



Response to Discussion Paper

Strengthening Information Sharing Arrangements

Royal Commission into Institutional Responses to Child Sexual Abuse

19 April 2017

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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
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 Joseph, Perthville
Christian Brothers	Missionary Sisters of St Peter Claver	Sisters of St Paul de Chartres
Cistercian Monks	Missionary Sisters of Service	Sisters of the Good Samaritan
Columban Fathers	Missionary Sisters of the Sacred Heart	Sisters of the Good Shepherd
Congregation of the Mission – Vincentians	Missionary Sisters of the Society of Mary	Sisters of the Holy Family of Nazareth
Congregation of the Most Holy Redeemer – Redemptorists	Missionary Society of St Paul	Sisters of the Little Company of Mary
Congregation of the Passion – Passionists	Oblates of Mary Immaculate	Sisters of the Resurrection
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 African Missions
Daughters of Charity	Order of Friars Minor Conventual	Society of the Catholic Apostolate (Pallottines)
Daughters of Mary Help of Christians	Order of Saint Augustine	Society of Jesus
Daughters of Our Lady of the Sacred Heart	Order of the Friar Servants of Mary (Servite Friars)	Society of St Paul
Daughters of St Paul	Our Lady of the Missions	Society of the Divine Word Australian Province
De La Salle Brothers	Patrician Brothers	Society of the Sacred Heart
Discalced Carmelite Friars	Pious Society of St Charles – Scalabrinians	Sylvestrine-Benedictine Monks
Dominican Friars	Poor Clare Colettines	Ursuline Missionaries of the Sacred Heart
Dominican Sisters of Eastern Australia & The Solomons	Prelature of the Holy Cross and Opus Dei	Verbum Dei Missionary Fraternity
Dominican Sisters of North Adelaide	Presentation Sisters – Lismore	
Dominican Sisters of Western Australia	Presentation Sisters – Queensland Congregation	
Faithful Companions of Jesus	Presentation Sisters – Tasmania	
Family Care Sisters	Presentation Sisters – Victoria	
Franciscan Friars	Presentation Sisters – Wagga Wagga Congregation	
Franciscan Missionaries of Mary	Presentation Sisters – WA	
Franciscan Missionaries of the Divine Motherhood	Religious of the Cenacle	
Franciscans of the Immaculate	Salesians of Don Bosco	
Holy Cross – Congregation of Dominican Sisters	Salvatorian Fathers – Society of the Divine Saviour	
Holy Spirit Missionary Sisters	Secular Institute of the Schoenstatt	
Hospitaller Order of St John of God	Sisters of Mary Servants of the Blessed Sacrament Sisters of Charity of Australia	

Other Entities

Australian Catholic Bishops Conference
Catholic Religious Australia
Catholic Church Insurance Limited
National Committee for Professional Standards
Professional Standards Office Tasmania
Professional Standards Office NSW/ACT
Professional Standards Office NT
Professional Standards Office Qld
Edmund Rice Education Australia
Good Samaritan Education
Kildare Ministries
Loreto Mandeville Hall Toorak
Trustees of Mary Aikenhead Ministries



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)¹ 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. The Council's membership includes victims of abuse or persons who 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 members of the Supervisory Group are listed on the Council website [here](#).²

The Council is chaired by the Hon Neville Owen, former judge of the Supreme Court of Western Australia and former HIH Royal Commissioner.

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, Research Fellow in Social Work and Social Policy at the University of Western Australia, Chair of Catholic Social Services Australia
- 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, Chair of National Catholic Education Commission
- 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
- Professor Greg Craven AO, GCSG, Vice-Chancellor and President of the Australian Catholic University

¹ 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.

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

- Mr Stephen Elder OAM, 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
- co ordinating 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, and
- seeking to promote lasting healing for the victims and survivors of abuse.

Dioceses and religious institutes (commonly referred to as congregations and orders) have given authorisations 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 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 ordinarily speaks 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.³

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

³ 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

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.

