the Church' (which would include lay people) and that any such person abusing a person under the age of 18 or a vulnerable adult, 'is to be deprived of any dignity, or office or other responsibility whatsoever'.

In view of the fact that the recommendation is in line with the 2011 draft schema the Council supports Recommendation 16.9(b).

Under Australian law the definition of 'a child' in offences of possessing child pornography is generally to a person under the age of 18 years: see, for example, *Crimes Act 1958* (Vic), s70. On that basis, the Council supports Recommendation 16.9(c).

### Action

In the section of the introductory chapter we discussed the general concept of the ACBC approaching the Holy See in relation to changes to canon law. The Council mentioned the arrangements reached between the two bodies for communicating matters concerning the Royal Commission.

The matter should be brought to the attention of the Holy See working group with a suggestion that it be referred to, among other bodies, the Pontifical Commission for the Protection of Minors.

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## Recommendation 16.10

The Australian Catholic Bishops Conference should request the Holy See to amend canon law so that the pontifical secret does not apply to any aspect of allegations or canonical disciplinary processes relating to child sexual abuse.

### Area of implication for the Church

#### Canon law

#### Overview

This recommendation appears in Vol 16, Book 2, Ch 13, Contributing factors in the Catholic Church, Sect 13.11.6, Canon law.

Regard should also be had to Vol 16, Book 2, Sect 13.2 which contains a description of the history, development and content of the relevant canonical documents.

The comments in this section of the analysis should be read in conjunction with what was said about canon law generally in the introductory chapter.

#### Council comment

As noted in the introduction, in the submission for the Catholic Church Final Hearing, the Council advised the Royal Commission that:

- (i) *There were no Church laws or other legal requirements that either prohibited or encumbered bishops from complying with civil laws in regard to reporting priest offenders of child sexual abuse to civil authorities.*
- (ii) *The exercise of the power of governance in the internal forum did not apply to child sexual abuse cases when managing the reporting of priest offenders to civil authorities.*
- (iii) *There are no Church laws that prescribe the concealment of details of priest offenders from the investigative or legal requirements of civil authorities.*
- (iv) *A victim of child sexual abuse by a priest offender was free to go to the police at any stage of an ecclesiastical process, either before, during or after that process had concluded.*
- (v) *The obligation of pontifical secret/confidentiality applicable to the matters dealt with by the departments of the Roman Curia did not, and does not, amount to a concealment of information from civil authorities when providing such information is required by civil laws.*

Dr Rodger Austin, Fr Ian Waters and Sr Moya Hanlen gave evidence to similar effect. It follows that the Council does not believe that the ‘pontifical secret’ has the effect which appears to underlie the recommendation. This seems also to be the position of the Pontifical Commission for the Protection of Minors which, in May 2016, issued guidelines including:

*There should be a clear statement about compliance with the requirements of civil authorities and Church authorities. Where episcopal conferences include more than one country or a country with a federal structure – it should be clearly stated that the Church will comply with the relevant authority. This should include any civil requirements on mandatory reporting.*

The ‘pontifical secret’ has broad application in areas other than canonical disciplinary processes for abuse. While the Council would have no issue with clarifying the relevant norms in their application to abuse matters it is unable to comment on the wider ramifications, if any.

### Action

In the introduction the Council discussed the general concept of the ACBC approaching the Holy See in relation to changes to canon law and the arrangements in place between the two bodies for communicating matters concerning the Royal Commission.

This matter should be brought to the attention of the Holy See working group with a suggestion that it be referred to, among other bodies, the Pontifical Commission for the Protection of Minors.

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## Recommendations 16.11 and 16.13

### Recommendation 16.11

The Australian Catholic Bishops Conference should request the Holy See to amend canon law to ensure that the ‘pastoral approach’ is not an essential precondition to the commencement of canonical action relating to child sexual abuse.

### Recommendation 16.13

The Australian Catholic Bishops Conference should request the Holy See to amend the ‘imputability’ test in canon law so that a diagnosis of paedophilia is not relevant to the prosecution of or penalty for a canonical offence relating to child sexual abuse.

#### Area of implication for the Church

Canon law

#### Overview

These recommendations appear in Vol 16, Book 2, Ch 13, Contributing factors in the Catholic Church, Sect 13.11.6, Canon law. Regard should also be had to Vol 16, Book 2, Sect 13.2 which contains a description of the history, development and content of the relevant canonical documents.

The comments in this section of the analysis should be read in conjunction with what was said about canon law generally in the introductory chapter.

#### Council comment

These recommendations should be read in conjunction with those in Recommendations 16.55 and 16.56, which are aimed at removing offenders from office.

In the description of canonical documents in Vol 16, Sect 13.2 the Royal Commission makes the point that under the 1917 Code the penalty of degradation (dismissal from the clerical state) was only available for recidivist offenders and that the therapeutic or pastoral approach was entrenched by *Crimen sollicitationis*, which made it clear that dismissal from the clerical state was available only where the offender showed ‘no hope, humanly speaking, or almost no hope, of his amendment’. The same attitude pervades the 1983 Code, where canon 1341 provides:

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

The difficulty in this area is that canon 1341 provides a means of dealing with an offender other than by imposing a penalty. Canon 1341 does not demand that the misnamed ‘pastoral approach’ be tried before imposing a penalty. On the contrary, canon 1341 demands a judgement by the bishop that such an approach is unacceptable in a particular case. The premise on which this recommendation is based reflects a misunderstanding of canon law.

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

The Royal Commission criticised this approach and says (Vol 16, Book, p713) that it has had a negative impact on the Church’s response to clerical abuse in at least two ways. First, it contributed to the mistaken view on the part of some bishops and religious superiors that child sexual abuse was a forgivable moral failing, rather than a crime that should be reported to the police as required by the norms of the civil law. Secondly, for those bishops and religious superiors who wanted to initiate a canonical penal process against an alleged perpetrator, the ‘pastoral approach’ has been a significant obstacle to securing a successful outcome, because it was mistakenly understood to be a precondition to disciplinary action.

It seems clear that the Royal Commission takes the strict, literal view of the ‘zero tolerance’ thesis, namely, that anyone found to have abused a child should be dismissed from the clerical state (or religious life), with no exceptions. As previously stated, this is a complex issue and the Council has developed this thinking further in the discussion on Recommendation 16.56.

The Council agrees with Recommendation 16.11 if it is read literally: that the pastoral approach should not be *an essential precondition* to the commencement of canonical action. If, for example, a cleric is convicted in a criminal court of an abuse offence the bishop (or superior) would usually be minded to take canonical action. In those instances, the canon 1341 edict ought not to deter the bishop (or superior) from commencing action. However, would the same necessarily apply where, for instance, the cleric had been charged, tried and acquitted? The bishop (or superior) might still harbor concerns but there might be more room for an initial pastoral response before embarking on a process that could lead to the ultimate penalty. And in both instances, while therapeutic considerations ought not be a precondition to commencing action, it is quite another thing to suggest (as seems implicit in the overall reasoning of the Royal Commission) that pastoral considerations ought not be relevant to the outcome.

Presumably the canons reflecting a pastoral approach have a theological underpinning. If that is correct, consideration should be given to the underlying theology to see if an alternate approach is consistent with it.

Similar considerations apply to Recommendation 16.13. Canon 1321 provides:

*No one is punished unless the external violation of a law or precept, committed by the person, is gravely imputable, by reason of malice or negligence.*

Generally speaking, this accords with time-honoured principles of the criminal law relating to criminal responsibility and, in the view of the Council, ought not be disturbed. The Royal Commission refers to an instance where serial abusers had their dismissals by a Dublin canonical court overturned on appeal by a Vatican tribunal because they had been diagnosed as paedophiles. As understood by the Council, paedophilia

*alone* is not a matter equivalent to unsoundness of mind or something similar that would justify a finding that the person is not criminally responsible for her or his acts. The Council has not read the Vatican decision and there may be more to it than is disclosed in the final report. If there is not then, with respect, it is wrong.

If Recommendation 16.13 is read as meaning that paedophilia *alone* should not be relevant to the prosecution or penalty for a canonical offence of abuse, the Council has little difficulty with it. However, that does not justify interfering with the general prescription of criminal responsibility.

### Action

In the introduction the Council discussed the general concept of the ACBC approaching the Holy See in relation to changes to canon law and the arrangements in place between the two bodies for communicating matters concerning the Royal Commission.

This matter should be brought to the attention of the Holy See working group with a suggestion that it be referred to, among other bodies, the Pontifical Commission for the Protection of Minors.

In relation to Recommendation 16.11, the Implementation Advisory Group should commission research (possibly through the Canon Law Society of Australia and New Zealand) on canonical aspects of, and the theological underpinning (if any) for, the pastoral approach and ramifications of change in that regard.

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## Recommendation 16.12

The Australian Catholic Bishops Conference should request the Holy See to amend canon law to remove the time limit (prescription) for commencement of canonical actions relating to child sexual abuse. This amendment should apply retrospectively.

### Area of implication for the Church

Canon law.

### Overview

This recommendation appears in Vol 16, Book 2, Ch 13, Contributing factors in the Catholic Church, Sect 13.11.6, Canon law. Regard should also be had to Vol 16, Book 2, Sect 13.2 which contains a description of the history, development and content of the relevant canonical documents.

The comments in this section of the analysis should be read in conjunction with what was said about canon law generally in the introductory chapter

### Council comment

There are differing views among members of the Council about limitation periods generally. When the Council was developing a position on this question for the Redress and Civil Litigation issues paper, some members favoured abolition, others advocated retention. By majority, it was decided on the retention but with a long-time frame (25 years). The Royal Commission recommended abolition and that has already been taken up by most state and territory governments.

The Catholic Church claims data submitted to the Royal Commission indicated that the time between the first alleged incident of child sexual abuse and the date when the claim was received by the relevant Church authority was more than 30 years in 59 per cent of claims, and more than 20 years in 81 per cent of claims. The average time between the first alleged incident date and the date the claim was received was 33 years.

Before 1983 there was no canonical prescription (time limit) for bringing cases of child sexual abuse. The 1983 Code of Canon Law (Canon 1362) introduced a prescription of 5 years from the date of the offence. In 2001 the *motu proprio Sacramentorum Sanctitatis Tutela* extended the time limit to the victims 28th birthday (ten years after attaining majority) but this change was not retrospective.

In evidence at the public hearing for the Catholic Church Final Hearing, Dr Rodger Austin, Sr Hanlen and Mr Bill Kilgallon (then a member of the Pontifical Commission for the Protection of Minors) all advocated abolition of the canonical limitation period. On any view, a limitation period of five years or ten years after attaining majority is inadequate.



On that basis, and given the movement of limitation periods in civil law, the Council supports Recommendation 16.12.

### Action

In the introduction the Council discussed the general concept of the ACBC approaching the Holy See in relation to changes to canon law and the arrangements in place between the two bodies for communicating matters concerning the Royal Commission.

This matter should be brought to the attention of the Holy See working group with a suggestion that it be referred to, among other bodies, the Pontifical Commission for the Protection of Minors.

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## Recommendations 16.14, 16.55 and 16.56

### Recommendation 16.14

The Australian Catholic Bishops Conference should request the Holy See to amend canon law to give effect to Recommendations 16.55 and 16.56.

### Recommendation 16.55

Any person in religious ministry who is the subject of a complaint of child sexual abuse which is substantiated on the balance of probabilities, having regard to the principles in *Briginshaw v Briginshaw*, or who is convicted of an offence relating to child sexual abuse, should be permanently removed from ministry. Religious institutions should also take all necessary steps to effectively prohibit the person from in any way holding himself or herself out as being a person with religious authority.

### Royal Commission recommendation 16.56

Any person in religious ministry who is convicted of an offence relating to child sexual abuse should:

- (a) in the case of Catholic priests and religious, be dismissed from the priesthood and (or) dispensed from his or her vows as a religious
- (b) in the case of Anglican clergy, be deposed from holy orders
- (c) in the case of Uniting Church ministers, have his or her recognition as a minister withdrawn
- (d) in the case of an ordained person in any other religious denomination that has a concept of ordination, holy orders and (or) vows, be dismissed, deposed or otherwise effectively have their religious status removed.

### Area of implication for the Church

Canon law, Professional standards

### Overview

Recommendation 16.14 appears in Vol 16, Book 2, Ch 13, Contributing factors in the Catholic Church, Sect 13.11.6, Canon law. Regard should also be had to Vol 16, Book 2, Sect 13.2 which contains a description of the history, development and content of the relevant canonical documents. Recommendations 55 and 56 are to be found in Vol 16, Book 3, Part E, Ch 21, Improving responding and reporting by religious institutions, Sect 21.9, Determining an outcome.

Regards should also be had to Vol 7, Ch 3, where the Royal Commission comments on child-focused complaints handling regimes (see Recommendations 7.7 and 7.8).

The comments in this section of the analysis should be read in conjunction with what has been said about canon law generally in the introduction.

### Council comment

These recommendations raise two issues, namely the standard of proof and dismissal as a mandated penalty. Recommendation 16.55 relates to 'permanent removal from ministry', that is, he or she is loses authorisation to exercise ministry, while Recommendation 16.56 covers dismissal from the clerical state or dispensation from vows as a religious.

