



Submission from the  
Truth Justice and Healing Council

**Royal Commission into Institutional Responses to Child Sexual Abuse**

Consultation Paper

Best practice principles in responding to  
complaints of child sexual abuse in  
institutional contexts

**29 August 2016**



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Justice Peter McClellan AM  
Chair  
Royal Commission into  
Institutional Responses to Child Sexual Abuse

Via email: [solicitor@childabuseroyalcommission.gov.au](mailto:solicitor@childabuseroyalcommission.gov.au)

Dear Justice McClellan,

As you know, the Truth Justice and Healing Council (the Council) has been appointed by the Catholic Church in Australia to oversee the Church's response to the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission).

We now provide the Council's submission in response to the Royal Commission's consultation paper on best practice principles for responding to complaints of child sexual abuse in institutional contexts.

Yours sincerely

**Neville Owen**  
**Chair**  
**Truth Justice and Healing Council**

29 August 2016

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## Our Commitment

The leaders of the Catholic Church in Australia recognise and acknowledge the devastating harm caused to people by the crime of child sexual abuse. We take this opportunity to state:

- Sexual abuse of a child by a priest or religious is a crime under Australian law and under canon law.
- Sexual abuse of a child by any Church personnel, whenever it occurred, was then and is now indefensible.
- That such abuse has occurred at all, and the extent to which it has occurred, are facts of which the whole Church in Australia is deeply ashamed.
- The Church fully and unreservedly acknowledges the devastating, deep and ongoing impact of sexual abuse on the lives of the victims and their families.
- The Church acknowledges that many victims were not believed when they should have been.
- The Church is also ashamed to acknowledge that, in some cases, those in positions of authority concealed or covered up what they knew of the facts, moved perpetrators to another place, thereby enabling them to offend again, or failed to report matters to the police when they should have. That behaviour too is indefensible.
- Too often in the past it is clear some Church leaders gave too high a priority to protecting the reputation of the Church, its priests, religious and other personnel, over the protection of children and their families, and over compassion and concern for those who suffered at the hands of Church personnel. That too was and is inexcusable.
- In such ways, Church leaders betrayed the trust of their own people and the expectations of the wider community.
- For all these things the Church is deeply sorry. It apologises to all those who have been harmed and betrayed. It humbly asks for forgiveness.

The leaders of the Catholic Church in Australia commit ourselves to endeavour to repair the wrongs of the past, to listen to and hear victims, to put their needs first, and to do everything we can to ensure a safer future for children.

## Authorising Church Bodies

The following Catholic Church bodies have authorised the Truth Justice and Healing Council to represent them at the Royal Commission:

### Dioceses

Archdiocese of Adelaide	Diocese of Broome	Diocese of Sandhurst
Archdiocese of Brisbane	Diocese of Bunbury	Diocese of Toowoomba
Archdiocese of Canberra-Goulburn	Diocese of Cairns	Diocese of Townsville
Archdiocese of Hobart	Diocese of Darwin	Diocese of Wagga Wagga
Archdiocese of Melbourne	Diocese of Geraldton	Diocese of Wilcannia-Forbes
Archdiocese of Perth	Diocese of Lismore	Diocese of Wollongong
Archdiocese of Sydney	Diocese of Maitland-Newcastle	Eparchy of Ss Peter & Paul Melbourne
Diocese of Armidale	Diocese of Parramatta	Maronite Catholic Diocese of St Maroun
Diocese of Ballarat	Diocese of Port Pirie	Military Ordinariate of Australia
Diocese of Bathurst	Diocese of Rockhampton	Personal Ordinariate of Our Lady of the Southern Cross
Diocese of Broken Bay	Diocese of Sale	

### Religious Institutes

Adorers of the Blood of Christ	Institute of Sisters of Mercy Australia & Papua New Guinea	Sisters of Jesus Good Shepherd "Pastorelle"
Augustinian Recollect Sisters	Loreto Sisters	Sisters of Mercy Brisbane
Augustinian Sisters, Servants of Jesus & Mary	Marist Brothers	Sisters of Mercy North Sydney
Australian Ursulines	Marist Fathers Australian Province	Sisters of Mercy Parramatta
Benedictine Community of New Norcia	Marist Sisters – Congregation of Mary	Sisters of Nazareth
Blessed Sacrament Fathers	Ministers of the Infirm (Camillians)	Sisters of Our Lady of Sion
Brigidine Sisters	Missionaries of God's Love	Sisters of St Joseph, Lochinvar
Canons Regular of Premontre (Norbertines)	Missionaries of the Sacred Heart	Sisters of St Joseph of the Apparition
Canossian Daughters of Charity	Missionary Franciscan Sisters of the Immaculate Conception	Sisters of St Joseph of the Sacred Heart
Capuchin Friars	Missionary Sisters of Mary, Queen of the World	Sisters of St Paul de Chartres
Christian Brothers	Missionary Sisters of St Peter Claver	Sisters of the Good Samaritan
Cistercian Monks	Missionary Sisters of Service	Sisters of the Good Shepherd
Columban Fathers	Missionary Sisters of the Sacred Heart	Sisters of the Holy Family of Nazareth
Congregation of the Mission – Vincentians	Missionary Sisters of the Society of Mary	Sisters of the Little Company of Mary
Congregation of the Most Holy Redeemer – Redemptorists	Missionary Society of St Paul	Sisters of the Resurrection
Congregation of the Passion – Passionists	Oblates of Mary Immaculate	Society of African Missions
Congregation of the Sisters of Our Lady Help of Christians	Order of Brothers of the Most Blessed Virgin Mary of Mount Carmel (Carmelites)	Society of the Catholic Apostolate (Pallottines)
Daughters of Charity	Order of Friars Minor Conventual	Society of Jesus
Daughters of Mary Help of Christians	Order of Saint Augustine	Society of St Paul
Daughters of Our Lady of the Sacred Heart	Order of the Friar Servants of Mary (Servite Friars)	Society of the Divine Word Australian Province
Daughters of St Paul	Our Lady of the Missions	Society of the Sacred Heart
De La Salle Brothers	Patrician Brothers	Sylvestrine-Benedictine Monks
Discalced Carmelite Friars	Pious Society of St Charles – Scalabrinians	Ursuline Missionaries of the Sacred Heart
Dominican Friars	Poor Clare Colettines	Verbum Dei Missionary Fraternity
Dominican Sisters of Eastern Australia & The Solomons	Presentation Sisters – Lismore	<b>Other Entities</b>
Dominican Sisters of North Adelaide	Presentation Sisters – Queensland Congregation	Australian Catholic Bishops Conference
Dominican Sisters of Western Australia	Presentation Sisters – Tasmania	Catholic Religious Australia
Faithful Companions of Jesus	Presentation Sisters – Victoria	Catholic Church Insurance Limited
Family Care Sisters	Presentation Sisters – Wagga Wagga Congregation	Edmund Rice Education Australia
Franciscan Friars	Presentation Sisters – WA	Good Samaritan Education
Franciscan Missionaries of Mary	Religious of the Cenacle	Kildare Ministries
Franciscan Missionaries of the Divine Motherhood	Salesians of Don Bosco	Loreto Mandeville Hall Toorak
Franciscans of the Immaculate	Salvatorian Fathers – Society of the Divine Saviour	National Committee for Professional Standards
Holy Cross – Congregation of Dominican Sisters	Secular Institute of the Schoenstatt Sisters of Mary	Prelature of the Holy Cross & Opus Dei
Holy Spirit Missionary Sisters	Servants of the Blessed Sacrament	Professional Standards Office NSW/ACT
Hospitaller Order of St John of God	Sisters of Charity of Australia	Professional Standards Office NT
		Professional Standards Office QLD
		Professional Standards Office Tasmania
		Trustees of Mary Aikenhead Ministries