1 Introduction

1. Throughout the Council's period of engagement with the Royal Commission information sharing has consistently been identified by our stakeholders as an issue impacting on the safety of children in institutional contexts. There are currently a number of barriers to the timely and appropriate sharing of information to protect children, including misunderstanding of the operation of information sharing systems, confusion around privacy requirements, concerns about defamation and a reactive rather than proactive attitude towards information sharing.
2. Against this background, the Council agrees with the premise of the Royal Commission's discussion paper that the information sharing provisions within and across sectors and jurisdictions should be enhanced, and barriers eliminated, to provide for the safety of children in institutional contexts. The Council also agrees that the underpinning principle in regard to information sharing should be that the safety and wellbeing of children is paramount. Where there is tension between this principle and statute or the common law, the safety and wellbeing of children should have priority over the protection of confidentiality, individual reputation and privacy.
3. Information sharing processes must be clear and as simple as possible in order to be effectively implemented. Smaller organisations, particularly those constituted predominantly by volunteers, may experience difficulties in the practical implementation of information sharing requirements and must have access to support through an appropriate oversight agency.
4. For clarity, the Council states here its view that all faith-based institutions including the Catholic Church, its schools, welfare organisations and parishes, should be prescribed bodies for the purposes of both reportable conduct and information sharing schemes nationally.
5. The Council submits that a national approach to information sharing is necessary, to achieve consistency within and between jurisdictions. Further, the Council notes that while the Commission's discussion paper has appropriately limited its consideration to sharing of information relating to incidents and complaints of child sexual abuse, in many instances it would be preferable for a broader range of information impacting on the safety of children (and, potentially vulnerable people more generally) to also be capable of being appropriately shared in the contexts discussed.
6. In developing its response to the discussion paper the Council has consulted with archdioceses, dioceses and religious institutes, Catholic education providers through the National Catholic Education Commission and Catholic welfare and community services organisations through Catholic Social Services Australia.

1.1 The proposal under consideration

Information sharing by prescribed bodies within and across jurisdictions in relation to the safety and wellbeing of children

7. The Council supports the implementation of reforms to put in place nationally consistent arrangements for information sharing concerned with the safety and wellbeing of children within and across sectors and jurisdictions in Australia.

8. However, safeguards are required. A broad permission to share information presents risks to privacy and, in the absence of safeguards, may be subject to misuse. Information sharing arrangements must include clear thresholds and parameters, and should specify:
 - (a) the bodies with whom information can be shared (called 'prescribed bodies' in the discussion paper),
 - (b) the nature of the information that can be shared without consent, and
 - (c) the obligations on prescribed bodies and individuals for limiting and tracking information flow.
9. The operation of an effective information sharing model will change and potentially increase demands on institutions that are specified as prescribed bodies for the purpose of the information sharing arrangements. Consideration needs to be given to the practical implications for prescribed bodies in terms of resourcing and adequate training around the operation of the scheme and confidentiality issues. Prescribed bodies will need advice and resourcing to ensure consistent records are maintained and appropriate information management systems are in place. Clear guidelines or protocols will need to be in place under the proposed scheme to guide and support information sharing.

A particular issue: information sharing with the subject of the information

10. Any information sharing scheme will clearly need to address the sometimes complex position of the extent to which an individual should be able to have access to their own information, particularly where there is an investigation or other proceedings on foot.
11. As discussed elsewhere in this response, under any information sharing scheme prescribed bodies will need to protect informants during an investigation. Prescribed bodies are also legally obliged to observe the right to natural justice of respondents to complaints, and their rights under employment and privacy laws. Among other things, observance of the rights of individuals is necessary to ensure that investigatory findings stand up to scrutiny and appeal.

Our current experience: 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.

Also 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.

These forms of information sharing have implications for the privacy of victims and witnesses.

12. Information sharing in this context creates a range of complex issues for institutions.

A particular issue: Information sharing between institutions and members of the community

13. The focus of the discussion paper is on information sharing between prescribed bodies, professional organisations and registration authorities.

14. An aspect not discussed in the paper relates to the common community expectation that institutions such as schools and churches will also appropriately communicate information relating to the safety and wellbeing of children with the relevant school/church community. As the Royal Commission has identified in several of its reports to date⁴, it is not satisfactory for an affected community to be the last to know, or not to be informed, that there are serious concerns and investigations afoot, particularly when children in that community may have been affected. This is a particular issue when the person under investigation has previously been held out by an institution as a person of good standing.
15. A particular example relates to access and disclosure of information about children in schools who exhibit harmful sexual behaviours and other students impacted by those behaviours. The competing interests of parents of other children at the school in seeking access to information need to be clearly resolved in any information sharing process. Schools are obliged to protect all students at their school and discharge of this duty does not require them to disclose particulars to parents, as much as some parents may understandably believe that access to such information is their right.
16. Information sharing in such circumstances must proactively deal with the vexed question of whether, and if so at what stage, is it right to communicate something to the relevant school/Church community. This aspect has begun to be addressed by some institutions, including by the NSW police via implementation of the Joint Information Response Team (JIRT) Local Contact Point (LCP) Protocol to manage issues surrounding communication with the parents of any identified 'class of children' at risk of abuse.
17. For other institutions and investigations that do not involve police, the existing Chapter 16A provisions in NSW do not adequately address this aspect. There remain concerns about whether an institution is legally permitted to proactively share certain information with a relevant community.
18. The Council submits that processes for appropriate information sharing by institutions with their community need to be included in the information sharing provisions recommended by the Royal Commission. Applying the principle that children's safety and wellbeing should take precedence over privacy and confidentiality, information sharing arrangements in this area need to be carefully considered to manage the risk of inappropriate disclosure. The complexity and high stakes nature of this dilemma make it particularly difficult for institutions, regardless of their size and sophistication, to navigate. Clear legislative guidance and education around this aspect of the information sharing arrangements will be required.