These recommendations draw on and supplement those made in Volume 7 of the Final Report – Improving institutional responding and reporting, particularly recommendation 7.7, that institutions should have a child-focused complaint handling policy and procedure.

The Royal Commission identified a particular deficiency in the way religious institutions determine and implement the outcomes of investigations into complaints of child sexual abuse made against people in religious ministry generally. This includes the management by Church authorities of priests and religious who have been convicted of child sexual abuse offences or had complaints substantiated.

In relation to the standard of proof, canon law requires 'moral certainty', which is generally understood to be similar to persuasion beyond reasonable doubt, the level required for conviction of a criminal offence. The Royal Commission recommended adoption of balance of probabilities tailored to take into account *Briginshaw* considerations. Balance of probabilities is the level of persuasion used in the civil jurisdiction of Australian courts and means 'more likely than not' or 'the preponderance of possibility'. *Briginshaw* is a High Court case in which Justice Dixon said that there were only two standards: beyond reasonable doubt and balance of probabilities. However, in deciding the latter the trier of fact must achieve a level of satisfaction that takes into account the seriousness of the allegation, the inherent unlikelihood of an occurrence of a given description and the gravity of the consequences flowing from a particular finding. In other words, the standard is still the same (balance of probabilities) but the reasoning process leading to reasonable satisfaction requires additional considerations to be taken into account. In opting for the balance of probabilities/*Briginshaw* standard the Royal Commission seems to have been influenced by a number of considerations, including that:

- *Towards Healing* assesses the degree of likelihood that the person may abuse a child in the future, which is closer to balance of probabilities than it is to beyond reasonable doubt (even though, in this respect it differs from canon law),
- The Anglican and Uniting Churches use balance of probabilities/*Briginshaw*, and
- Regulatory authorities for the medical and teaching professions have the same standard.

Recommendation 16.55 deals with two situations and the second of them arises where the person has been convicted of an abuse offence. The Council presumes that this means convicted by a civil court of a criminal offence and this would involve satisfaction beyond reasonable doubt.

The first situation must apply to a canonical process where (for whatever reason) there has not been a criminal trial and to a conclusion reached in a process under *Towards Healing*, *The Melbourne Response* or a

complaints handling regime used by a Church authority. In Recommendation 16.9(a) the Royal Commission says that canon law should be amended to make it clear that child sexual abuse is a crime, not merely a moral failing. If it is a *crime* it would ordinarily follow that proof beyond reasonable doubt would be the applicable standard. Be that as it may, the recommendation needs to be dealt with on its merits.

On balance, the Council supports the recommendation that where a competent tribunal has reached a level of satisfaction on the balance of probabilities taking into account *Briginshaw* considerations, permanent removal from ministry should follow.

This will raise serious questions as to whether *Towards Healing, The Melbourne Response* and the various other complaints handing regimes actually do, according to their letter and in practical application, mandate use of that standard of satisfaction. Further, if a formal canonical process is required before removal from ministry can be decreed, it will be necessary to review whether, and to what extent, the current regimes comply with the canonical requirements.

The issue of the management of priests and religious who have been convicted of child sexual abuse offences or had complaints made against them substantiated, particularly in relation to whether or not they should be dismissed from the priesthood or in the case of religious, dispensed from vows, is complex. Despite the complexity, these recommendations are the expression of a general community expectation that Church authorities will take active and effective steps to permanently remove from ministry those who have been convicted of child sexual abuse offences, or had complaints of child sexual abuse made against them substantiated.

More work needs to be done on some aspects, including achieving clarity in relation to the first part of Recommendation 16.55.

As with Recommendation 16.11 there may be theological considerations that need to be considered, although they may not be immutable or inimical to the suggested standard. The Council takes no issue with the last sentence of the Recommendation. The standard of proof is not a practical problem in Recommendation 16.56 because ‘conviction’ would necessarily have involved ‘beyond reasonable doubt’ (a civil court) or ‘moral certainty’ (a canonical process).

In relation to mandated dismissal or zero tolerance (which is the effect of Recommendation 16.56) the Council has already commented on the complexity of the issues (see the discussion about Recommendations 16.11 and 16.13). In the final report (Vol 16 Book 3, Ch 21, p459) the Royal Commission dealt briefly with the arguments for and against automatic dismissal:

*In his evidence to our Institutional review of Catholic Church authorities hearing, Archbishop Anthony Fisher outlined the main arguments for and against dismissal of offending priests and religious that we have heard from various witnesses. Arguments in favour of dismissal include that:*

- *people in the community, particularly the victim and their family, would criticize the Catholic Church for continuing to support perpetrators*
- *it may be appropriate to deny ‘the title “Father” to the perpetrator, lest he be tempted to use his priestly status to find further opportunities to abuse the vulnerable’*

- *Catholic institutions do not have the resources or ability to effectively supervise perpetrators to ensure that they pose no risk.*

*Arguments against dismissal include that:*

- *'it may be wise to maintain links with a perpetrator (e.g. by providing some material support) in order to ensure that there is some continuing oversight of the person with a view to the continuing protection of vulnerable people'*
- *'situations may arise where dismissal or dispensation may not achieve any real or significant effect, such as where a convicted priest is very old and immobile, and living in a retirement village'*
- *'dismissal may be seen by the victim, their family or the community as the Catholic Church 'washing its hands again of a responsibility' and 'throwing them back on their family or on the community' to support them financially.'*

On balance, the Council supports the notion of mandated dismissal but it is a complex issue. This is an area where it will be difficult for the Church to get consensus across the myriad Church authorities for whom this is a practical problem. It is unarguable that 'the norm' should be dismissal but whether the discretion to deal with the exceptional case should be removed is problematic. A lot more work needs to be done in this area.

There are two related issues that we would like to raise. The first relates to delay in obtaining dismissal decrees. At present, the power to dismiss a person from the clerical state lies with the Holy See. In his evidence to the Royal Commission Fr Francis Maloney opined that there needed to be greater democratisation of all canonical matters, including dismissal and laicisation, and that they should be removed from the Vatican and dealt with locally. This is connected with the idea, in Recommendation 16.15, that ACBC and CRA should consider setting up local tribunals to hear canonical trials. Arguably, that could address the delay problem, but only if the power to dismiss or laicise was delegated from the Holy See to the local Church.

The second issue relates to the accountability of Bishops for failing properly to deal with allegations of abuse. Historically, although with some jurisdictional exceptions, this lies in the area of negligence rather than the criminal law. The Council makes some comments about this in a different context at the end of the canon law section of the introductory chapter.

It should be understood that in the *motu proprio* the Holy Father was largely declaring what canon law already provided for in relation to holding bishops accountable for their failings rather than changing the regulation. This includes the standard of proof. If the Holy See moves to formalise procedures in this area a question of the appropriate standard of proof might arise. In late January 2018 there was significant media criticism of the Holy Father's reaction to questions concerning a Chilean Bishop against whom negligence allegations have been made. In the course of responding to those criticisms His Holiness indicated that he would have to be achieve 'moral certainty' before acting. That may have been no more than a reflection of the current state of canon law (namely, that a judge must have 'moral certainty; before imposing a penalty) but it might be a contentious issue in the future.

## Action

These recommendations should be referred to the Implementation Advisory Group for consideration and development of national guidance for Church authorities on the approach to be taken to permanent removal from ministry of any priest or religious convicted of an offence or with a substantiated complaint of child sexual abuse.

In addition, the Implementation Advisory Group should commission research or sponsor an examination of, among other things:

- the theological underpinning (if any) of the standard or proof in canonical disciplinary procedures, and
- the true meaning (in relevant context) of 'zero tolerance', arguments for and against automatic dismissal, the various models adopted by Australian Church Authorities in this area and the chances of achieving uniformity.
- A review of Towards Healing, the Melbourne Response and other complaints handling regimes to see whether they are canonically appropriate to achieve the goal to which Recommendation 16.55 is directed.

CPSL will also have a role in developing guidelines on these matters.

In the section of the introductory chapter the Council discussed the general concept of the ACBC approaching the Holy See in relation to changes to canon law and the arrangements reached between the two bodies for communicating matters concerning the Royal Commission.

These matters should be brought to the attention of the Holy See working group with a suggestion that it be referred to, among other bodies, the Pontifical Commission for the Protection of Minors.

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## Recommendations 16.15

The Australian Catholic Bishops Conference and Catholic Religious Australia, in consultation with the Holy See, should consider establishing an Australian tribunal for trying canonical disciplinary cases against clergy, whose decisions could be appealed to the Apostolic Signatura in the usual way.

### Area of implication for the Church

#### Canon law

#### Overview

This recommendation appears in Vol 16, Book 2, Ch 13, Contributing factors in the Catholic Church, Sect 13.11.6, Canon law. Regard should also be had to Vol 16, Book 2, Sect 13.2 which contains a description of the history, development and content of the relevant canonical documents.

The comments in this section of the analysis should be read in conjunction with what was said about canon law generally in the introductory chapter.

#### Council comment

In 2001 the Holy See introduced new procedures for responding to abuse allegations against clergy. The preponderance of evidence given to the Royal Commission is that there have been few, if any, canonical trials in the Church in Australia.

The idea of having an Australian tribunal for trying canonical disciplinary cases against clergy is not a novel one. The five regional/provincial tribunals in Australia since 1974 have been competent to hear cases pertaining to criminal matters. Prior to 1974 each diocesan tribunal had that competency. In 1974 a National Tribunal of Appeal was established as the second instance tribunal for the tribunals in Australia and New Zealand. This arrangement, for reasons of law, was discontinued by the Holy See in 2011.

Whilst the five regional/provincial tribunals are competent to hear criminal trials, it would be a better use of personnel if there was one single tribunal in Australia for criminal trials. This would enable sufficient qualified and experienced personnel to be involved in the tribunal, and at the same time to ensure the formation of personnel for the future. In saying this, the Council is not suggesting any disturbance to the system of tribunals that presently exists and that deals, in the main although not exclusively, with marital matters.

There seems to be no reason in principle why local tribunals could not be established or re-established, as the case may be (see the evidence of Archbishop Wilson recorded at Vol 16, Book 2, p726).

The Council supports recommendation 16.15.

## Action

The Implementation Advisory Group should sponsor an examination by a group with representatives of ACBC, CRA and the Canon Law Society of Australia and New Zealand of

- The feasibility of establishing a single national tribunal in Australia to try canonical trials in abuse cases
- Processes, procedures and administrative protocols for such tribunals
- Resourcing implications, and
- Training of personnel, possibly through the Australian Catholic University, Broken Bay Institute and the University of Note Dame Australia (some or all of which could also consider offering degrees in canon law).

## Recommendations 16.16 and 16.17

### Recommendation 16.16

The Australian Catholic Bishops Conference should request the Holy See to introduce measures to ensure that Vatican Congregations and canonical appeal courts always publish decisions in disciplinary matters relating to child sexual abuse, and provide written reasons for their decisions. Publication should occur in a timely manner. In some cases it may be appropriate to suppress information that might lead to the identification of a victim.

### Recommendation 16.17

The Australian Catholic Bishops Conference should request the Holy See to amend canon law to remove the requirement to destroy documents relating to canonical criminal cases in matters of morals, where the accused cleric has died or ten years have elapsed from the condemnatory sentence. In order to allow for delayed disclosure of abuse by victims and to take account of the limitation periods for civil actions for child sexual abuse, the minimum requirement for retention of records in the secret archives should be at least 45 years.

#### Area of implication for the Church

Canon law

#### Overview

This recommendation appears in Vol 16, Book 2, Ch 13, Contributing factors in the Catholic Church, Sect 13.11.6, Canon law. Regard should also be had to Vol 16, Book 2, Sect 13.2 which contains a description of the history, development and content of the relevant canonical documents.

In relation to Recommendation 16.17, regard should also be had to Vol 8, Record keeping and information sharing, and to Vol 16, Book 3, Part E, Ch 23, Recordkeeping and information sharing in religious institutions.

The comments in this section of the analysis should be read in conjunction with what was said about canon law generally in the introductory chapter.

#### Council comment

Recommendation 16.16 appears in the final report under a heading 'Transparency of canon law disciplinary processes'. The Royal Commission said (Vol 16, Book 2 p726):

*We heard that the lack of transparency of canon law disciplinary processes is a significant barrier to fairness and effectiveness.*

*The 2009 Murphy report was scathing in its comments about the secrecy of the Catholic Church's canonical disciplinary processes, which it described as being in stark contrast to the civil law principle*

*that justice should be publicly administered, and that this could undoubtedly inhibit reporting child sexual abuse to the civil authorities or others.*

It also referred (p727) to the ACBC response to the 2011 draft scheme in which concern was expressed that the Church processes lacked clarity and that:

*The unavailability of jurisprudence on non-matrimonial cases compounds the problem. We believe that by making jurisprudence and precedence [stet] known to bishops and judges, the bishops would be in a better position to apply the church's penal legislation.*

The Council supports recommendation 16.16.