## The Truth Justice and Healing Council

The Catholic Church in Australia (the Church) welcomes the establishment of the Royal Commission into Institutional Responses to Child Sexual Abuse as an opportunity to acknowledge the truth about child sexual abuse within the Church, and to have these issues investigated and considered, objectively and publicly. It is an opportunity to bear witness to the suffering of the many victims of this abuse.

The Church is committed to cooperating with the Royal Commission, without reservation or qualification.

In February 2013 the Australian Catholic Bishops Conference (ACBC) and Catholic Religious Australia (CRA)<sup>1</sup> jointly established the Truth Justice and Healing Council (the Council) to coordinate and oversee the Church's overall response to and appearance at hearings of the Royal Commission.

The Council is a body of 11 people, with expertise spanning such fields as child sexual abuse, trauma, mental illness, suicide, psycho-sexual disorders, education, public administration, law and governance. The majority of Council members are lay, two of its members are bishops, and one of its members is a Brigidine sister. Two of the Council members are either themselves victims of abuse or have immediate family members who are victims. The Council provides independent advice to the ACBC and CRA, through a Supervisory Group, which is comprised of the Permanent Committee of the ACBC, and representatives of CRA. The Supervisory Group may accept or reject the advice.

The Supervisory Group endorses this Submission. The members of the Supervisory Group are listed on the TJHC website [here](#).<sup>2</sup>

The Council is chaired by the Hon Neville Owen, former judge of the Supreme Court of Western Australia and former HIH Royal Commissioner. Mr Owen's appointment follows the death of the Council's inaugural Chair, the Hon Barry O'Keefe in April 2014.

The other members of the Council are:

- Ms Elizabeth Proust AO, Deputy Chair, former Secretary to the Victorian Department of Premier and Cabinet, Chairman of the Bank of Melbourne and Nestlé Australia and member of other boards
- Archbishop Mark Coleridge, Archbishop of Brisbane
- Professor Maria Harries AM, Adjunct Professor at Curtin University and Research Fellow in Social Work and Social Policy at the University of Western Australia
- Associate Professor Rosemary Sheehan AM, Department of Social Work, Faculty of Medicine, Nursing and Health Sciences, Monash University
- Hon Greg Crafter AO, former South Australian Minister of Education
- Sr Maree Marsh, former Congregational Leader of the Brigidine Sisters and psychologist with Anti-Slavery Australia at the University of Technology Sydney, Faculty of Law
- Bishop Bill Wright, Bishop of the Diocese of Maitland-Newcastle

<sup>1</sup> CRA is the peak body, previously known as the Australian Conference of Leaders of Religious Institutes, for leaders of religious institutes and societies of apostolic life resident in Australia.

<sup>2</sup> <http://www.tjhcouncil.org.au/about-us/members-of-supervisory-group.aspx>

- Professor Greg Craven, Vice-Chancellor of the Australian Catholic University
- Mr Stephen Elder, former Member of the Victorian Legislative Assembly and Parliamentary Secretary for Education and currently Executive Director of Catholic Education for the Archdiocese of Melbourne
- Dr Marian Sullivan, child and adolescent psychiatrist.

The CEO of the Council, Mr Francis Sullivan, has worked in government and private practice and has held positions as Secretary-General of the Australian Medical Association, Chief Executive of Catholic Health Australia and consultant to the Pontifical Council for the Pastoral Care of Health Care Workers at the Vatican. He is an Adjunct Professor at the Australian Catholic University.

The Council oversees the Church's engagement with the Royal Commission, including by:

- speaking for the Church in matters related to the Royal Commission and child sexual abuse
- coordinating the Church's legal representation at, and the Church's participation in, the Royal Commission.

The Council's role extends to:

- initiating research into best practice procedures, policies and structures to protect children
- assisting in identifying any systemic institutional failures that have impeded the protection of children
- providing information to the Royal Commission concerning the various procedures, policies and structures that have been successively put in place by Church organisations over the past 25 years to deal with complaints and instances of child sexual abuse and any improvements which might be made to them to provide greater protection for children
- seeking to promote lasting healing for the victims and survivors of abuse.

To date, 32 dioceses and 97 religious institutes (commonly referred to as congregations and orders) have given an authorisation to the ACBC or CRA, authorising those bodies to represent and act for them in the engagement of the Church with the Royal Commission.

The ACBC and CRA have in turn delegated that authority to the Council. The Council therefore seeks to appear at the Royal Commission for all the authorising bodies, and will speak with one voice for all of them.

Pursuant to these arrangements, the Council acts for all archdioceses and dioceses in Australia, with the exception of three of the Eastern Rite Eparchies, and for all the major religious institutes. The Council also acts for a number of other Catholic organisations including Catholic Church Insurance Limited (CCI).

For practical purposes, the Council will ordinarily speak for the whole Church: its dioceses, its religious institutes, its priests and religious, in the Royal Commission.

The Catholic Church in Australia today is an extensive and diverse religious organisation committed to worship, prayer and pastoral care. It is involved in providing pastoral, educational, health, human and social services across Australia.<sup>3</sup>

Notwithstanding that all the dioceses and religious institutes are autonomous and independent, each from the other, with no one central or controlling authority, and with each free to govern its affairs separately and independently, all are united in their support for the principles stated in the Commitment at the head of this Submission.

Those principles are also fully shared by all the innocent and high-minded priests and religious whose long years of devoted and selfless service have been admirable and who are heartbroken by the revelations of sexual abuse which have emerged in recent decades.

The Council's aim is to do everything in its power to ensure that the Royal Commission has available to it from the Church all the material that it needs for the work it seeks to do, so as to ensure that a light is shone on dark places and times and events, and to ensure that nothing is concealed or covered up in respect of what Church personnel did or failed to do.

The Council seeks to fulfil that role, on behalf of the Church, in a spirit of honesty, openness and genuine humility.