Sector specific registers accessible by relevant bodies within and across jurisdictions

19. The Council is strongly of the view that teacher registration bodies should maintain an expanded and consistent amount of information about registered teachers that is capable of being shared with equivalent bodies in other jurisdictions and with current and prospective employers.
20. In the same way, the Council is supportive of any work that can be done to remove inconsistency and achieve harmonisation of the requirements of carers registers in each jurisdiction so that information about carers is maintained and capable of being shared with other registers and institutions engaging the services of carers. The safety and wellbeing of children demands that

⁴ For example Case Study 2 (YMCA), Case Study 9 (St Ann's School) and Case Study 14 (Diocese of Wollongong).

interjurisdictional differences that currently operate as barriers to achieving this are worked through and removed.

2 Improving information sharing within and across sectors and jurisdictions

2.1 Current arrangements and the need for reform

21. The Council supports the implementation of reforms to put in place nationally consistent arrangements for information sharing concerned with the safety and wellbeing of children within and across sectors and jurisdictions in Australia.
22. Currently, the operation of state and federal privacy laws is not well understood and this uncertainty inhibits information sharing. It is very difficult for institutions to navigate the privacy environment. Clarification is needed.

2.2 The need for a national approach

23. The Council is firmly of the view that a national approach to information sharing will better protect children. A national approach is necessary to achieve consistency within and between jurisdictions. Without a national approach to information exchange, children may remain at risk given a person's current ability to easily move across jurisdictions.

Our current experience: If an organisation in NSW is aware of a risk that an adult may pose to a child or young person in NSW, and that adult moves interstate, the only option available to the organisation is to make a risk of significant harm report to the NSW Department of Family & Community Services (FACS) which has the capacity to share this information with other child protection agencies across Australia. This is arguably a higher threshold than (in the case of proactive sharing under Chapter 16A) a reasonable belief that the information would assist the recipient to meet their responsibilities for children's safety and welfare. Even where the higher threshold is met, such reports can prove ineffective as further information sharing is dependent on FACS deciding to share the information concerned with another statutory authority interstate.

2.3 A model for nationally consistent intra-and inter- jurisdictional information exchange scheme

24. The Chapter 16A information sharing provisions introduced in NSW in 2009 have been a welcome and extremely positive initiative. Chapter 16A gives prescribed bodies the ability to actively exchange relevant information regarding the safety and wellbeing of children and young people in ways which did not exist previously. The relationship between the NSW Ombudsman and Office of the Children's Guardian through Chapter 16A allows for easy flow of information between these regulatory bodies and further distribution of information to relevant agencies as required.
25. The Council supports the implementation of a national approach to information sharing modelled on Chapter 16A given the positive evaluation its operation has received over the period since its commencement, specifically its strengths in removing many of the limitations on information sharing that exist in jurisdictions that do not have an equivalent of Chapter 16A.

26. As discussed elsewhere in this response, consideration would have to be given to the definition of prescribed bodies in Chapter 16A to ensure that all institutions of the Church are clearly included.

Our current experience: Family and Community Services (FACS) have introduced ‘Patchwork’ in NSW which allows services working with families to enter the Family and Child they are working with into a centralised system called ‘Patchwork’. This enables other agencies to search and will notify them that the organisation is engaged with that family. This allows for greater collaboration and case conferencing and initiates the use of a Chapter 16A request to that organisation. A limitation of the system is that it is only as useful as the information that is stored in it. If services are not using Patchwork then this will affect its usefulness.