Recommendation 16.17 is in a section entitled 'Diocesan secret archives'. There is considerable scepticism in Church circles and in the wider community about the reference to 'secret' archives with the pejorative implication of the phrase. Leaving that issue to one side, the mischief at which this recommendation is directed lies in canon 489, which directs that documents in criminal cases in matter of morals should be destroyed on the death of the offender or after 10 years has elapsed since sentence was passed. However, canon 489 requires that a summary of the facts of the case and the definitive judgement be retained in the archives.

In 2000 the ACBC sent a report to Rome drawing attention to the problems caused when records are not available, including the impossibility of obtaining accurate statistics and the difficulties for an incoming bishop in understanding past events. The Nolan Report in the United Kingdom recommended that records relating to abuse allegations should be retained for 100 years. In its submission to the Royal Commission on record keeping (November 2016) the Council followed the Nolan report and suggested that records be kept for 100 years.

With all that in mind, the Council supports Recommendation 16.17.

## Action

In the introduction the Council discussed the general concept of the ACBC approaching the Holy See in relation to changes to canon law and the arrangements in place between the two bodies for communicating matters concerning the Royal Commission.

This matter should be brought to the attention of the Holy See working group with a suggestion that it be referred to, among other bodies, the Pontifical Commission for the Protection of Minors.

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## Recommendations 16.18 and 16.19

### Recommendation 16.18

The Australian Catholic Bishops Conference should request the Holy See to consider introducing voluntary celibacy for diocesan clergy.

### Recommendation 16.19

All Catholic religious institutes in Australia, in consultation with their international leadership and the Holy See as required, should implement measures to address the risks of harm to children and the potential psychological and sexual dysfunction associated with a celibate rule of religious life. This should include consideration of whether and how existing models of religious life could be modified to facilitate alternative forms of association, shorter terms of celibate commitment, and (or) voluntary celibacy (where that is consistent with the form of association that has been chosen).

### Area of implication for the Church

#### Ecclesial Governance

#### Overview

These recommendations are to be found in Volume 16, Book 2, Part D Religious institutions, Ch 13 Catholic Church, Section: 13.11.7, p731

The Commission summarised its deliberations as:

*it is apparent that celibacy in itself is not a direct cause of child sexual abuse. However, we are satisfied that the Catholic Church's rule of compulsory celibacy is a contributing factor for the incidence of child sexual abuse, especially when combined with other risk factors. ( Vol 16, Bk2, p. 766 ).*

However, this finding needs to be read in the context of other findings:

*individual pathology on its own is insufficient to explain child sexual abuse perpetrated by Catholic clergy and religious. Instead, a heightened risk of child sexual abuse arises out of the interplay between pre-existing factors in relation to an individual's psychosexual immaturity or psychosexual dysfunction and a range of situational and institutional factors. (Vol16,Bk2,p.612 )*

*there is an elevated risk of child sexual abuse where the 'propensity risk' of compulsorily celibate male Catholic clergy and religious to sexually abuse children is combined with the 'situational risk' afforded by privileged access to children in certain types of Catholic Church institutions. ( Vol16,Bk 2, p.767 )*

*we have identified a tightly interconnected cluster of systemic structural and cultural factors that appear to have contributed to both the occurrence of child sexual abuse and to poor institutional responses to child sexual abuse in the Catholic Church. These relevant factors include ( a full list is on p.616):*

- *The culture of clericalism in the Catholic Church*
- *Celibacy*
- *A culture of secrecy in the Catholic Church.*

*Among these factors, it appears to us that clericalism sits at the center, where it is interconnected with, and in some instances, is the root or foundation of, the other contributing factors. (Vol16, Bk2, p.616)*

#### Council comment

The Council has always maintained that there is no direct causal link between celibacy and abuse. However, in the submission for the Catholic Church Final Hearing the Council said that:

*an individual's ability to live a balanced and mature celibate life, and to be supported in that endeavor, is critical. If the particular personality of the celibate person is dysfunctional in some way, then that is where the problem arises. As stated above, whilst celibacy is not causative of sexual abuse, it can be lived in social conditions which heighten risks for that individual.*

The Council agrees with findings that celibate male clergy living in unbalanced and stressful situations may pose a higher risk to children, especially where there is a lack of suitable supervision. Although the Royal Commission heard from psychological and psychiatric experts around the pathological and sociological factors associated with perpetrators of child sexual abuse, a more detailed understanding of the influence of mandatory celibacy on those individuals needs to be developed.

Also, to the degree that it is accepted that celibacy contributes to a dysfunctional clericalist culture that promotes secrecy and the misuse of power in relation to child sexual abuse, then the study should extend to examining situational and institutional factors in relation to child sexual abuse in the Church.

It is important to recognise that a vow of celibacy is essential in the communal living of religious life. Any exploration of its role in the incidence of child sexual abuse must be directly associated with mechanisms for formation, support and growth for celibates within religious communities.

The Council considers that the more detailed understanding of the contribution of celibacy for the incidence of child sexual abuse should form part of the brief for the Holy See's analysis of the impact of the Royal Commission's report.

#### Action

In the introduction the Council discussed the general concept of the ACBC approaching the Holy See in relation to changes to canon law and the arrangements in place between the two bodies for communicating matters concerning the Royal Commission.



This matter should be brought to the attention of the Holy See working group, in particular requesting a study be undertaken on the impact of mandatory celibacy on the behavior of perpetrators of child sexual abuse and in the influence of clericalism in the institutional response to the abuse by the Church.

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## Recommendations 16.20, 16.21 and 16.22

### **Recommendation 16.20**

In order to promote healthy lives for those who choose to be celibate, the Australian Catholic Bishops Conference and all Catholic religious institutes in Australia should further develop, regularly evaluate and continually improve, their processes for selecting, screening and training of candidates for the clergy and religious life, and their processes of ongoing formation, support and supervision of clergy and religious.

### **Recommendation 16.21**

The Australian Catholic Bishops Conference and Catholic Religious Australia should establish a national protocol for screening candidates before and during seminary or religious formation, as well as before ordination or the profession of religious vows.

### **Recommendation 16.22**

The Australian Catholic Bishops Conference and Catholic Religious Australia should establish a mechanism to ensure that diocesan bishops and religious superiors draw upon broad-ranging professional advice in their decision-making, including from staff from seminaries or houses of formation, psychologists, senior clergy and religious, and lay people, in relation to the admission of individuals to:

- (a) seminaries and houses of religious formation
- (b) ordination and (or) profession of vows.

### **Area of implication for the Church**

#### **Formation**

#### **Overview**

These recommendations can be found in Vol 16, Bk 2, Sections: 13.11.7 – 13.11.9

The Royal Commission stated that celibacy in itself is not a direct cause of child sexual abuse. However, the Royal Commission found a direct link between celibacy and the culture of clericalism which in turn leads to secrecy, psychosexual dysfunction and a risk to the safety of children. (Vol 6, Bk2, pp. 766-768).

The Royal Commission concluded that compulsory celibacy is a contributing factor for the incidence of child sexual abuse (p.766) and thus recommended the exploration of voluntary celibacy for priests and religious (Vol6, Bk2, p.770).

In association with that finding the Royal Commission examined the current programs used to ascertain the suitability of individuals to live celibate priestly and religious lives.

In addition the Royal Commission heard from a series of witnesses, seminary directors, psychologists, counsellors, psychiatrists and theologians detailing the historical development of screening, selection, training and formation programs. The Royal Commission identified a lack of consistency across the Church in programs for screening and selection of candidates (pp.785 - 787) and the need for a more unified approach in order for the Church to satisfy Child Safe Standard 5 proposed in Chapter 20 of the Final Report.

### Council comment

The Council submitted in Case Study 50: the Catholic Church final hearing:

- Seminary formation has changed significantly since the 1980's in Australia with the introduction of better screening and psychological testing procedures.
- Although human development programs are now a compulsory feature of seminary training there is a need for consistency and quality control of their applications.
- Standards of educational outcomes should be developed for all seminaries that operate in Australia.
- Standards need to be established that direct the level of on-going formation clergy and religious are provided throughout the course of their active service life. ( Catholic Church: Then and Now, p.59)

The general conclusions of the Commission are supported. Although the Council submitted that changes to screening, selection and training programs have been occurring since the 1980s, the Council also recognised that more consistency and quality improvement is required.

To that end the Council envisaged CPSL developing standards in this area that bishops and religious leaders would meet so that best practice protocols and guidelines would be enacted.

As to the Commission's recommendation of a National Protocol, significant strategic policy work, by ACBC and CRA is required. Specifically, the development of a national protocol will require:

- a clear set of policies, protocols, practices and procedures capable of being agreed to by the ACBC and CRA
- that work should be undertaken by a multidisciplinary working group made up of members of the ACBC (or their nominees) and CRA (or their nominees), experts nominated by the ACBC and CRA, plus other independent persons with expertise in psychology, social work, counselling, theology and the law.
- the design of a strategic education and training program which facilitates the implementation of the agreed policies, protocols, practices and procedures.
- the establishment of a monitoring and evaluation process which considers the implementation of the policies, protocols, practices and procedures, and the education and training process which sees the implementation of the policies, protocols, practices and procedures.

- The involvement of Catholic universities (e.g., ACU, UD, ND, SCD) with the development of the applied policies, protocols, practices and procedures “for selecting, screening and training of candidates for the clergy and religious life” and the monitoring and evaluation of the standards and framework.

### Action

The Implementation Advisory Group should monitor the development of the National Protocol and report to ACBC and CRA.

CPSL should develop appropriate standards to align with the development of the National Protocol.

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## Recommendation 16.23

In relation to guideline documents for the formation of priests and religious:

- (a) The Australian Catholic Bishops Conference should review and revise the *Ratio nationalis institutionis sacerdotalis*: Program for priestly formation (current version December 2015), and all other guideline documents relating to the formation of priests, permanent deacons, and those in pastoral ministry, to explicitly address the issue of child sexual abuse by clergy and best practice in relation to its prevention.
- (b) All Catholic religious institutes in Australia should review and revise their particular norms and guideline documents relating to the formation of priests, religious brothers, and religious sisters, to explicitly address the issue of child sexual abuse and best practice in relation to its prevention.

### 1.2 Area of implication for the Church

Formation

### 1.3 Overview

This recommendation is found in Vol 16, Bk 2, Section 13.11.8, pp.788-790.

### 1.4 Council comment

This recommendation from the Royal Commission covers similar ground to other recommendations. What is most important is that strategies articulated under 16.20 and 16.21 deal with the issues noted by the Royal Commission in their recommendation 16.23.

It is noted that a committee has been established by the ACBC to work on the implementation of the *Ratio Nationalis Institutionis Sacerdotalis* (2015) into the Australian context. Similar work has been undertaken by representatives of the Leaders of (male) Religious Institutes through CRA.

“Human Formation” is a recognised and key pillar of formation. It is clearly emphasised in the Ratio. The ACBC and CRA need to tackle the challenge of striking the proper balance in the formation for priesthood, between “Human Formation” and that of “Intellectual Formation”.

The recommendations for 16.23 should be integrated into the process outlined in the recommendations associated with 16.20 and 16.21.

A review committee for the *Ratio Nationalis Institutionis Sacerdotalis* (2015) must be comprised of expert persons, both lay and clerical, from a broad range of disciplines. The same principle applies to Religious Institutes in their examination of their respective norms and guidelines relating to formation of brothers, priests and sisters.

In the examination of the Ratio (and corresponding norms and guidelines in religious institutes), and in the work of any committee charged with developing an implementation strategy, significant attention must be paid to three issues highlighted by the Royal Commission:

- (a) The need for stronger measures that ensure initial and ongoing education and training pertaining to child abuse prevention
- (b) The need for a greater emphasis on educational programs and experiential learning oriented towards assisting candidates in the areas of human development and the development of psychosexual maturity.
- (c) The particular needs of candidates (religious and priests) seeking to minister within an Australian context.

### 1.5 Action

ACBC and CRA should establish review committees and report progress to the Implementation Advisory Group.

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## Recommendation 16.24

The Australian Catholic Bishops Conference and Catholic Religious Australia should conduct a national review of current models of initial formation to ensure that they promote pastoral effectiveness, (including in relation to child safety and pastoral responses to victims and survivors) and protect against the development of clericalist attitudes.

### Area of implication for the Church

#### Formation

#### Overview

This recommendation can be found in Vol 16, Bk 2, Section: 13.11.8 pp.791-808.

The Royal Commission found that formation practices prior to the 1970s were inadequate in preparing individuals for the realities of life in pastoral ministry. (p.808)

The Commission was satisfied that:

*Inadequacies in selection, screening and initial formation have contributed to the incidence of child sexual abuse by clergy and religious in Catholic institutions in Australia, including through the absence of appropriately trained people and a curriculum and formation process that reflected a comprehensive understanding of human development and experience.*

*From the 1970s there have been improvements...However, it appears to us that, in Australia, change has largely been implemented in an ad hoc and inconsistent manner. (p.809)*

#### Council comment

The Council submitted to the Royal Commission that “selection, screening and training of priests and religious has changed markedly from the approach in place in the early 1990s” (Catholic Church: Then and Now, p.51)

Recommendations in respect of 16.24 must be read in conjunction with the fundamental propositions put forward in 16.20 and 16.21.