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<sup>3</sup> See Annexure B, TJHC Submission to Royal Commission Issues Paper No 2: Towards Healing, 30 September 2013  
[http://tjhcouncil.org.au/media/39435/30549468\\_2\\_TJHC-Towards-Healing-submission-30-Sep-2013.pdf](http://tjhcouncil.org.au/media/39435/30549468_2_TJHC-Towards-Healing-submission-30-Sep-2013.pdf)



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## Executive summary

- 1 The Council welcomes the opportunity to provide feedback on behalf of the Church to the Royal Commission's consultation paper on best practice principles in responding to complaints of child sexual abuse. The Council agrees that robust child sexual abuse complaint handling procedures in institutions will improve child safety and wellbeing, operating to prevent child sexual abuse through strengthening safeguards.
- 2 Child safe organisations should encourage people to report all information relevant to child safety and wellbeing, regardless of their connection to the organisation. The language used in any complaints handling procedures will set the tone for their operation. To this end, the Council is concerned that the language of the principles as currently drafted has an undue criminal bias which may prove discourage early disclosure and reporting of concerns. The Council has suggested some alternate language which would encourage this.
- 3 The Council confirms its support for a national redress scheme, which while in operation would undertake any required investigation of complaints of historic child sexual abuse in institutional contexts. The Church is also committed to providing an ongoing pastoral response to victims and survivors of child sexual abuse alongside the redress scheme into the future.
- 4 The Council strongly submits that a nationally consistent, harmonised approach to child sexual abuse complaint handling in institutions is necessary. This should include a national system of independent oversight of reportable conduct investigations and the ability for institutions to share information critical to prevention of abuse, both within jurisdictions and between jurisdictions.

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## 2 Introduction

- 1 The Council welcomes the opportunity to provide feedback on behalf of the Church to the Royal Commission's consultation paper on best practice principles in responding to complaints of child sexual abuse. The Council agrees that robust child sexual abuse complaint handling procedures in institutions will improve child safety and wellbeing, preventing child sexual abuse through strengthening safeguards.
- 2 As the Royal Commission's case studies have shown, management of concerns about, and complaints of, child sexual abuse by institutions including the Church has historically been poor. Failures in complaint handling have at times resulted in further harm being suffered. This is deplorable.
- 3 The Council acknowledges that institutions including many Church institutions have at times failed the children in their care because policies and procedures to assist staff and others to properly respond to complaints of child sexual abuse have been absent. At other times, policies and procedures were in place but they were inadequate, too complex, or were simply not followed by personnel.
- 4 The Council confirms its support for a national redress scheme, which while in operation would undertake any required investigation of complaints of historic child sexual abuse in institutional contexts. The Church is also committed to providing an ongoing pastoral response to victims and survivors of child sexual abuse alongside the redress scheme into the future. Outside of the redress scheme and pastoral response, it is anticipated that Church organisations will have a role managing responses to disclosure of information and investigating complaints related to current behaviour.
- 5 One benefit of the Church's redress scheme, *Towards Healing* has been its national operation (in all areas except the Melbourne Archdiocese, where *The Melbourne Response* applies). The Council strongly submits that a nationally consistent, harmonised approach to child sexual abuse complaint handling in institutions is necessary. This should include a national system of independent oversight of reportable conduct investigations and the ability for institutions to share information critical to prevention of abuse both within jurisdictions and between jurisdictions.
- 6 As a general comment, the Council submits that the handling of complaints about historic conduct from victims and survivors who are now adults needs to be consistent with, but is necessarily different from, the handling of information and complaints about current behaviour towards children. Any identification of 'best practice' principles for handling of complaints of child sexual abuse may need to consider the extent to which the identified principles apply to both these types of complaints.

## 3 General comments

### 3.1 Definitions

- 1 The Council submits that there should be definitional harmonisation nationally for child protection and child sexual abuse terminology, in policy, legislation and general usage.

### 3.2 Language used in the consultation paper

- 2 The Council is concerned that some language in the consultation paper has a criminal law bias that is not appropriate. Such language in this context is restrictive. The language of the policy and procedures of institutions working with children should encourage any person (not necessarily a 'complainant') who has information (not 'evidence') about a person (not an 'accused') that is relevant to the safety and wellbeing of children, to share the information with the institution so that it may assess (not 'investigate') the information.
- 3 An institution should encourage people to report all information relevant to child safety and wellbeing, regardless of their relationship with the institution. A person making a report does not need to be a consumer of the institution or someone who wishes to 'complain'. Nor should they have to make a judgment about the intent of the person on whose conduct they are informing. Institutions working with children need to foster a culture that encourages people who have a concern to notify it to an appropriate person.
- 4 The use of language such as 'complaint', 'accused', 'investigate' and 'evidence' suggests a regime having an underlying criminal/adversarial philosophy, and this carries the risk that the language will deter people from engaging with the information sharing process. Instead, words such as 'notify' and 'notification' instead of 'complain' or 'complaint', 'information' instead of 'evidence', 'assess' rather than 'investigate' and 'respondent' instead of 'accused' should be used.
- 5 The Council has included a table of proposed alternative language at Appendix A to this submission.
- 6 While the Council has general concerns regarding the language of the consultation paper, in relation to the definitions of particular terms the Council makes the following specific observations:

#### **'Accused'**

- 7 The definition of 'accused' used in the consultation paper is appropriate if 'accused' is the preferred language. As noted above, the Council prefers language that has less of a criminal overtone, such as 'respondent' to a complaint/notification.
- 8 Regardless of the language used however, the Council is concerned that there is scant reference made to the respondent to a complaint and the often highly complex process of managing the respondent's interests in the complaints process. Unless the complaint is historic and the respondent is deceased, management of the respondent throughout the process of complaint handling will need to form part of any response by an institution. This issue needs further development.

## ‘Complaint’

- 9 The consultation paper clearly indicates that the word ‘complaint’ is intended to have a broad meaning, to cover ‘not only complaints about child sexual abuse that are expressed as such, but all allegations including reports, suspicions, concerns, alleged breaches of the code of conduct and other disclosures of behaviour that may constitute or relate to child sexual abuse’. The Royal Commission has sought to further broaden this definition in its terminology around ‘identification of a complaint’. Use of the word ‘complaint’ in any best practice guidelines without a corresponding understanding within institutions that it has this broad meaning may limit its application.
- 10 In circumstances where child sexual abuse occurs in a continuum, not all conduct that is of concern will constitute a ‘complaint’ in the traditional sense, thereby falling neatly into a complaint management system.
- 11 A complaint is information about an institution from someone who tells it something about itself and is therefore a valuable source of continual improvement, regardless of whether or not it is sufficient of itself to warrant the establishment of a formal investigation process into the conduct of an individual. An institution should encourage the passing on of information relevant to child safety and wellbeing, from any source. It is not necessary for a person providing information to be someone who wishes to ‘complain’. Good practice would be to develop a culture of notification about specified behaviours as early as possible in the continuum.
- 12 There are many pieces of information which, when shared appropriately, may assist institutions to take proactive action to ensure a child safe environment. The information received may not constitute a ‘complaint’ as such, but good practice nevertheless would mean the information is recorded, assessed and where necessary investigated and acted upon.
- 13 Further, the threshold for action in relation to a complaint or report of conduct, if only set at the level of criminal conduct, will not be as beneficial as if it were set at an earlier and lower threshold.
- 14 Any system for the management of complaints needs to be part of a whole of organisation approach to child safety and wellbeing. It would be unfortunate if the consultation paper was viewed as suggesting that information relating to child safety and wellbeing, when brought forth, will be a ‘complaint’, thereby fitting neatly into a ‘complaints management system’.
- 15 For these reasons, a broad definition of ‘complaint’ (if that is the most appropriate word) is appropriate and necessary. The terminology needs to encompass:
  - (a) ‘complaints’ in the usual sense of the word (ie regarding any conduct that has occurred that might constitute child sexual abuse)
  - (b) the notification, disclosure, reporting, sharing and passing on of information from any source about suspicions, observations and concerns, ‘red flags’ or behaviour that requires further inquiry and monitoring, and
  - (c) giving force and effect to the ‘voice of the child’, by including verbal or nonverbal reports and disclosures made by children, which may occur through drawings or stories.

- 16 As noted above, the Council has general concerns about the terminology used in the consultation paper. Institutions need to be able to act as early as possible to prevent harm to children. The definition of 'complaint' (if that is the most appropriate word) should be framed in a way that requires and enables institutions to encourage reporting of concerns, not just 'complaints' as traditionally understood. Once notified, institutions must consider and act on information. This is vital for ensuring the safety and wellbeing of children, as it will support the establishment of a culture of disclosure in institutions, enabling early intervention and prevention of later, more serious breaches as well as an effective and appropriate response to abuse should it occur.
- 17 In the balance of this submission, the word 'complaint' is used with the broad meaning discussed here.

#### **'Child sexual abuse'**

- 18 The definition of 'child sexual abuse' used in this consultation paper is the definition the Royal Commission has developed and used consistently through its processes. The definition does not however reflect the definitions used in other fora and in legislation in Australian states and territories. Nationally consistent, harmonised definitions of relevant terms including 'child sexual abuse' are required.

#### *Child on child abuse*

- 19 Child on child abuse is identified as an increasingly significant issue for institutions working with children, particularly schools and child care centres. Noting that the Royal Commission is working on this issue separately, it will be critical to include more information and guidance in relation to this issue in the context of complaint management in due course.

### 3.3 Appropriateness of consumer-oriented approach

- 20 Reference is made in the consultation paper to Ombudsman complaint handling processes and to the Australian Standard for customer satisfaction.<sup>4</sup> This risks giving the proposed best practice guidelines overtones of a consumer-protection scheme, designed to assist people seeking personal redress for a right not honoured. The Council agrees with the comment in Appendix 3 of the consultation paper that 'the [referenced Australian Standards] are consumer driven and were not devised for dealing with criminal conduct'. In the same way, again as noted in the consultation paper, the identified Ombudsman's complaint handling guidelines are not directed towards management of complaints of child sexual abuse.
- 21 While the principles contained in the Australian Standard and Ombudsman's guidelines may have relevance to the handling of historic complaints of abuse and associated claims of redress, for contemporary complaints involving children, the Council submits that the principles are not generally appropriate. A broader approach is required to complaints of child sexual abuse.

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<sup>4</sup> The Australian Standard referenced in the consultation paper, AS ISO 10002-2006 *Customer satisfaction - Guidelines for complaints handling in organizations* has been superseded by AS/NZS 10002:2014 *Guidelines for complaint management in organizations* which reflects a change from a consumer-based complaints regime to a more generalised system.

### 3.4 Case study examples

- 22 The Council considers the inclusion of case studies 5 and 6 in the consultation paper as examples of failures in the handling of child sexual abuse complaints to be appropriate. However, in relation to case study 14, the Council is concerned that the balance of the summary provided in the consultation paper does not fully reflect the facts and of that case study as they relate to the consultation paper.
- 23 In relation to case study 14, the Council notes that while formal processes continued in Rome from 2001 to 2006 regarding the question of whether Nestor should be allowed to function publicly as a priest or whether he should be dismissed, then Bishop Wilson and subsequently Bishop Ingham were found by the Royal Commission to have acted appropriately, taking steps to ensure Nestor did not work with children and remained out of public ministry because they assessed him as posing a continuing risk to children.
- 24 Following Nestor's acquittal from criminal charges (on appeal), the Diocese of Wollongong followed the reportable conduct procedure under Part 3A of the *Ombudsman Act 1974* (NSW), conducting a reportable conduct investigation, the outcome of which was that three of four allegations against Nestor were sustained. Further, after the completion of the investigation, the Diocese commenced a canonical investigation and applied to the Vatican for Nestor's dismissal from the clerical state. Nestor was ultimately dismissed by Pope Benedict XVI in October 2008.
- 25 Case study 14 showed how an investigation undertaken under the NSW reportable conduct scheme operated to protect children.

## 4 The six identified best practice principles for strong and effective complaint response

- 1 The Royal Commission is seeking submissions on the best practice principles identified in the consultation paper and their implementation, with the goals of assisting institutions to:
  - (a) respond quickly and comprehensively to complaints
  - (b) manage complaints in a way that better protects children from child sexual abuse, and
  - (c) tailor their implementation of the principles to fit the differing contexts and circumstances in which institutions operate, in terms of the work they do, their size, and the extent of legislative and other oversight of their activities.
- 2 The best practice principles also need to be capable of flexible application to different types of complaints and disclosures occurring in a variety of contexts. Although factors relevant to historic abuse complaints are discussed in the consultation paper, it is unclear whether the identified best practice principles are intended to apply to investigation of complaints of historic conduct, to the extent that this is necessary outside of any national redress scheme.
- 3 If the best practice principles are intended to apply to both historic complaints and complaints about current conduct, the Council has some concerns, as detailed below.
- 4 The appropriate place in the principles to include guidance for institutions about their consideration of the management and rights of respondents to complaints also needs to be considered.

### 4.1 Response to individual principles

#### **1. An institutional culture that makes decisions based on the best interests of the child and is aware of the inherent vulnerability of children in their care.**

*The culture establishes and leads appropriate standards of behaviour. It creates an environment in which children and adults connected to the institution are alert in identifying and enabled to report incidents or behaviour that could indicate, or be a precursor to, child sexual abuse.*

- 1 As to the concept of 'the best interests of the child', the Council presumes the Commission is aware of the modern literature from moral philosophers and theologians pointing to the inadequacy of the term 'best interests'. While there is no doubt case law addressing the meaning of the phrase at law, the Commission might care to clarify the meaning of the term 'best interests' in the context of this principle, in a way that stresses the paramount concern that institutions must have for the safety and wellbeing of each and every child given the inherent vulnerability of children in their care.
- 2 In fact, rather than being unique to complaint handling, this principle is a required element of the culture of child safe organisations, aimed at consciously and systematically creating conditions that reduce the likelihood of harm occurring to children and young people.