There was significant emphasis in Case Study 50: Catholic Church Final Hearing on models of initial formation. Given changing social circumstances, the emerging needs of the ecclesial community, and improved understanding of what makes for good and healthy human formation, a review of current curricula is timely.

The Royal Commission posits a causal connection between an institutional model of formation, the values which underpin such models, and the development of clericalism. While a causal connection may not always exist, it is reasonable to say that different models of formation will have their own impact on the formation

process. It is also reasonable to say that models emphasising separation, social or class difference, and theological constructs such as ontological change, are more likely to foster a clericalist approach to ministry. These factors should be foremost in the curriculum review.

The ACBC and leaders of religious institutes must:

- (a) Engage in a critical and open review of the models of initial formation currently in use (including curriculum, processes and the location of different stages of formation) to ensure that candidates for religious life and priesthood are exposed to the realities of ordinary life, and tested against these realities, to ensure they can relate effectively, respectfully and sensitively to those with whom they minister.
- (b) Ensure that this review encompasses a multidisciplinary approach utilising the expertise of priests, religious, candidates and lay external experts from a range of disciplines.

### Action

ACBC and CRA should establish the proposed reviews as a matter of urgency and provide on-going reports to the Implementation Advisory Group.

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## Recommendation 16.25

The Australian Catholic Bishops Conference and Catholic Religious Australia should develop and each diocese and religious institute should implement mandatory national standards to ensure that all people in religious or pastoral ministry (bishops, provincials, clergy, religious, and lay personnel):

- (a) undertake mandatory, regular professional development, compulsory components being professional responsibility and boundaries, ethics in ministry, and child safety
- (b) undertake mandatory professional/pastoral supervision
- (c) undergo regular performance appraisals.

### Area of implication for the Church

#### Formation

#### Overview

This recommendation can be found in Vol 16, Bk 2, Section: 13.11.9. pp.845 - 848

The Royal Commission accepted that changes to professional development and pastoral supervision were occurring within the Church. It also acknowledged that:

*many of the mechanisms that we recommend should be introduced are already required by Integrity in Ministry. However, we have heard that they have not been fully implemented by dioceses and religious institutes. (p.845)*

#### Council comment

The Council submitted to the Royal Commission that:

*Standards need to be established that direct the level of on-going formation clergy and religious are provided throughout the course of their active service life. (The Catholic Church: Then and Now, p.59).*

Any person—lay, religious, priest—engaged in any form of ministry must receive individual and where appropriate group supervision, and ongoing professional development and formation, the aim of which is to equip such persons with the requisite skills to engage in ministry with integrity, balance, appropriate boundaries and the ability to maintain a healthy lifestyle. Professional or pastoral supervision or consultation establishes the necessary conditions whereby safeguarding can occur. It ensures a responsible and accountable approach to ministry.

The recommendations for 16.25 should be integrated into the process outlined in the recommendations associated with 16.20 and 16.21 and subsequent recommendations. The recommendations that pertain specifically to 16.25 are as follows:

- CPSL should develop of a set of national standards on professional development, professional or pastoral supervision or consultation, and appraisal, agreed to by each diocese and all religious institutes.
- The development process for the national standards must engage with a broad range of experts—lay, religious and clerical—in order that the standards are effective to the task and broadly acceptable to those for whom the accountability processes are established.

### Action

CPSL should develop the appropriate standards for compliance by bishops and religious leaders. CPSL should inform the Implementation Advisory Group of on-going progress in the development of standards.

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## Recommendation 16.26

The Australian Catholic Bishops Conference should consult with the Holy See, and make public any advice received, in order to clarify whether:

- (a) information received from a child during the sacrament of reconciliation that they have been sexually abused is covered by the seal of confession
- (b) if a person confesses during the sacrament of reconciliation to perpetrating child sexual abuse, absolution can and should be withheld until they report themselves to civil authorities.

### Council comment and Action

See the detailed discussion in Recommendations 7.4, 16.26, 16.48 and the Criminal Justice report.

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## Recommendations 16.27, 16.28, 16.29 and 16.30

### **Recommendation 16.27**

The Jehovah's Witness organisation should abandon its application of the two-witness rule in cases involving complaints of child sexual abuse.

### **Recommendation 16.28**

The Jehovah's Witness organisation should revise its policies so that women are involved in processes related to investigating and determining allegations of child sexual abuse.

### **Recommendation 16.29**

The Jehovah's Witness organisation should no longer require its members to shun those who disassociate from the organisation in cases where the reason for disassociation is related to a person being a victim of child sexual abuse.

### **Recommendation 16.30**

All Jewish institutions in Australia should ensure that their complaint handling policies explicitly state that the *halachic* concepts of *mesirah*, *moser* and *loshon horo* do not apply to the communication and reporting of allegations of child sexual abuse to police and other civil authorities.

#### **Area of implication for the Church**

Other faith-based institutions.

#### **Overview**

These recommendations are found in Vol16 Book 3 Part D pp 102

#### **Council comment**

The Council has no competency to address these recommendations.

#### **Action**

No action required at this time.

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## Recommendations 16.31, 16.32, 16.33, 16.34 and 16.35

### **Recommendation 16.31**

All institutions that provide activities or services of any kind, under the auspices of a particular religious denomination or faith, through which adults have contact with children, should implement the 10 Child Safe Standards identified by the Royal Commission.

### **Recommendation 16.32**

Religious organisations should adopt the Royal Commission's 10 Child Safe Standards as nationally mandated standards for each of their affiliated institutions.

### **Recommendation 16.33**

Religious organisations should drive a consistent approach to the implementation of the Royal Commission's 10 Child Safe Standards in each of their affiliated institutions.

### **Recommendation 16.34**

Religious organisations should work closely with relevant state and territory oversight bodies to support the implementation of and compliance with the Royal Commission's 10 Child Safe Standards in each of their affiliated institutions.

### **Recommendation 16.35**

Religious institutions in highly regulated sectors, such as schools and out-of-home care service providers, should report their compliance with the Royal Commission's 10 Child Safe Standards, as monitored by the relevant sector regulator, to the religious organisation to which they are affiliated.

## **Area of implication for the Church**

Ecclesial Governance

Overview

Discussion of standards compliance and monitoring is covered in Vol 16, Book 3, Sect 20.2.1

## **Council comment**

Council submitted that the establishment of CPSL would ensure better compliance and monitoring of child safety standards in the Catholic Church. This new regime would not duplicate existing statutory standards compliance and would work on policy matters with state and federal jurisdictions.



The Catholic Church standards would apply to all organisations seeking to work within the Church on child related matters/services. Formal and informal Catholic organisations seeking to work within a diocese would need the permission of the local ordinary and his satisfaction that they are willing to comply with the standards.

The establishment of CPSL has the potential to satisfy these recommendations.

#### Action

For the consideration of CPSL.

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## Recommendation 16.36

Consistent with Child Safe Standard 1, each religious institution in Australia should ensure that its religious leaders are provided with leadership training both pre- and post-appointment, including in relation to the promotion of child safety.

### Area of implication for the Church

#### Formation

#### Overview

Recommendation relates to Volume 16, Book 3 Part E, Creating child safe religious institutions, section 20.4.1, Leadership, governance and culture.

The Royal Commission found:

*... leaders of those religious institutions we examined were not adequately prepared for what was required of them in preventing and responding to child sexual abuse. (p.315)*

#### Council comment

This recommendation is supported. Many current Church leaders indicated that either they or their predecessors were not trained to deal with complaints handling, child abuse allegations, the pastoral response to victims and the legal ramifications of abuse cases. Such training is essential in the creation of child safe institutions.

CPSL was established to develop and monitor standards related to child safety. The training of leaders would be an integral component to assessing the degree to which the institution was child safe.

#### Action

CPSL should develop and monitor standards of training for leaders that include competencies in managing complaints and allegations of child abuse, the promotion of child safety and the supervision of staff development.

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## Recommendations 16.37, 16.38 and 16.39

### **Recommendation 16.37**

Consistent with Child Safe Standard 1, leaders of religious institutions should ensure that there are mechanisms through which they receive advice from individuals with relevant professional expertise on all matters relating to child sexual abuse and child safety. This should include in relation to prevention, policies and procedures and complaint handling. These mechanisms should facilitate advice from people with a variety of professional backgrounds and include lay men and women.

### **Recommendation 16.38**

Consistent with Child Safe Standard 1, each religious institution should ensure that religious leaders are accountable to an appropriate authority or body, such as a board of management or council, for the decisions they make with respect to child safety

### **Recommendation 16.39**

Consistent with Child Safe Standard 1, each religious institution should have a policy relating to the management of actual or perceived conflicts of interest that may arise in relation to allegations of child sexual abuse. The policy should cover all individuals who have a role in responding to complaints of child sexual abuse.

#### **Area of implication for the Church**

Ecclesial Governance

#### **Overview**

Discussed in Vol 16, Book 3, Sect 20.4

#### **Council comment**

The establishment of CPSL incorporates the monitoring of professional standards within the Church. Religious leaders would be assessed for the level of compliance they ensured their services met in regard to the agreed Church standards. In particular, the manner in which professional standards issues were managed, including complaints handling.

CPSL has the potential to satisfy these recommendations.

#### **Action**

For the consideration of CPSL.

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## Recommendation 16.40

Consistent with Child Safe Standard 2, wherever a religious institution has children in its care, those children should be provided with age-appropriate prevention education that aims to increase their knowledge of child sexual abuse and build practical skills to assist in strengthening self-protective skills and strategies. Prevention education in religious institutions should specifically address the power and status of people in religious ministry and educate children that no one has a right to invade their privacy and make them feel unsafe.

### Area of implication for the Church

#### Child safe standards

#### Overview

This recommendation is found in Book 3 of Vol 16, Part 20.4.2 pp 338-343 and relate to children's participation and empowerment in institutions in which they are engaged.

Children are safer when institutions acknowledge and teach them about their right to be heard, listened to and taken seriously as well as being enabled to understand, identify and raise their safety concerns with a trusted adult. This enables children to feel safe within the institution.

Further to recommendations 6.4-6.6 requiring institutions to implement the Child Safe Standards, the Royal Commission has identified that an important element of Child Safe Standard 2 - children's participation and empowerment - is educative: ensuring children have access to sexual abuse prevention programs and information, and are aware of how to complain if they feel unsafe.

Such protective behaviours empower children with knowledge and skills to help protect themselves from potentially abusive situations, and how to get help in the event of abuse or attempted abuse.

#### Council comment

In October 2011 the Council submitted its response to the Royal Commission's issues paper 3: Child Safe Institutions, in which it identified nine essential elements of child safe institutions. This included a recommendation for empowerment of children and protective behaviours training for children, consistent with Child Safe Standard 2 identified by the Royal Commission.

#### Action

Church authorities should implement recommendation 16.40 as part of implementation of recommendations 6.4, 6.5 and 6.6.



Recommendation 16.40 should be referred to CPSL for consideration and development of appropriate standards (this recommendation relating to the content for implementation of the Child Safe Standards generally).

Implementation progress by Church authorities and CPSL should be monitored by the Implementation body.

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## Recommendation 16.41

Consistent with Child Safe Standard 3, each religious institution should make provision for family and community involvement by publishing all policies relevant to child safety on its website, providing opportunities for comment on its approach to child safety, and seeking periodic feedback about the effectiveness of its approach to child safety.

### Area of implication for the Church

#### Child safe standards

#### Overview

This recommendation is found in Book 3 of Vol 16, Part 20.4.3 pp 344-346 and relates to community engagement with institutions in the development and operation of practices and decisions affecting children.

A child safe institution engages with parents, carers and the broader community to enhance the protection of children within its care.

Further to recommendations 6.4-6.6 requiring institutions to implement the Child Safe Standards, the Royal Commission has identified that religious institutions could improve the extent to which families and the broader community are informed about and have a say in their policies and practices. The Royal Commission found that religious institutions are often closely connected to their communities and both need to work together to enhance child safety.

#### Council comment

In October 2011 the Council submitted its response to the Royal Commission's issues paper 3: Child Safe Institutions, in which it identified nine essential elements of child safe institutions. These elements have been fully subsumed into the ten Child Safe Standards of the Royal Commission.

Recommendation 16.41 is consistent with Council policy as presented to the Royal Commission and is supported.

#### Action

Church authorities should implement recommendation 16.41.

Recommendation 16.41 should be referred to CPSL for consideration and development of appropriate standards.



Implementation progress by Church authorities and CPSL should be monitored by the Implementation Advisory Group.

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## Recommendation 16.42

Consistent with Child Safe Standard 5, each religious institution should require that candidates for religious ministry undergo external psychological testing, including psychosexual assessment, for the purposes of determining their suitability to be a person in religious ministry and to undertake work involving children.

### Area of implication for the Church

#### Formation

#### Overview

This recommendation is to be found in Vol 16, Book 3, Sect 20.4.5, Human resource management.

This recommendation also results from the discussion in Vol 16, Book 2, Sect 13.11.8, Selection, screening and initial formation.