- 3 In its response to the Royal Commission's Issues Paper 3 on Child Safe Institutions, the Council submitted that *'organisations working with children need to recognise that risk is a feature of all work with children and that they needed to manage this risk by creating safer organisational environments... The change of focus to ensuring that child safety is paramount may be a cultural shift for many organisations.... Child related organisations need to recognise that child safety is integral to everything that they do.'*<sup>5</sup>
- 4 Child-safe institutions ensure a rigorous code of conduct is in place that promotes their child safe culture by identifying specific behavioural expectations. The code of conduct connects with clear and accessible complaint handling policies which articulate the consequences for breaching a code of conduct. This is reinforced by policies and actions within institutions to create conditions that increase the likelihood of any harm being identified and reported.
- 5 Once conduct of concern is identified and reported, child-safe institutions provide for appropriate responses to any disclosures, allegations or suspicions of harm. This will include prompt and fair investigation processes and clear enunciation of the support mechanisms available for victims, families/carers and the rights afforded to the person who is the subject of investigation (the respondent).
- 6 While this principle is readily and appropriately relevant to institutions currently working with children, its applicability to the management of reports of historic child sexual abuse is less clear.

## 2. A child-focused complaint handling policy.

*This policy guides the institution's response to complaints and specifies protections for people who make complaints. The policy needs to be accessible to all children and any adult survivors – taking into account cultural diversity as well as communication and support needs. It also needs to be enforced and regularly reviewed.*

- 1 This principle is appropriate for institutions currently working with children in relation to complaints around current conduct. However, the applicability of a 'child-focused' complaint handling policy to the management of complaints from adult survivors of child sexual abuse is unclear.
- 2 It may be that institutions require separate, or at least differently-worded policies directed to different stake holders. There will also be a need for provision of information in various formats (including a range of on-line and printed materials) and potentially a range of languages, while also ensuring that it is both age and culturally appropriate and accessible. For example, policy documentation aimed at young children will be different from that aimed at senior secondary aged children and adults.
- 3 Consultation with children and their parents/carers on the one hand and with adult victims/survivors on the other would need to form part of the institution's work towards ensuring policies are sufficiently child focused, or sufficiently victim/survivor focused as the case requires.

<sup>5</sup> Truth Justice and Healing Council (11 October 2013) Submission to the Royal Commission in response to Issues Paper 3: Child Safe Institutions <http://tjhcouncil.org.au/media/40232/131011-Submission-RC-Issues-Paper-No-3-Child-Safe-Institutions.pdf>



### **3. A process that is clear and accessible to children and adults, and emphasises responsiveness and accountability.**

*Information should be available about how and where to make a complaint. The process should be simple. Support should be provided for any child or adult making a complaint. The response should be prompt. Those accountable for the process and outcome should be identified.*

- 1 The requirement for the complaints process to be clear and accessible cannot be overstated. Again, differences in the approach required for complaints of historic abuse and complaints regarding current conduct would need to be considered.
- 2 It will be important to develop trust in the process of complaint management within each institution. As stated above, institutional culture must promote disclosure. Policies and processes must address known barriers to reporting. Children (and adults) should be encouraged to disclose behaviour of concern and supported once they have done so.
- 3 Investigation of complaints must proceed in a prompt and fair manner, for the benefit of both complainant and (where applicable) the respondent. Having minimum standards, qualifications or accreditation for investigators would go a long way towards ensuring that investigations are conducted at a high standard and findings have veracity.
- 4 It should also be clear that institutions need to act decisively once an investigation is finalised. For example, if an investigation substantiates misconduct by an employee, the institution should act decisively at both an individual level in terms of taking action against the employee and at a systemic level to address any broader issues that may have been identified in the course of the investigation.
- 5 Responsibility for the process, veracity and outcome of investigations should rest ultimately with institutions and institutional leaders.
- 6 The Council considers that the explanation of this principle should include an element relating to the position of the respondent to a complaint. While this is less likely to be relevant to investigation of complaints of historic abuse, where a perpetrator may be deceased, for complaints of current conduct, the situation for institutions dealing with respondents to complaints is highly complex and can easily become very litigious. Institutions require effective guidance which provides more detail than a simple statement to the effect that respondents must be given procedural fairness in any investigation process.

### **4. Protocols are in place for managing relationships and sharing information with other agencies.**

*The institution should maintain contact with agencies such as the police and child protection to ensure that the institution reports and discusses complaints in a manner that protects the safety and wellbeing of children.*

#### ***Information sharing with police and other child protection agencies***

- 1 There is no question that an institution should establish and maintain good relationships with agencies such as the police and child protection services in relation to reporting and investigation of complaints.

- 2 It is accepted that police and other child protection authorities need an opportunity to initiate and pursue investigations after complaints are received and institutions should avoid any communication that might interfere with a police investigation or undermine possible criminal proceedings. Under current processes, there are frequently delays and a lack of information available about steps being taken by the authorities in response to reports from institutions. The institution is often left waiting for extended periods for a response from police or child protection authorities. Schools in particular have to manage distressed children and parents, and employees against whom complaints have been made, in the absence of information from police or child protection authorities about the status of their investigation.
- 3 The flow of information between authorities including police and the institution should be bidirectional as far as possible. There is a need for greater sharing of information between such authorities and institutions, to ensure that the institution can act effectively, including disclosing information if necessary to protect the safety and wellbeing of children.
- 4 The following issues around information sharing have been identified by Church agencies in this context:
  - (a) There is currently difficulty around the removal of an employee judged to pose a risk to children where such action has the potential to alert the person to a disclosure that police may not yet have acted upon. Enhanced information sharing may assist institutions to take necessary action in those scenarios with more certainty, assisting them to maintain the necessary focus on child safety.
  - (b) There is currently an inability in some jurisdictions to share information about employees who leave their employment before an investigation into a complaint has been finalised. This has the potential to allow people who pose a risk to children to move states and continue working with children. This could be resolved if there was consistent legislation nationally requiring information to be provided to a registering body such as a teacher registration or working with children check authority.
  - (c) Where there are question marks over whether conduct to which a complaint relates is criminal in nature an issue arises as to whether an industrial or reportable conduct investigation needs to be delayed until the completion of police investigations. While an institution through its investigative actions, must be careful not to negatively impact on a criminal investigation, information sharing in this context would help to facilitate prompt completion of required investigations.
  - (d) In the experience of Church authorities it would be rare that state and territory police would provide material (records of interview, statements) to an institution where the police investigation was completed and did not result in the commencement of criminal proceedings. This leaves the institution, which will usually still have a responsibility to investigate from a disciplinary perspective, to 'start again', with the accompanying delay and risk that the additional process will re-traumatise those involved.
- 5 While not a complete solution, the information sharing that is available under Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) and Part 5.1A of the *Care and Protection of Children Act 2007* (NT) are appropriate and work quite effectively in those jurisdictions. The legislation relies on prescribed bodies initiating the provision of relevant information, which does not always occur.

- 6 In each of the scenarios above, it is likely that legislation would be required in most states and territories, even in NSW and the NT, to facilitate the levels of information exchange necessary to protect children, both within and between jurisdictions.
- 7 Ideally, a greater ability for institutions to understand and have information around the actions taken by police in general, but in these circumstances in particular, could result in more effective outcomes during internal investigations.

#### *Communication with those directly affected and the broader community*

- 8 Issues around the ability of institutions to communicate with victims, witnesses and the wider community during the process of dealing with a complaint are extremely complex due to competing interests, including the need to support those directly involved and protect their privacy, while keeping the broader community informed in order to ensure the protection of children.
- 9 In most jurisdictions, there is a lack of ability for institutions to advise the victim, the person reporting, or parents, carers, relevant others of the progress of a matter and the outcome, without breaching privacy laws. Although in NSW a recent amendment to the *Ombudsman Act 1974* (NSW) has assisted with this issue in that state, the amendment relates only to matters falling within the NSW reportable conduct scheme. It does not apply more broadly to workers or agencies that fall outside of the jurisdiction of the NSW Ombudsman.
- 10 There have been findings made in case studies by the Royal Commission about inadequacies in communication about investigation outcomes by institutions to their local community.<sup>6</sup> Institutions are often isolated in trying to manage communication with relevant stakeholders and there is often criticism about how much information is shared. Similarly, where information is shared by institutions, there are commonly threats of legal action from the respondent to the complaint.
- 11 In NSW, although there are benefits available to institutions arising from the Joint Investigation Response Team (JIRT) protocol, the reported experience is that it is rarely used due to a lack of resources from within JIRT. Further, it is not clear that the JIRT protocol complies with privacy laws.
- 12 There is a need to ensure privacy issues are addressed and support provided to all those directly involved in an investigation process. Communities, particularly small communities, can be quick to make judgments based on limited information. The public interest in release of information to a community would need to be balanced against considerations of whether information released in this way might add to the trauma being suffered by those involved.

#### *Communication with the respondent to a complaint*

- 13 The explanation of this principle should include information about the position of the respondent and the steps the institution should take in relation to information sharing and access by respondents to information through an investigation process. This is a complex matter.

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<sup>6</sup> For example, finding 9 of Case study 14 – that Bishop Peter Ingham should have made it known publicly that Nestor had been dismissed from the clerical state because of the findings of child sexual abuse and other inappropriate conduct made against him. It is the Diocese of Wollongong's experience that developing protocols to provide for better public communication in the future is a complex process, with many competing considerations to be balanced. The Council also notes the recent institution in NSW by JIRT of a Local Contact Point (LCP) Protocol to manage issues surrounding communication with the parents of any identified 'class of children' at risk of abuse, in response to findings of this Royal Commission in case study 2 in relation to public communication.

- 14 Institutions clearly need to protect informants and complainants during an investigation. They also have legal obligations to have regard to the rights of the respondent to the complaint, as provided under principles of natural justice, employment and privacy laws. Among other things, this is necessary in order to ensure that investigatory findings stand up to scrutiny and appeal.
- 15 Respondents to complaints are entitled to have access to information about the complaint made against them. In some states and territories, sharing of this information is governed by legislation but regardless, this adds a level of complexity to an investigation process and the communication required by an institution. For example:
  - (a) in NSW, if the reportable conduct scheme applies, respondents are entitled to have access to files at the conclusion of an investigation, by operation of the *Government Information (Public Access) Act 2009 (NSW)* and pursuant to some Enterprise Agreements. This has implications for the privacy of victims and witnesses.
  - (b) in NSW, when a person who has been barred from working with children by the Children's Guardian under the NSW WWCC legislation challenges that bar, they are usually entitled to view their entire file, including witness evidence. Witnesses in investigations are not informed that their statements have been made available to the respondent.
- 16 An unintended consequence of this legislated information sharing can be that victims and witnesses will choose not to come forward to report concerns where they believe that the respondent may have detailed access to what they reported or their statements.

#### *The Royal Commission's research on the topic of information sharing*

- 17 The Council notes that the Royal Commission has released some research<sup>7</sup> on information sharing, which it is currently considering.

### **5. Training is provided about the complaint handling process.**

*All staff members, volunteers and others involved in the complaint handling process receive adequate and ongoing training in the institution's expectations about reporting concerns and its policy and procedures for managing complaints.*

- 1 Training is integral to the promotion of necessary cultural change in child related institutions. Education underpins the development of a culture that knows and trusts processes, and thus ensures both prevention of abuse and the effective handling of any issues that arise. Regular and ongoing training of all staff members and volunteers is thus critical to success.
- 2 Although difficult depending on the size of the organisation, training should be delivered to staff by experts in the field (either internally or externally). Training should include topics such as:
  - (a) identifying child sexual assault
  - (b) grooming behaviour and its significance
  - (c) handling disclosures
  - (d) organisational codes of conduct and policies

<sup>7</sup> Adams, C., and Lee-Jones, K., (2016) *A study into the legislative—and related key policy and operational—frameworks for sharing information relating to child sexual abuse in institutional contexts* Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney.

- (e) boundaries and accepted standards of behaviour
  - (f) how best to support young people (and adults) making complaints of abuse.
- 3 It would be beneficial for best practice guidelines to provide details about the types of training that are considered necessary and clarification on the frequency of training required across the lifecycle of an employee's engagement with an institution. In addition, consideration should be given to guidelines for volunteers in institutions and the training required in volunteer roles.
  - 4 Staff should be made accountable for attendance for training through employment conditions, attendance records and declarations that policies have been read and understood.
  - 5 Similarly children and parents/guardians themselves need age and language-appropriate education and information that enable them to identify inappropriate behaviour and to report it, with confidence that it will be handled effectively. Education processes should also address known barriers to reporting.

## 6. An ongoing audit process is in place

*This helps institutions monitor the efficacy of their policy and procedures for responding to complaints of child sexual abuse*

- 1 The Council supports the view that ongoing audit and process improvement, both internal and external, should be part of any institutional system of child protection generally: ie not limited to complaints handling.
- 2 Regular review of policies and procedures by institutions is critical. Policies should include approval dates and dates for review. Systemic reviews, or root cause analyses should be triggered by complaints and their outcomes and any legislative changes. This will assist institutions to improve incrementally based on current circumstances.
- 3 Any audit process should be broader than a paper-based approach: as well as reviewing documentation auditors would need to hear from complainants, staff, volunteers and children as part of the process.
- 4 One example of an effective external audit and process improvement is the NSW reportable conduct scheme, discussed elsewhere in this submission.
- 5 In NSW non-government schools, another robust system is also in place through the school review process which requires schools to be audited by designated reviewers against standards set by the Board of Studies Teacher and Educational Standards (BOSTES) in Safe and Supportive Environments.
- 6 Nationally, external auditing of performance against identified best practice child safe standards has already been identified by the Council as a key future direction for its child protection processes. The Church is currently working towards development of the standards that would underpin such audit processes.