#### Council comment

Psychological testing is important and should be a part of any assessment, screening and discernment process. Psychological testing and assessments provide historical data and evidence of tendencies; however, each psychological testing process (and the accompanying assessment) is a snapshot of a person as they are at the time of the testing. This is a limitation that needs to be countered using other methods of discernment.

The use of a more therapeutic process, the additional use of regular supervision, discernment interviews with formators, and group supervision with peers and mentors (to name some processes), all assist in the discernment and decision-making process. The discernment and assessment process must be focused on the complex motivations for choosing a celibate lifestyle, and on the realistic (rather than aspirational) capacity to lead a celibate life.

Assessment and discernment must therefore use a mixed method approach:

- Initial psychological assessment
- Further psychological assessments at critical points of progression in the pathway
- Therapeutic intervention in the form of counselling or psychotherapy
- Education around human development (across the life span).

With the establishment of CPSL, standards for screening and psychological testing can be developed and monitored for compliance.



The proposed best practice multidisciplinary assessment proposed by Dr Gerardine Robinson in her evidence to the Commission is supported. The components of which are:

- Medical assessment
- Neuropsychological assessment
- Comprehensive psychosocial interview
- Comprehensive structured psychosexual assessment
- Psychiatric assessment
- Psychological testing
- Spiritual assessment.

#### Action

CPSL to develop standards around the screening and assessment for personnel involved in religious ministry and provide updates to the Implementation Advisory Group.

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## Recommendation 16.43

Each religious institution should ensure that candidates for religious ministry undertake minimum training on child safety and related matters, including training that:

- (a) equips candidates with an understanding of the Royal Commission's 10 Child Safe Standards
- (b) educates candidates on:
  - (i) professional responsibility and boundaries, ethics in ministry and child safety
  - (ii) policies regarding appropriate responses to allegations or complaints of child sexual abuse, and how to implement these policies
  - (iii) how to work with children, including childhood development
  - (iv) identifying and understanding the nature, indicators and impacts of child sexual abuse.

### Area of implication for the Church

#### Formation

#### Overview

This recommendation is to be found in Vol 16, Book 3, Part E, Creating child safe religious institutions, Section: 20.4.5, Initial training of candidates for religious ministry,

#### Council comment

This recommendation is supported.

CPSL should develop and monitor for compliance standards of education and training for personnel involved with children.

Bishops and Leaders of Religious Institutes must ensure that adequate resources are set aside to provide for and review the effectiveness of the education and training mentioned above.

#### Action

CPSL should develop the appropriate standards and provide the Implementation Advisory Group with on-going updates.

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## Recommendations 16.44 and 16.45

### **Recommendation 16.44**

Consistent with Child Safe Standard 5, each religious institution should ensure that all people in religious or pastoral ministry, including religious leaders, are subject to effective management and oversight and undertake annual performance appraisals.

### **Recommendation 16.45**

Consistent with Child Safe Standard 5, each religious institution should ensure that all people in religious or pastoral ministry, including religious leaders, have professional supervision with a trained professional or pastoral supervisor who has a degree of independence from the institution within which the person is in ministry.

#### Area of implication for the Church

##### Formation

##### Overview

These recommendations are to be found in Vol 16, Part E, Creating child safe religious institutions, Sect 20.4.5 Oversight and professional supervision of people in religious ministry.

##### Council comment

CPSL will have the responsibility to develop and monitor standards associated with the obligations for personnel in regard to professional supervision, appraisals and performance reviews.

Bishops and religious leaders will need to resource the compliance of standards to ensure that the Church is regarded as being a child safe religious institution. In order to meet the compliance obligations:

- Dioceses and Religious Institutes must develop structures for accountability and appraisal which will be applicable to all those engaged in any form of ministry
- The strategies for “effective management and oversight” of all those engaged in ministry within the church will include:
  - (i) Line management supervision (see 16.45 below)
  - (ii) Individual professional supervision
  - (iii) Group supervision (where relevant and appropriate)

(iv) Yearly appraisal.

- Bishops and Leaders of Religious Institutes must engage in regular external professional supervision (or as it may be terms, individual pastoral consultation).
- Bishops and Leaders of Religious Institutes must engage in a structured yearly performance appraisal.
- The appraisal of any bishop or leader of a religious institute must be carefully structured and sensitively managed so that it provides useful feedback and the necessary follow-up support which allows the person to bring about any recommended change.
- As with any form of appraisal, the appraisal of the bishop or a leader of a religious institute must have an appropriate balance between transparency and accountability.
- As with any form of appraisal, the appraisal of the bishop or a leader of a religious institute must engage suitably qualified people of integrity from both within the Catholic Church and external to it to assist with the appraisal process.
- Similar strategies must be employed for the appraisal of priests, religious and lay ministers within the church

#### Action

CPSL should develop and monitor standards associated with appraisal and assessment of effective management and oversight in institutions and the professional/pastoral supervision of key personnel.

## Recommendation 16.46

Religious institutions which receive people from overseas to work in religious or pastoral ministry, or otherwise within their institution, should have targeted programs for the screening, initial training and professional supervision and development of those people. These programs should include material covering professional responsibility and boundaries, ethics in ministry and child safety.

### Area of implication for the Church

#### Formation

#### Overview

This recommendation is to be found in Vol 16, Book 3, Part E, Creating child safe religious institutions, Sect 20.4.5, Recruiting personnel from overseas.

#### Council comment

This particular recommendation is a subset of other recommendations dealing with screening, training, ongoing professional development and professional practices that ensure accountability and good practice in ministry.

CPSL has responsibility to develop and monitor standards associated with the screening, formation and training of individuals sourced from overseas for ministry in Australia.

The recommendations for 16.46 should be integrated into the processes outlined in previous recommendations dealing with education and training, monitoring and evaluation, and those dealing with supervision, professional developing and appraisal.

The standards should encompass:

- Priests, religious and candidates from other countries must be provided with initial and ongoing education and support focusing on their understanding of and integration into the Australian secular and religious culture.
- Priests, religious and candidates from other countries must be provided with appropriate individual and group professional supervision focusing on their understanding of and integration into the Australian secular and religious culture.
- All programs of education, training and supervision “should include material covering professional responsibility and boundaries, ethics in ministry and child safety” as core aspects of an initial and ongoing curriculum.



## Action

CPSL should develop the appropriate standards associated with screening and training for overseas sourced personnel.

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## Recommendation 16.47

Consistent with Child Safe Standard 7, each religious institution should require that all people in religious or pastoral ministry, including religious leaders, undertake regular training on the institution's child safe policies and procedures. They should also be provided with opportunities for external training on best practice approaches to child safety.

### Area of implication for the Church

#### Formation

#### Overview

This recommendation is to be found in Vol 16, Book 3, Part E, Creating child safe religious institutions. Sect 20.4.7 Ongoing education and training for people in religious ministry.

#### Council comment

CPSL has responsibility for developing and monitoring standards associated with staff training on the policies and procedures for child safety.

The recommendation 16.47 should be integrated into the processes outlined in previous recommendations dealing with education and training, monitoring and evaluation, and those dealing with supervision, professional developing and appraisal. The standards should incorporate components such as:

- Policies, practices and protocols for all dioceses and religious institutes must be reviewed and evaluated in light of the findings of the Royal Commission.
- All bishops and leaders of religious institutes must instruct that a comprehensive training program be developed and implemented—stage by stage—for each member of their diocese or religious institute.
- This baseline training on safeguarding of children and vulnerable adults must be mandatory for any person engaged in any level of active public ministry.
- Compliance with mandatory training must be a condition of employment, the retention of ministry, the holding of faculties.
- Failure to engage in mandatory training on safeguarding of children and vulnerable adults must invoke warnings, censure, and ultimately if compliance is not forthcoming, the withdrawal of the person from active public ministry.
- All people involved in active public ministry, be they lay, religious, deacons, priests or bishops must engage actively in this mandatory training and education.



## Action

CPSL should develop the appropriate standards to meet this recommendation as a matter of urgency.  
Duplication with government regulatory systems should be avoided.

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## Recommendation 16.48

Religious institutions which have a rite of religious confession for children should implement a policy that requires the rite only be conducted in an open space within the clear line of sight of another adult. The policy should specify that, if another adult is not available, the rite of religious confession for the child should not be performed

### Council comment and Action

See the detailed discussion in the section entitled 'Recommendations 7.4, 16.26, 16.48 and the Criminal Justice report.

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## Recommendations 16.49 and 16.50

### **Recommendation 16.49**

Codes of conduct in religious institutions should explicitly and equally apply to people in religious ministry and to lay people.

### **Recommendation 16.50**

Consistent with Child Safe Standard 7, each religious institution should require all people in religious ministry, leaders, members of boards, councils and other governing bodies, employees, relevant contractors and volunteers to undergo initial and periodic training on its code of conduct. This training should include:

- (a) what kinds of allegations or complaints relating to child sexual abuse should be reported and to whom
- (b) identifying inappropriate behaviour which may be a precursor to abuse, including grooming
- (c) recognising physical and behavioural indicators of child sexual abuse
- (d) that all complaints relating to child sexual abuse must be taken seriously, regardless of the perceived severity of the behaviour.

#### Area of implication for the Church

##### Ecclesial Governance

##### Overview

Discussed in Volume 16, Book 3, Sect 21.4.2

##### Council policy

The establishment of CPSL was partly in response to the need for consistency across standards compliance in the Church. Policies and programs such as ‘Integrity in Ministry’ and ‘Integrity in the Service of the Church’ would be incorporated into training for all personnel in the Church.

CPSL has the potential to satisfy these recommendations.

##### Action

For the consideration of CPSL.

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## Recommendations 16.51, 16.52, 16.53 and 16.54

### **Recommendation 16.51**

All religious institutions' complaint handling policies should require that, upon receiving a complaint of child sexual abuse, an initial risk assessment is conducted to identify and minimise any risks to children.

### **Recommendation 16.52**

All religious institutions' complaint handling policies should require that, if a complaint of child sexual abuse against a person in religious ministry is plausible, and there is a risk that person may come into contact with children in the course of their ministry, the person be stood down from ministry while the complaint is investigated.

### **Recommendation 16.53**

The standard of proof that a religious institution should apply when deciding whether a complaint of child sexual abuse has been substantiated is the balance of probabilities, having regard to the principles in *Briginshaw v Briginshaw*.

### **Recommendation 16.54**

Religious institutions should apply the same standards for investigating complaints of child sexual abuse whether or not the subject of the complaint is a person in religious ministry.

## Area of implication for the Church

### Professional standards

### Overview

These recommendations are found in Vol 16, Part E Chapter 21.5-21.8 pp 416-446 and relate to the development of policy and procedure around receipt and response of religious institutions to complaints of child sexual abuse.

These recommendations draw on and supplement those made in Volume 7 of the Final Report – Improving institutional responding and reporting, particularly recommendation 7.7 that institutions should have a child-focused complaint handling policy and procedure.

The Royal Commission identified clear deficiencies in past approaches to complaint handling and management of alleged perpetrators.

From its investigations the Royal Commission identified that many survivors felt they could not disclose abuse, either because there was no-one they could confide in within the institution or no identified and understood processes through which to make a complaint. Case studies also revealed evidence of alleged perpetrators

being allowed to continue in ministry after complaints about their actions had been received, without any assessment of the risk they posed to children.

The Royal Commission has recommended that institutions establish and publicise policy and procedures for the management of complaints, including

- (a) providing an initial point or points of contact for receipt of complaints
- (b) compliance with legal requirements for reporting of complaints to civil authorities
- (c) clear investigation procedures that accord with the principles of natural justice
- (d) putting in place processes for management of risk posed by alleged perpetrators during the investigation process, and
- (e) provision for sharing information with affected parties about the complaint.

The Royal Commission expressed particular concern regarding canonical investigation procedures, which require a higher standard of proof (moral certainty) than the civil standard recommended by the Royal Commission (balance of probabilities). In this regard, reference should be had to the recommendations in Volume 13 of the Final Report and Council evaluation of same.

#### Council comment

It is clear that, despite the Council preference for investigation of historic claims of child sexual abuse be undertaken by agencies independent of the Church under a national redress scheme, going forward there will still be occasions when Church authorities will be required to receive and investigate complaints.

It follows that Church authorities require policy and procedures for complaint handling that are informed by and consistent with these recommendations of the Royal Commission (and those of Volume 7 of the Final Report).

Recommendations 16.51, 16.52, 16.53 and 16.54 are consistent with Council policy and are supported.

#### Action

Church authorities should review their existing complaint handling policies and procedures to ensure that recommendations 16.51, 16.52, 16.53 and 16.54 are fully articulated and implemented (consistent with their approach to implementation of the recommendations in Volume 7 of the Final Report).

Recommendations 16.51, 16.52, 16.53 and 16.54 should be referred to CPSL for consideration and development of appropriate standards.

Implementation progress by Church authorities and CPSL should be monitored by the Implementation Advisory Group.

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## Recommendation 16.55 and 16.56

### **Recommendation 16.55**

Any person in religious ministry who is the subject of a complaint of child sexual abuse which is substantiated on the balance of probabilities, having regard to the principles in Briginshaw v Briginshaw, or who is convicted of an offence relating to child sexual abuse, should be permanently removed from ministry. Religious institutions should also take all necessary steps to effectively prohibit the person from in any way holding himself or herself out as being a person with religious authority.