## 5 Oversight of complaint handling

- 1 The Council strongly supports external oversight of child protection standards and implementation systems in child-related institutions. Ideally external oversight would be provided by a national body. At the very least, external oversight should be established via harmonised legislation nationally, ensuring it is nationally consistent. This is desirable in order to:
  - achieve greater responsiveness to concerns of child sexual abuse
  - make reporting obligations clearer, nationally consistent and therefore more likely to be effectively implemented, and
  - improve the ability to provide consistent training, oversight and monitoring, particularly noting the mobility of staff within Australia.

### 5.1 Legislative and regulatory obligations and responsibilities

- 1 Consistency is needed across jurisdictions about who is a mandatory reporter, what is reportable and to whom. Currently there are legislative mandatory reporting and other reporting schemes in all or most jurisdictions, but little consistency. This causes an unnecessary complexity for those charged with reporting, especially in institutions that operate across several states and territories.
- 2 There should be nationally consistent legislative definitions of the categories of conduct that need to be reported externally by institutions working with children.
- 3 Further, it is also important that there is alignment between different oversight agencies. For example in NSW currently, this would include the NSW Office of the Children's Guardian, Ombudsman, Family and Community Services and the police. Assuming external oversight is implemented nationally as discussed below, it will be imperative that all such bodies are consistent in their legislation, responsibilities and approach to their role.

### 5.2 A national system of oversight of reportable conduct investigations is required

- 1 For investigation of complaints of child sexual abuse, the Council submits that a national system providing for independent oversight of reportable conduct investigations is required in Australia.
- 2 The Council is aware that Council of Australian Governments has approved, in principle, the establishment of an oversight office in each state and territory that would have powers and functions similar to those of the NSW Ombudsman under the NSW reportable conduct scheme.<sup>8</sup> Further, the Victorian government is taking steps, and the ACT government has passed legislation<sup>9</sup> establishing information sharing and reportable conduct schemes for their jurisdictions.

<sup>8</sup> In the most recent COAG Communique, it was stated: '*Reportable conduct scheme: COAG welcomed Chief Minister Barr's proposal for nationally harmonised reportable conduct schemes to improve oversight of responses to allegations of child abuse and neglect. COAG agreed, in-principle, to harmonise reportable conduct schemes, similar to the current model in operation in NSW and announced in the ACT and Victoria*' COAG Communique (1 April 2016) 42nd Meeting, Canberra.

<sup>9</sup> In August 2016 the ACT Legislative Assembly passed the *Reportable Conduct and Information Sharing Legislation Amendment Act 2016* establishing information sharing protocols and a reportable conduct scheme modelled on the NSW scheme, in the ACT.

- 3 The Council applauds these developments, but is concerned to ensure that a national oversight scheme, or at the very least a truly harmonised scheme, is implemented in Australia. Consistency is needed between the jurisdictions to enhance transparency and facilitate the information sharing that is required to keep children safe nationally.
- 4 The Council submits that such external oversight should be modelled on the current reportable conduct scheme under Part 3A of the *Ombudsman Act 1979* (NSW) (scheme).
- 5 Currently in NSW, some workers and agencies are subject to the oversight of the scheme. The scheme assists institutions to identify and resolve the complexities that arise in any investigation of reportable conduct. Submissions have been made to have the scheme extended to cover all employees of all institutions working with children in NSW.<sup>10</sup> The scheme has provided institutions with a framework within which to consider how to make each particular institution child-safe. The Council is informed by practitioners working in dioceses and Church organisations in NSW that having the scheme as an element of the overall child protection system has significantly increased the safety of children in NSW.
- 6 In Queensland, the Queensland College of Teachers provides oversight for investigations commenced in relation to children. However, this oversight is necessarily related only to the reportable conduct of registered teachers, not those working with children more broadly.

#### Necessary features of a national oversight model

- 7 The legislative framework for the oversight model must provide clear parameters for institutions and their child protection professionals to work within, and the agency charged with oversight must be well resourced if it is to be effective.
- 8 The features which are necessary in a reportable conduct scheme include those outlined in the *Ombudsman Act 1974* (NSW) Part 3A, which requires the NSW Ombudsman to keep under scrutiny relevant systems for preventing reportable conduct by employees of certain government and non-government agencies which work with children, and the handling and responding to reportable allegations involving their employees.

#### Coverage of a national oversight scheme

- 9 Any oversight scheme should apply to all child-related activities of organisations that work with children, but should also encompass other activities that may not necessarily be 'child-related' but nevertheless routinely involve children. Churches and the organisations that are within the Church's auspices should fall within the scheme.
- 10 The scheme should be aligned with the Working With Children Check so that it is more easily understood by workers and the public. Alignment of child protection legislation nationally assists institutions to give a clear message, assists compliance and assists institutions to respond to concerns and complaints in a timely, professional and appropriate manner.
- 11 Independent external oversight of complaint handling and investigations by a competent regulatory body will provide the necessary scrutiny to give community assurance and rebuild trust in institutions handling such fraught matters.

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<sup>10</sup> In November 2015 Bishop Bill Wright wrote to the NSW Ombudsman on behalf of the Archbishops and Bishops of the NSW Deanery of the Church seeking to have the jurisdiction of the NSW reportable conduct scheme extended to cover all persons working with children in NSW dioceses.

## Collaboration and information sharing

- 12 The issues around information sharing facing institutions engaged in investigation processes have been discussed elsewhere in this submission. One of the risks in child protection is that perpetrators can move from an area or jurisdiction of higher scrutiny to an area of lower scrutiny. The NSW Ombudsman's ability to share information with the Children's Guardian assists in reducing this opportunity in NSW.
- 13 Under the NSW reportable conduct scheme the NSW Ombudsman is able to disclose particular information to the Children's Guardian which agencies are not able to report. This ability has become much more important since the categories of findings of misconduct which are able to be reported to the Children's Guardian were narrowed.<sup>11</sup> The NSW Ombudsman has to some extent been able to assist with this gap and can also sometimes assist to fill the gaps under Chapter I6A.
- 14 The access that the NSW Ombudsman has to both policing matters and employment matters is significant. The capacity of the Ombudsman to collate and link information about people against whom findings have been made leads to a much safer outcomes for children in NSW. This aspect should be replicated in any national oversight scheme.
- 15 These abilities to collaborate and share information should be replicated in any reportable conduct scheme implemented nationally, to enable similar information sharing between the oversight body and WWCC regulator both within and between jurisdictions.
- 16 Collaboration between institutions and the Ombudsman's office is an important element of the current NSW reportable conduct scheme that needs to be replicated in any recommended national oversight scheme.

## Support for development of best practice policy and practice

- 17 The NSW Ombudsman's office is very responsive in providing assistance with practice development. As with any organisation, documents, policies, practices are only relevant so far as they are successfully lived. In a dynamic environment, institutions grapple with many pieces of legislation, regulatory bodies, expectations and stakeholders. There are times where institutions are caught between differing, often competing and sometimes contradictory legislation and policy. The NSW Ombudsman's Office has engaged in continual dialogue with agencies in order to assist with continuous improvement of their policies and compliance. This is a very important aspect of the manner in which the NSW Ombudsman's Office fulfils its functions.
- 18 There are a number of examples of this responsiveness and assistance from the NSW Ombudsman to make improvements to systems. One was the important alignment of definitions between the *Ombudsman Act 1974* (NSW) and the *Child Protection (Working with Children Check) Act 2012* (NSW). Another example has been the Ombudsman's support of the request from the Church in NSW for an extension of the jurisdiction of the NSW reportable conduct scheme to include a broader variety of activities and employees.<sup>12</sup> Continued consultation to remedy identified problems with the operation of child protection legislation and systems must be integral to any reportable conduct scheme.

<sup>11</sup> Recent legislative changes have meant that in NSW sustained findings of psychological harm, ill-treatment or neglect are no longer able to be reported by an agency to the Children's Guardian. Such findings were previously reportable in the context of Working With Children Check (WWCC) processes. It is considered that this is a very important area of harm to children especially in particular sectors such as out-of-home care and foster care. Such findings should still be reportable to the Children's Guardian in order that they are considered in the risk assessment performed as part of a WWCC.

<sup>12</sup> See note 10 above.



- 19 The NSW reportable conduct scheme is particularly useful in allowing early detection of grooming and crossing of professional boundaries issues which is beneficial in preventing more serious incidents of child sexual assault occurring.
- 20 In addition, the standards set by the NSW Ombudsman's office set the bar at a high yet reasonable level for reporting and the conduct of investigations, providing clarity to institutions around the Ombudsman's expectations. For example, the NSW Ombudsman's Office sets time frames for reporting and monitors investigations for analysis and completeness. In addition, risk management and investigation plans must be submitted in a timely way and are reviewed for accuracy and analysis. Conflicts of interest by investigators are also identified and explored during this initial review process.
- 21 Overall, it is the transparency added by the scrutiny of the NSW reportable conduct scheme, if nothing else, that undoubtedly improves both the investigation process itself and the perception of that investigation by all involved: the victim, the accused, and others.

#### Development of collaborative relationships

- 22 The NSW reportable conduct scheme also provides an opportunity for positive relations to be built by institutions with external agencies including the NSW Ombudsman, Family and Community Services, the police and the Office of the Children's Guardian, to develop a collaborative child protection system.
- 23 Police investigations are warranted when the complaint is of criminal conduct. However for many reasons police investigations will not be able to deal with the full extent of relevant complaints. That being the case, there must be independent external oversight of the institutions' handling of the range of complaints; this is necessary to ensure early and appropriate intervention; this is particularly so in the area of child sexual abuse which can be so difficult to fully bring to light at the time; unless there is the necessary early and appropriate intervention the more tragic consequences are likely to occur.

### 5.3 Access to advice and support for institutions

- 1 The area of child protection has a history of being under-resourced by institutions and governments. The complaints process must be rigorous - it must be used to address particular complaints and concerns at the appropriate level but also be used to identify systems issues and those issues addressed by the organisation.
- 2 Dealing with child protection issues, particularly child sexual assault, is a highly complex area of work. Even for highly resourced and skilled child protection units within larger institutions which deal with this type of work on a daily basis, practitioners may need extra advice and support.
- 3 Clear and simple processes could be provided by a government body, including templates and fact sheets. Accessibility to the regulator would assist in learnings for organisations.
- 4 The government or another organisation could provide standardised training resources to assist small agencies.
- 5 The NSW Ombudsman does offer institutions access to professional advice in dealing with complaints and that support can be valuable. This could be mimicked in each state and territory as harmonised oversight bodies are implemented.

- 6 Assistance with review of systemic concerns or findings may be particularly challenging for smaller (especially volunteer) organisations, lacking resources or expertise. Larger institutions would benefit from having access to an additional independent advisory service which could help guide institutions in managing particularly complex child protection complaints.
- 7 A possible option for small organisations that have some links to larger organisations would be for the larger organisation to assist the smaller organisation. There would be resource and privacy implications. Other options that would be considered suitable would include extending the amount of support that the Ombudsman (or similar oversight body) provides, utilising peak bodies, or engaging private service providers as discussed below. There would be resource and privacy implications in relation to all of these options.

### Peak bodies

- 8 Peak bodies can be helpful and should provide some advice and support to their members, but institutions which deal with children are covered by a range of peak bodies, so this alone would not lead to consistency and best practice across the range of institutions, especially if such bodies were state based. Peak bodies should only provide advice and support, not have oversight.
- 9 In some instances specific offices within dioceses or religious institutes have the responsibility to provide advice and support to staff in their agencies regarding any complaints about child sexual abuse. These offices have policies and reporting lines and training in place regarding the identification and reporting of child abuse. Having a “centralised” system within a diocese or religious institute has benefits for smaller “agencies” such as parishes and other agencies such as Catechists and Youth Ministry.
- 10 A suggestion was made to the Council that the national and state Professional Standards Offices have considerable expertise and a group of directors or key staff could form such a peak body for small institutions that are not otherwise supported within a church structure.

### Government agencies

- 11 As discussed above, some government agencies are already valuable sources of advice and support for institutions and their expertise and existing relationships should be utilised. The extent to which the NSW reportable conduct scheme becomes the model will determine the viability of such a scheme to continue to provide advice. The establishment of new bodies by the different federal, state and territory governments could be counter-productive and lead to further complexity.
- 12 Key government agencies with specialist functions such as the resources of the Public Safety Business Agency in Queensland, which provides resources and toolkits for meeting requirements in relation to risk management could be expanded to encompass the wider responsibilities of complaints management in relation to abuse of children.

### Private service providers

- 13 The Council recognises that some experts may well have significant skills and experience to offer institutions on a consultancy basis via a private service provider model. There must be alternatives available however. The Council would be concerned if profit became a significant driver of operations in the area of oversight, as costs are likely to become prohibitive, especially for smaller, less well-resourced institutions which may need more support.

## Appendix A – Suggested alternate language

Accused	<b>Respondent</b> – to encourage reporting of information the use of language with criminal law connotations should be avoided.
Complainant	<b>Any person</b> – does not need to be someone who has been offended against. Anyone who observes something of concern should be encouraged to report it.
Complaint	<b>Notification</b> – Institutions need to develop a culture of notification. If the whole focus is on ‘complaint’ this will deter notifications. Notification or reporting may prevent abuse, whereas complaints often are made after the abuse occurs. By using the word notification children and others may feel more comfortable about raising concerns, at an earlier time.
Evidence	<b>Information</b> – again to remove criminal connotations
Investigate	<b>Assess</b>