### **Recommendation 16.56**

Any person in religious ministry who is convicted of an offence relating to child sexual abuse should:

- (a) in the case of Catholic priests and religious, be dismissed from the priesthood and (or) dispensed from his or her vows as a religious
- (b) in the case of Anglican clergy, be deposed from holy orders
- (c) in the case of Uniting Church ministers, have his or her recognition as a minister withdrawn
- (d) in the case of an ordained person in any other religious denomination that has a concept of ordination, holy orders and(or) vows, be dismissed, deposed or otherwise effectively have their religious status removed.

### Council comment and Action

See the detailed discussion in the section entitled 'Recommendations 7.4, 16.55 and 16.56'.

## Recommendation 16.57

Where a religious institution becomes aware that any person attending any of its religious services or activities is the subject of a substantiated complaint of child sexual abuse, or has been convicted of an offence relating to child sexual abuse, the religious institution should:

- (a) assess the level of risk posed to children by that perpetrator's ongoing involvement in the religious community
- (b) take appropriate steps to manage that risk.

### Area of implication for the Church

#### Professional standards

#### Overview

This recommendation is found in Vol 16, Part E Chapter 21.10 pp 464-471 and relates to the approach that should be taken by religious institutions to participation of people (whether priest, lay or religious) who the institution is aware has been convicted of a child sexual abuse offence or had a substantiated complaint and wishes to attend and (or) participate in religious ceremonies run by the institution.

The Royal Commission recognised 'the uniquely difficult situation this creates for religious institutions seeking to ensure they are child safe' given that 'religious institutions which provide religious services or activities, through which people can practice their religion or beliefs, need to manage risks to children who also attend...'.

The Royal Commission has recommended that an assessment of the risk posed to children is conducted where an institution becomes aware an attendee has been convicted of a child sexual abuse offence or had a substantiated complaint and:

- (a) where the risk posed by the person can be adequately managed, appropriate steps to manage the risk should be taken
- (b) where the risk cannot be effectively managed, the safety of children should be prioritised and the person prohibited from attending.

The Royal Commission noted that for some religious institutions a blanket rule prohibiting attendance may be the only effective way to manage the risk in the circumstances.

#### Council comment

As recognised by the Royal Commission, some Church authorities have, or are in the process of, implementing risk assessment-based approaches to the participation of people who have been convicted of a child sexual



abuse offence or had a complaint made against them substantiated. The Council is supportive of this policy approach as a way forward in dealing with this complex issue.

Recommendation 16.57 is supported.

### Action

Recommendation 16.57 should be referred to the Implementation Advisory Group and CPSL for consideration and development of national guidance for Church authorities on a risk assessment-based approach to be taken to attendance of those convicted of an offence or with a substantiated complaint of child sexual abuse at Church activities and ceremonies. It may also be necessary for CPSL to develop appropriate standards.

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## Recommendation 16.58

Each religious organisation should consider establishing a national register which records limited but sufficient information to assist affiliated institutions identify and respond to any risks to children that may be posed by people in religious or pastoral ministry.

### Area of implication for the Church

#### Professional standards

#### Overview

This recommendation is found in Vol 16, Book 3, Part 23.2.6 pp 577-588 and relates to the establishment of a national register of information relevant to the risk of child sexual abuse posed by individuals engaged in religious or pastoral ministry.

Although only one recommendation (16.58) was included, the whole of Part 23 of the final report (Vol 16 Book 3 pp 542-588), which deals with information sharing in religious institutions, building on Volume 8 relating to information sharing generally, is also relevant.

The Royal Commission has identified risks posed when information about child sexual abuse is not shared between employers and registering authorities in child-related sectors.

Although it acknowledged that in the absence of regulatory authorities and governing legislation it may be difficult for institutions to develop and maintain effective registers containing up-to-date information, the Royal Commission considered that many religious organisations were large enough, and had overarching bodies capable of establishing and operating a national register.

The Royal Commission compared the operation of the recently established:

- 2      Australian Catholic Ministry Register (ACMR) which essentially identifies priests and male religious who are considered suitable to minister to children, and
- 3      *National Register Canon 2017* by the Anglican Church, which operates to identify clergy and lay people who pose a risk to children.

The Royal Commission considered that registers can be 'key tools in overcoming cultural and structural issues in sharing information relating to people in religious ministry', thereby helping to promote children's safety by alerting institutions to the risk posed by individuals.

#### Council comment

The Council supported the establishment and operation of the ACMR by the NCPS.



This recommendation is supported.

The scope of this recommendation for the Church should be considered, in particular whether changes should be made to the structure, coverage and information maintained by the ACMR.

### Action

This recommendation should be referred to the Implementation Advisory Group for further consideration.

On the understanding that the operation of the ACMR is likely to transfer to CPSL from the NCPR, it may be that the transfer will provide an opportunity for CPSL to evaluate the ACMR in its current form and determine whether it is the best structure to achieve the goal of ensuring the safety of children.



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## Volume 17, Beyond the Royal Commission

Volume 17, Beyond the Royal Commission describes the impacts and legacy of the Royal Commission and discusses monitoring and reporting on the implementation of the Royal Commission's recommendations.

The Royal Commission made six recommendations in this volume.

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## Recommendations 17.1, 17.2 and 17.4

### **Recommendation 17.1**

The Australian Government and state and territory governments should each issue a formal response to this Final Report within six months of it being tabled, indicating whether our recommendations are accepted, accepted in principle, rejected or subject to further consideration.

### **Recommendation 17.2**

The Australian Government and state and territory governments should, beginning 12 months after this Final Report is tabled, report on their implementation of the Royal Commission's recommendations made in this Final Report and its earlier Working with Children Checks, Redress and Civil Litigation and Criminal Justice reports, through five consecutive annual reports tabled before their respective parliaments.

### **Recommendation 17.4**

The Australian Government should initiate a review to be conducted 10 years after the tabling of this Final Report. This review should:

- (a) establish the extent to which the Royal Commission's recommendations have been implemented 10 years after the tabling of the Final Report
- (b) examine the extent to which the measures taken in response to the Royal Commission have been effective in preventing child sexual abuse, improving the responses of institutions to child sexual abuse and ensuring that victims and survivors of child sexual abuse obtain justice, treatment and support
- (c) advise on what further steps should be taken by governments and institutions to ensure continuing improvement in policy and service delivery in relation to child sexual abuse in institutional contexts.

### **Area of implication for the Church**

#### **Implementation**

#### **Overview**

These recommendations are to be found in

- Vol 17, Ch 2 Beyond the Royal Commission, 2.2.1 An initial government response p51 (recommendation 17.1)
- Vol 17, Ch 2 Beyond the Royal Commission, 2.2.3 Ongoing periodic reporting p53 (recommendation 17.2)
- Vol 17, Ch 2 Beyond the Royal Commission, 2.2.4 10-year review p54 (recommendation 17.4)

## Council comment

These recommendations reflect the often-stated position of the Council that the Catholic Church needs to be fully engaged with the Royal Commission and that now and in the coming years it will only be action on the part of Church leaders that will demonstrate to the Catholic and broader community that they are willing to engage in necessary reforms to rebuild trust and credibility.

The Council supports these recommendations.

## Action

The Implementation Advisory Group should review the initial response from the Australian Government and provide a formal report back to the Church leadership.

The Implementation Advisory Group should also monitor and report back to the Church leadership on the Australian and state government's 12-month reporting on the implementation of the Royal Commission's recommendations including the actual and future impacts for the Church.

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## Recommendations 17.3

Major institutions and peak bodies of institutions that engage in child-related work should, beginning 12 months after this Final Report is tabled, report on their implementation of the Royal Commission's recommendations to the National Office for Child Safety through five consecutive annual reports. The National Office for Child Safety should make these reports publicly available. At a minimum, the institutions reporting should include those that were the subject of the Royal Commission's institutional review hearings held from 5 December 2016 to 10 March 2017.

### Area of implication for the Church

#### Implementation

#### Overview

This recommendation is to be found in Vol 17, Ch 2 Monitoring and reporting on implementation, 2.2.3 Ongoing periodic reporting, p 53

#### Council comment

This recommendation reflects the often stated position of the Council that the Catholic Church must be fully engaged with the Royal Commission and that now, and in the coming years, it will only be action on the part of Church leaders that will demonstrate to the Catholic and broader community that they are willing to engage in necessary reforms to rebuild trust and credibility.

The Council supports this recommendation.

#### Action

The Implementation Advisory Group should co-ordinate the Church's first annual response to this recommendation incorporating into it results of CPSL audits and other undertakings.

Depending on the life of the Implementation Group the responsibility of coordinating the following four annual reviews will need to be undertaken by the ACBC/CRA or possibly CPSL.

These reviews will be closely scrutinised and will demonstrate to the community the extent to which the Catholic Church has listened and responded to the revelations of the Royal Commission.

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## Recommendations 17.5

The Australian Government should host and maintain the Royal Commission website for the duration of the national redress scheme for victims and survivors of institutional child sexual abuse.

### Area of implication for the Church

#### Implementation

#### Overview

This recommendation is to be found in Vol 17, Ch 2 Monitoring and reporting on implementation, 2.3.3 Preserving the records of the Royal Commission p 61

#### Council comment

Like the Royal Commission the Council has built a substantial website over the past five years which collates the Church's engagement with the Royal Commission, the policy development in relation to strengthening child protections in the Church, engaging with survivors both legally and pastorally, public communications and more.

The Council supports this recommendation.

#### Action

The ACBC should host and maintain the Council website by either incorporating it into the ACBC site or maintaining it as a stand-alone site.

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## Recommendations 17.6

A national memorial should be commissioned by the Australian Government for victims and survivors of child sexual abuse in institutional contexts. Victims and survivors should be consulted on the memorial design and it should be located in Canberra.

### Area of implication for the Church

#### Implementation

#### Overview

This recommendation is to be found in Vol 17, Ch 2 Monitoring and reporting on implementation, 2.5 A national memorial p 65

#### Council comment

The Council has always recognised that promoting healing for survivors must be an essential part of the Church's response to people who have been sexually abused as children in the Church and accepts that memorials can be part of this healing.

The Council has supported the 'Loud Fence' movement and a number of Church bodies, including the Marists in Canberra and the Christian Brothers in Ballarat, have already dedicated substantial memorials within local schools.

The Council supports this recommendation.

#### Action

The ACBC and CRA should maintain a data base of memorials and other similar activities which should be publically available and incorporated into the annual implementation reports to the National Office for Child Safety as described in the Royal Commission's Rec 17.3

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## Criminal Justice report

On the 14 August 2017 the Royal Commission released its Criminal Justice report which included 85 recommendations aimed at reforming the Australian criminal justice system in order to provide a fairer response to victims of institutional child sexual abuse.

The report recommended legislative and policy changes, reform to police and prosecution responses, evidence of complainants, sentences and appeals, and grooming offences.

It also recommends new offences, including 'failure to report' and 'failure to protect'.

In responding to Commission's Criminal Justice consultation paper, the Council confined itself, for the most part, to issues that specifically related to the Catholic Church including that:

- There should be a nationally consistent criminal law provision in Australia requiring a person who has information leading the person to form a reasonable belief that a sexual offence has been committed against a child to disclose that information to the police unless the person has a reasonable excuse for not doing so.
- There may be merit in the enactment in all States and Territories of a provision equivalent to s 49C (2) of the Crimes Act 1958 (Vic). However, an assessment should first be made of any adverse practical effects that the provision may have had in Victoria.
- It would not be appropriate to introduce into the criminal law a provision seeking to attach criminal liability to institutions in which child sexual abuse occurs.

The Commission said the criminal justice system is often seen as not being effective in responding to child sexual abuse cases and conviction rates are lower compared to other crimes.

The Commission's criminal justice recommendations have been informed by the Royal Commission's public hearings, private sessions, a consultation paper, research and roundtables.

## Recommendations 4, 5 and 6

### Recommendation 4

To encourage reporting of allegations of child sexual abuse, including institutional child sexual abuse, each Australian government should ensure that its policing agency:

- (a) takes steps to communicate to victims (and their families or support people where victims are children or are particularly vulnerable) that their decision whether to participate in a police investigation will be respected – that is, victims retain the right to withdraw at any stage in the process and to decline to proceed further with police and (or) any prosecution
- (b) provides information on the different ways in which victims and survivors can report to police or seek advice from police on their options for reporting or not reporting abuse – this should be in a format that allows institutions and survivor advocacy and support groups and support services to provide it to victims and survivors
- (c) makes available a range of channels to encourage reporting, including specialist telephone numbers and online reporting forms, and provides information about what to expect from each channel of reporting
- (d) works with survivor advocacy and support groups and support services, including those working with people from culturally and linguistically diverse backgrounds and people with disability, to facilitate reporting by victims and survivors
- (e) allows victims and survivors to benefit from the presence of a support person of their choice if they so wish throughout their dealings with police, provided that this will not interfere with the police investigation or risk contaminating evidence
- (f) is willing to take statements from victims and survivors in circumstances where the alleged perpetrator is dead or is otherwise unlikely to be able to be tried.

### Recommendation 5

To encourage reporting of allegations of child sexual abuse, including institutional child sexual abuse, among Aboriginal and Torres Strait Islander victims and survivors, each Australian government should ensure that its policing agency:

- (a) takes the lead in developing good relationships with Aboriginal and Torres Strait Islander communities
- (b) provides channels for reporting outside of the community (such as telephone numbers and online reporting forms).

### Recommendation 6

To encourage prisoners and former prisoners to report allegations of child sexual abuse, including institutional child sexual abuse, each Australian government should ensure that its policing agency:

- (a) provides channels for reporting that can be used from prison and that allow reports to be made confidentially
- (b) does not require former prisoners to report at a police station.

### Area of implication for the Church

Civil governance

### Overview

These recommendations are found in Vol 1 of the Royal Commission's Criminal Justice report, Chapter 8, Part 8.3 pp 396-427 and relate to steps police services should take to encourage victims and survivors to report child sexual abuse.

The Royal Commission gave in depth consideration to the issue of police reporting, recognising that police cannot act when they do not know something has happened. The Royal Commission has recommended that state and territory police forces engage in processes designed to encourage victims and survivors to report their abuse.

The Royal Commission found that particular regard should be had to encouraging reporting by groups that are 'harder to reach', including indigenous people, prisoners and others who have criminal records.

### Council comment

The Council recognises that this recommendation may contribute to the development of public policy.

### Action

The implementation of this recommendation by government should be monitored by CPSL.

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## Recommendation 12

Each Australian government should ensure that, if its policing agency does not provide a specialist response to victims and survivors reporting historical child sexual abuse, its policing agency develops and implements a document in the nature of a 'guarantee of service' which sets out for the benefit of victims and survivors – and as a reminder to the police involved – what victims and survivors are entitled to expect in the police response to their report of child sexual abuse. The document should include information to the effect that victims and survivors are entitled to:

- (a) be treated by police with consideration and respect, taking account of any relevant cultural safety issues
- (b) have their views about whether they wish to participate in the police investigation respected
- (c) be referred to appropriate support services
- (d) contact police through a support person or organisation rather than contacting police directly if they prefer
- (e) have the assistance of a support person of their choice throughout their dealings with police unless this will interfere with the police investigation or risk contaminating evidence
- (f) have their statement taken by police even if the alleged perpetrator is dead
- (g) be provided with the details of a nominated person within the police service for them to contact
- (h) be kept informed of the status of their report and any investigation unless they do not wish to be kept informed
- (i) have the police focus on the credibility of the complaint or allegations rather than focusing only on the credibility of the complainant, recognising that many victims of child sexual abuse will go on to develop substance abuse and mental health problems, and some may have a criminal record.

### Area of implication for the Church

Civil governance

### Overview

These recommendations are found in Vol 1 of the Royal Commission's Criminal Justice report, Chapter 8, Part 8.7 pp 503-508 and relate to police responses to reports of historical child sexual abuse – ie reports from victims and survivors who are adults, rather than children, at the time of their report.



## Council comment

In its consideration to the issue of police reporting, the Royal Commission identified that adult survivors of child sexual abuse are less satisfied with police responses to adults reporting historical child sexual abuse than children reporting recent abuse. This recommendation is designed to improve police responses to adult victims and survivors, via the development of a 'guarantee of service' document.

The Council recognises that this recommendation may contribute to the development of public policy.

### 1.6 Action

The implementation of this recommendation by government should be monitored by CPSL.

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## Recommendation 13

Each Australian government should ensure that its policing agency responds to victims and survivors with disability, or their representatives, who report or seek to report child sexual abuse, including institutional child sexual abuse, to police in accordance with the following principles:

- (a) Police who have initial contact with the victim or survivor should be non-judgmental and should not make any adverse assessment of the victim or survivor's credibility, reliability or ability to make a report or participate in a police investigation or prosecution because of their disability.
- (b) Police who assess or provide an investigative response to allegations made by victims and survivors with disability should focus on the credibility of the complaint or allegation rather than focusing only on the credibility of the complainant, and they should not make any adverse assessment of the victim or survivor's credibility or reliability because of their disability.
- (c) Police who conduct investigative interviewing should make all appropriate use of any available intermediary scheme, and communication supports, to ensure that the victim or survivor is able to give their best evidence in the investigative interview.
- (d) Decisions in relation to whether to lay charges for child sexual abuse offences should take full account of the ability of any available intermediary scheme, and communication supports, to assist the victim or survivor to give their best evidence when required in the prosecution process.

### Area of implication for the Church

#### Civil governance

#### Overview

These recommendations are found in Vol 1 of the Royal Commission's Criminal Justice report, Chapter 8, Part 8.8 pp 509-512 and relate to police responses to reports of child sexual abuse made by adults and children with disabilities.

In its consideration to the issue of police reporting, the Royal Commission identified that children and adults with disability encounter significant difficulties seeking to report to police, which this recommendation seeks to address.

#### Council comment

The Council recognises that this recommendation may contribute to the development of public policy.



## Action

The implementation of this recommendation by government should be monitored by CPSL.

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## Recommendations 16, 17, 18, 19 and 20

### **Recommendation 16**

In relation to blind reporting, institutions and survivor advocacy and support groups should:

- (a) be clear that, where the law requires reporting to police, child protection or another agency, the institution or group or its relevant staff member or official will report as required
- (b) develop and adopt clear guidelines to inform staff and volunteers, victims and their families and survivors, and police, child protection and other agencies as to the approach the institution or group will take in relation to allegations, reports or disclosures it receives that it is not required by law to report to police, child protection or another agency.

### **Recommendation 17**

If a relevant institution or survivor advocacy and support group adopts a policy of reporting survivors' details to police without survivors' consent – that is, if it will not make blind reports – it should seek to provide information about alternative avenues for a survivor to seek support if this aspect of the institution or group's guidelines is not acceptable to the survivor.

### **Recommendation 18**

Institutions and survivor advocacy and support groups that adopt a policy that they will not report the survivor's details without the survivor's consent should make a blind report to police in preference to making no report at all.

### **Recommendation 19**

Regardless of an institution or survivor advocacy and support group's policy in relation to blind reporting, the institution or group should provide survivors with:

- (a) information to inform them about options for reporting to police
- (b) support to report to police if the survivor is willing to do so.

### **Recommendation 20**

Police should ensure that they review any blind reports they receive and that they are available as intelligence in relation to any current or subsequent police investigations. If it appears that talking to the survivor might assist with a police investigation, police should contact the relevant institution or survivor advocacy and support group, and police and the institution or group should cooperate to try to find a way in which the survivor will be sufficiently supported so that they are willing to speak to police.



## Area of implication for the Church

Civil governance, Professional standards

### Overview

These recommendations appear in Criminal Justice report Vol1, Ch 9, Sect 9.3.

### Council comment

See the general discussion about blind reporting in the Criminal Justice report part of the introductory chapter.

This is a very difficult subject and view about the efficacy of blind reporting differ. The Council believes that mandatory, open reporting should be the norm but, on balance, have come to the conclusion that there is a place for blind reporting in limited situations.

### Action

The Implementation Advisory Group and CPSL should work on standards and guidelines for reporting generally, including blind reporting.

The relevant provisions of *Towards Healing*, *The Melbourne Response* and other complaints handling regimes should be reconsidered in the light of these recommendations.

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## Recommendations 27, 28 and 29

### Recommendation 27

State and territory governments should review any position of authority offences applying in circumstances where the victim is 16 or 17 years of age and the offender is in a position of authority (however described) in relation to the victim. If the offences require more than the existence of the relationship of authority (for example, that it be 'abused' or 'exercised'), states and territories should introduce legislation to amend the offences so that the existence of the relationship is sufficient.

### Recommendation 28

State and territory governments should review any provisions allowing consent to be negated in the event of sexual contact between a victim of 16 or 17 years of age and an offender who is in a position of authority (however described) in relation to the victim. If the provisions require more than the existence of the relationship of authority (for example, that it be 'abused' or 'exercised'), state and territory governments should introduce legislation to amend the provisions so that the existence of the relationship is sufficient.

### Recommendation 29

If there is a concern that one or more categories of persons in a position of authority (however described) may be too broad and may catch sexual contact which should not be criminalised when it is engaged in by such persons with children above the age of consent, state and territory governments could consider introducing legislation to establish defences such as a similar-age consent defence.

## Area of implication for the Church

Civil governance

## Overview

These recommendations are found in Vol 2 of the Royal Commission's Criminal Justice report, Part 3, Chapter 13, pp 98-120 and relate to the Royal Commission's consideration of position of authority offences.

The Royal Commission identified that institutional child sexual abuse often occurs in situations where perpetrators are in a position of authority in relation to their victim or victims. This has traditionally been viewed as an aggravating factor.

Particular examples of conduct that would give rise to a position of authority offence is when a teacher abuses a child in their class, or a priest abuses a child in his congregation. In either case, the perpetrator of the abuse would be considered to be in a position of authority in relation to their victim. The offences are designed to recognise the particular seriousness of such conduct.



The Royal Commission compared and contrasted existing criminal offences in all jurisdictions that are intended to address such abusive scenarios and made recommendations aimed at ensuring the offences are effective in protecting young people.

#### Council comment

The Council recognises that this recommendation may contribute to the development of public policy.

#### Action

The implementation of this recommendation by government should be monitored by CPSL.

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## Recommendations 32, 33, 35 and 36

### **Recommendation 32**

Any person associated with an institution who knows or suspects that a child is being or has been sexually abused in an institutional context should report the abuse to police (and, if relevant, in accordance with any guidelines the institution adopts in relation to blind reporting under recommendation 16).

### **Recommendation 33**

Each state and territory government should introduce legislation to create a criminal offence of failure to report targeted at child sexual abuse in an institutional context as follows:

- (a) The failure to report offence should apply to any adult person who:
  - (i) is an owner, manager, staff member or volunteer of a relevant institution – this includes persons in religious ministry and other officers or personnel of religious institutions
  - (ii) otherwise requires a Working with Children Check clearance for the purposes of their role in the institution

but it should not apply to individual foster carers or kinship carers.
- (b) The failure to report offence should apply if the person fails to report to police in circumstances where they know, suspect, or should have suspected (on the basis that a reasonable person in their circumstances would have suspected and it was criminally negligent for the person not to suspect), that an adult associated with the institution was sexually abusing or had sexually abused a child.

[remainder of Recommendation 33 omitted]

### **Recommendation 35**

Each state and territory government should ensure that the legislation it introduces to create the criminal offence of failure to report recommended in recommendation 33 addresses religious confessions as follows:

- (a) The criminal offence of failure to report should apply in relation to knowledge gained or suspicions that are or should have been formed, in whole or in part, on the basis of information disclosed in or in connection with a religious confession.
- (b) The legislation should exclude any existing excuse, protection or privilege in relation to religious confessions to the extent necessary to achieve this objective.
- (c) Religious confession should be defined to include a confession about the conduct of a person associated with the institution made by a person to a second person who is in religious ministry in that second person's professional capacity according to the ritual of the church or religious denomination concerned

### Recommendation 36

State and territory governments should introduce legislation to create a criminal offence of failure to protect a child within a relevant institution from a substantial risk of sexual abuse by an adult associated with the institution as follows:

- (a) The offence should apply where:
  - (i) an adult person knows that there is a substantial risk that another adult person associated with the institution will commit a sexual offence against:
    - a child under 16
    - a child of 16 or 17 years of age if the person associated with the institution is in a position of authority in relation to the child
  - (ii) the person has the power or responsibility to reduce or remove the risk
  - (iii) the person negligently fails to reduce or remove the risk.
- (b) The offence should not be able to be committed by individual foster carers or kinship carers.
- (c) Relevant institutions should be defined to include institutions that operate facilities or provide services to children in circumstances where the children are in the care, supervision or control of the institution. Foster care and kinship care services should be included, but individual foster carers and kinship carers should not be included. Facilities and services provided by religious institutions, and any service or functions performed by persons in religious ministry, should be included.
- (d) State and territory governments should consider the Victorian offence in section 49C of the *Crimes Act 1958* (Vic) as a useful precedent, with an extension to include children of 16 or 17 years of age if the person associated with the institution is in a position of authority in relation to the child.

#### Area of implication for the Church

Sacrament of Confession, Civil governance, Professional standards

#### Council comment and Action

These four recommendations go together with those relevant to the sacrament of confession and are discussed in detail in the section about Recommendations 7.4, 16.26 and 16.48.

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## APPENDIX 1 - The structure of the Royal Commission's final report

### Part One – the Volumes in the Final report

#### Recommendations

This is a discrete volume (not given a number) which lists all of the recommendations made in the final report, the Working with Children Checks report, the Redress and Civil Litigation report and the Criminal Justice report.

#### Preface and Executive Summary

Includes a summary of the final report and a complete list of all recommendations. It includes a Final information containing statistics from the 8,013 private sessions with survivors held between May 2013 and November 2017.

#### Volume 1, Our inquiry

Introduces the Final Report, describes the establishment, scope and operations of the Royal Commission.

#### Understanding child sexual abuse in institutional contexts

#### Volume 2, Nature and cause

Details the nature and cause of child sexual abuse in institutional contexts. It also describes what is known about the extent of child sexual abuse and the limitations of existing studies.

The volume discusses factors that affect the risk of child sexual abuse in institutions and the legal and political changes that have influenced how children have interacted with institutions over time.

The Royal Commission made one recommendation in this volume.

#### Volume 3, Impacts

Details the impacts of child sexual abuse in institutional contexts. The volume discusses how impacts can extend beyond survivors, to family members, friends, and whole communities. The volume also outlines the impacts of institutional responses to child sexual abuse. The Royal Commission made no recommendations in this volume.

## Volume 4, Identifying and disclosing child sexual abuse

Describes what the Royal Commission learned about survivors' experiences of disclosing child sexual abuse and about the factors that affect a victim's decision whether to disclose, when to disclose and who to tell. The Royal Commission made no recommendations in this chapter

## Volume 5, Private sessions

Provides an analysis of survivors' experiences of child sexual abuse as told to Commissioners during private sessions, structured around four key themes:

- experiences of abuse;
- circumstances at the time of the abuse;
- experiences of disclosure;
- and impact on wellbeing.

It also describes the private sessions model, including how it was adapted to meet the needs of diverse and vulnerable groups.

The Royal Commission made no recommendation in this volume.

## Volume 6, Making institutions child safe

Looks at the role community prevention could play in making communities and institutions child safe, the child safe standards that will make institutions safer for children, and how regulatory oversight and practice could be improved to facilitate the implementation of these standards in institutions.

It also examines how to prevent and respond to online sexual abuse in institutions in order to create child safe online environments.

The Royal Commission made 24 recommendations in this volume

## Volume 7, Improving institutional responding and reporting

Examines the reporting of child sexual abuse to external government authorities by institutions and their staff and volunteers, and how institutions have responded to complaints of child sexual abuse.

It outlines guidance for how institutions should handle complaints, and the need for independent oversight of complaint handling by institutions.

The Royal Commission made 12 recommendations in this volume.

## Volume 8, Recordkeeping and information sharing

Examines records and recordkeeping by institutions that care for or provide services to children; and information sharing between institutions with responsibilities for children's safety and wellbeing and between those institutions and relevant professionals.

It makes recommendations to improve records and recordkeeping practices within institutions and information sharing between key agencies and institutions.

The Royal Commission made 23 recommendations in this volume.

## Support and treatment

### Volume 9, Advocacy, support and therapeutic treatment services

Examines what the Royal Commission learned about the advocacy and support and therapeutic treatment service needs of victims and survivors of child sexual abuse in institutional contexts, and outlines recommendations for improving service systems to better respond to those needs and assist survivors towards recovery.

The Royal Commission made nine recommendations in this volume.

### Volume 10, Children with harmful sexual behaviours

Examines what the Royal Commission learned about institutional responses to children with harmful sexual behaviours. It discusses the nature and extent of these behaviours and the factors that may contribute to children sexually abusing other children.

The volume then outlines how governments and institutions should improve their responses and makes recommendations about improving prevention and increasing the range of interventions available for children with harmful sexual behaviours.

The Royal Commission made seven recommendations in this volume.

## Particular institutions

### Volume 11, Historical residential institutions

Examines what the Royal Commission learned about survivors' experiences of, and institutional responses to, child sexual abuse in residential institutions such as children's homes, missions, reformatories and hospitals during the period spanning post-World War II to 1990.

The Royal Commission made no recommendations in this volume.

### Volume 12, Contemporary out-of-home care

Examines what the Royal Commission learned about institutional responses to child sexual abuse in contemporary out-of-home care. The volume examines the nature and adequacy of institutional responses and draws out common failings. It makes recommendations to prevent child sexual abuse from occurring in out-of-home care and, where it does occur, to help ensure effective responses.

The Royal Commission made 22 recommendations in this volume.

### Volume 13, Schools

Examines what the Royal Commission learned about institutional responses to child sexual abuse in schools. The volume examines the nature and adequacy of institutional responses and draws out the contributing factors to child sexual abuse in schools. It makes recommendations to prevent child sexual abuse from occurring in schools and, where it does occur, to help ensure effective responses to that abuse.

The Royal Commission made eight recommendations in this volume.

### Volume 14, Sport, recreation, arts, culture, community and hobby groups

Examines what the Royal Commission learned about institutional responses to child sexual abuse in sport and recreation contexts.

The volume examines the nature and adequacy of institutional responses and draws out common failings. It makes recommendations to prevent child sexual abuse from occurring in sport and recreation and, where it does occur, to help ensure effective responses.

The Royal Commission made four recommendations in this volume.

### Volume 15, Contemporary detention environments

Examines what the Royal Commission learned about institutional responses to child sexual abuse in contemporary detention environments, focusing on youth detention and immigration detention.

It recognises that children are generally safer in community settings than in closed detention. It also makes recommendations to prevent child sexual abuse from occurring in detention environments and, where it does occur, to help ensure effective responses.

The Royal Commission made 15 recommendations in this volume.



## Volume 16, Religious institutions

Examines what the Royal Commission learned about institutional responses to child sexual abuse in religious institutions.

The volume discusses the nature and extent of child sexual abuse in religious institutions, the impacts of this abuse, and survivors' experiences of disclosing it. The volume examines the nature and adequacy of institutional responses to child sexual abuse in religious institutions, and draws out common factors contributing to the abuse and common failings in institutional responses.

It makes recommendations to prevent child sexual abuse from occurring in religious institutions and, where it does occur, to help ensure effective responses.

This volume was divided into three books.

The Royal Commission made 58 recommendations in this volume.

## Volume 17, Beyond the Royal Commission

Describes the impacts and legacy of the Royal Commission and discusses monitoring and reporting on the implementation of the Royal Commission's recommendations.

The Royal Commission made six recommendations in this volume.

Part Two – number of recommendations in each volume of the Final Report, the Working with Children Checks, Redress and Civil Litigation and Criminal Justice reports.

Volume 1, Our inquiry	0
Volume 2, Nature and cause	1
Volume 3, Impacts	0
Volume 4, Identifying and disclosing child sexual abuse	0
Volume 5, Private sessions	0
Volume 6, Making institutions child safe	24
Volume 7, Improving institutional responding and reporting	12
Volume 8, Recordkeeping and information sharing	23
Volume 9, Advocacy, support and therapeutic treatment services	9
Volume 10, Children with harmful sexual behaviours	7
Volume 11, Historical residential institutions	0
Volume 12, Contemporary out-of-home care	22
Volume 13, Schools	8
Volume 14, Sport, recreation, arts, culture, community and hobby groups	4
Volume 15, Contemporary detention environments	15
Volume 16, Religious institutions	58
Volume 17, Beyond the Royal Commission	6
Total number of recommendations in Final Report	189
<b>Working with Children Checks report</b>	<b>36</b>
<b>Redress and Civil Litigation report</b>	<b>99</b>
<b>Criminal Justice report</b>	<b>85</b>
Total number of recommendations made by the Commission	409

## APPENDIX 2 - Recommendations by subject category

Subject Area	Recommendations
Ecclesial governance	Recs 16.7-16.8, 16.18-16.19, 16.31-16.35 (CSS), 16.37-16.39, 16.49-16.50
Canon law	Recs 16.9-16.17, 16.55-16.56 (PS)
Sacrament of confession	Recs 7.4, 16.26, 16.48 (CG and PS)
Formation and supervision	Recs 16.20-16.25, 16.36 16.42-16.47
Schools	Recs 6.19-6.23, 8.5, 8.9-8.16, 13.1-13.8, 16.6
Professional standards	Recs 7.1-7.2 (CG), 7.3 (OOHC) 7.7-7.8 (CG), 7.9-7.12, 16.51-16.54 16.55-16.56 (CL)
Out of home care	7.3 (PS), 8.17-8.23 12.1-12.22
Civil governance	Recs 2.1, 6.1, 6.2-6.3 (Schools), 6.4, 6.5 (CSS), 6.10-6.11 (CSS), 7.1-7.3 (PS), 7.4 (Confession), 7.5-7.6, 7.7-7.8 (PS), 8.1 (PS), 8.2-8.4, 8.6-8.8, 9.1-9.9, 14.1-14.4, 15.1-15.15
Child safe standards	Recs 6.3-6.4, 6.5 (CG), 6.10-6.11 (OOHC), 6.18, 6.24, 7.7, 8.17 (OOHC), 8.18, 8.19 (OOHC), 8.20, 8.21- 8.23 (OOHC), 10.1-10.6, 16.31-16.35 (EG), 16.40-16.41, 16.57-16.58
Implementation	17.1-7.6
Other faith-based institutions	Recs 16.1-16.5 (Anglicans), 16.27-16.29 (Jehovah's Witness), 16.30 (Jewish)

Note: some recommendations are in more than one category. This has been indicated by an abbreviation in brackets.

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## APPENDIX 3 - Referrals of Royal Commission recommendations

ACBC	Australian Catholic Bishops Conference
ADM	Archdiocese of Melbourne
CPSL	Catholic Professional Standards Ltd
CSSA	Catholic Social Services Australia
Church authorities	Various Church authorities including dioses and religious orders
CRA	Catholic Religious Australia
DCP	Church institutions involved in detention centre activities
IAB	Implementation and Advisory Body
NCEC	National Catholic Education Commission and other catholic education commissions
OOHC	Out of home care providers
PCOG	Plenary Council Organising Group

Agency	Recommendation in which some action or monitoring is suggested
ACBC	16.8; 16.9; 16.10; 16.11; 16.12; .16.13; 16.14; 16.16; 16.17; 16.18; 16.19; 16.23; 16.24; 16.55; 16.56; 17.3; 17.5; 17.6;
ADM	16.6
Church authorities	6.4; 6.5; 6.6; 7.7; 7.8; 8.1; 8.4, 16.41; 16.51; 16.52; 16.53; 16.54
CPSL	6.4, 6.5, 6.6, 6.7, 6.8, 6.9, 6.10, 6.11, 6.12, 6.13, 6.14;.6.15; 6.17; 6.18; 6.24; 7.7; 7.10; 7.11; 7.12; 8.1; 8.2; 8.3; 8.4; 8.5; 8.6; 8.7; 8.8; 8.9; 8.10; 8.11; 8.12; 8.13; 8.14; 8.15; 8.16; 8.17; 8.18; 8.19; 8.20; 8.21; 8.22; 8.23; 10.1; 10.2; 10.3; 10.4; 10.5; 10.6; 10.7; 12.1; 12.2; 12.3; 12.4; 12.5; 12.6; 12.7; 12.8; 12.9; 12.10; 12.11; 12.12; 12.13; 12.14; 12.15; 12.16; 12.17; 12.18; 12.19; 12.20; 12.21; 12.22 13.1; 13.2; 13.3; 13.4; 13.5; 13.6; 13.7; 13.8;

Agency	Recommendation in which some action or monitoring is suggested
	16.8; 16.14; 16.18; 16.19; 16.31; 16.32; .16.33; 16.34; 16.35; 16.36; 16.37; 16.38; 16.39; 16.41; 16.42; 16.43; 16.44; 16.45; 16.46; 16.47; 16.49; 16.50; 16.51; 16.52; 16.53; 16.54; 16.55; 16.56; 16.57; 16.58;  Criminal Justice recs 4, 5, 6, 12, 13 ,16, 17, 18, 19, 20, 27, 28, 29
CRA	16.15; 16.23; 16.24, 17.3; 17.6
CSSA	6.1;  8.17; 8.18; 8.19; 8.20; 8.21; 8.22; 8.23;  10.1; 10.2; 10.3; 10.4; 10.5; 10.6; 10.7;  12.1; 12.2; 12.3; 12.4; 12.5; 12.6; 12.7; 12.8; 12.9; 12.10; 12.11; 12.12; 12.13; 12.14; 12.15; 12.16; 12.17; 12.18; 12.19; 12.20; 12.21; 12.22
DCP	15.1; 15.2; 15.3; 15.4; 15.5; 15.6; 15.7; 15.8; 15.9; 15.10; 15.11; 15.12; 15.13; 15.14; 15.15
IAB	6.4; 6.5; 6.6;  7.4;  16.26; 16.48;  7.5; 7.6; 7.7; 7.8;  8.1; 8.4  9.1; 9.2; 9.3;  16.7; 16.11; 16.14; 16.15; 16.18; .16.19; 16.25; 16.41; 16.51; 16.52; 16.53; 16.54; 16.55; 16.56; 16.57; 16.58;  17.1; 17.2; 17.3; 17.4;  Criminal Justice recs 16, 17, 18, 19, 20, 32; 33; 35; 36
NCEC	8.14; 8.15; 8.16  3.1; 13.2; 13.3; 13.4; 13.5; 13.6; 13.7; 13.8;
OOHC	8.17, 8.18; 8.19; 8.20; 8.21; 8.22; 8.23;  12.1; 12.2; 12.3; 12.4; 12.5; 12.6; 12.7; 12.8; 12.9; 12.10; 12.11; 12.12; 12.13; 12.14; 12.15; 12.16; 12.17; 12.18; 12.19; 12.20; 12.21; 12.22