2.4 Key elements of model information-sharing provisions

Direct exchange of information between a wide range of prescribed bodies

27. The range of institutions considered in the discussion paper as potentially being included as ‘prescribed bodies’ under the information sharing scheme is extensive and appropriate.
28. Prescribed bodies must be clearly defined. A balance must be achieved in this definition, so as to capture all the key agencies that provide services to children. Subject to comments below regarding the potential for expansion of the scheme to vulnerable people, the definition should be clear enough that it will not serve to create such a broad category that it generates complexity and inadvertently contributes to either unnecessary demand or confusion as to whether bodies which do not normally provide services to children may nevertheless be prescribed bodies.

Our current experience: In NSW there has been some confusion regarding the definitions of ‘welfare’ ‘education’ and ‘children’s services’ as currently used in Chapter 16A.

Clarification in any information sharing scheme recommended by the Commission as to the intended operation of these terms would be beneficial.

The Church

29. The Council considers it imperative that the Church, its schools, social welfare organisations and parishes should be prescribed bodies for the purposes of the information sharing scheme.⁵

The Commonwealth

30. The Commonwealth should be part of the information sharing scheme and relevant Commonwealth agencies which hold relevant information relating to the safety and wellbeing of children, including for example health, social services and immigration and perhaps also bodies such as the Family Court, should be subject to legislation requiring appropriate information sharing with prescribed bodies.

⁵ 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, which includes Chapter 16A, extended to cover all persons working with children in NSW dioceses.

Regulatory and oversight bodies

31. The Council submits that regulatory and oversight bodies should be included in the scheme (as discussed further below in relation to particular sectors).
32. It is important that there is alignment between the range of institutions that are prescribed bodies for the purposes of the information sharing scheme and those subject to state and territory child protection oversight and reportable conduct schemes.

Systemic schools

33. The discussion paper notes the current lack of clarity around whether Catholic systemic schools are considered to be prescribed bodies for the purposes of Chapter 16A.
34. The Council's advice is that in practice, this has not been an issue for Catholic education systems in NSW. Catholic schools/education offices have been accepted as having 'direct responsibility for, or direct supervision of, education' to children, as required by Chapter 16A. In turn, Catholic schools/education offices have promoted Chapter 16A information sharing at the school level with other prescribed bodies: principals and school counsellors have been informed that under the provisions of Chapter 16A they are able to request information from other prescribed bodies and to respond to requests for information from prescribed bodies.
35. Having said that, it would be preferable for all schools, regardless of their governance structure, to be clearly included as prescribed bodies for the purposes of the information sharing arrangements.

Organisations providing services to adults

36. Information sharing should not be limited to information about children and should include information about adults that is both relevant to the safety and well-being of children, including for example information that may assist an institution's ability to respond to historical allegations where the parties are now adults, and the protection of vulnerable adults.
37. Further, there is often overlap between staff engaged in providing services to children and to adults in sectors such as disability and aged care. It would be beneficial for organisations providing services to vulnerable adults to also be included as prescribed bodies. This is from the perspective of improving both the range of information available to prescribed bodies providing services to children and information sharing among institutions providing services to vulnerable people generally.

Consistency in scope of information able to be exchanged

38. The scope of information that should be shared with all prescribed bodies needs to be consistent, to remove confusion stemming from different rules being applied to different bodies, as this is where barriers to exchanging information may arise.
39. Proper resourcing, guidance and training will be required to ensure that all prescribed bodies, regardless of size, are able to fulfil their responsibilities appropriately and to minimise the risk of inappropriate information sharing.

A wide scope of information shared at a low threshold

40. Chapter 16A allows for a broad exchange of information, including sharing of low level concerns. In the Council's view it is important that this is maintained, as low level concerns often go to a pattern of concerning behaviour indicating higher risk.
41. Institutions need the capacity to share and obtain risk-related information, including information about suspicions and unsubstantiated or untested allegations. The Council acknowledges the challenges that arise in providing prescribed bodies with the ability to share such information. This is in terms of procedural fairness, the risk that inaccurate information will be shared, that too much weight will be placed on such information by receiving bodies and/or that information might be shared for an improper purpose.
42. However, where an organisation has received information, particularly information indicating a potential risk and warranting investigation, and the person who is the subject of the information leaves the organisation before that investigation is complete, an ability to share such information, including the fact that the individual left before the investigation was complete, is necessary. This will reduce the risk which currently exists of individuals continually shifting between employers to avoid repercussions of inappropriate conduct with children.
43. The importance of resourcing, efficient systems and effective education and training cannot be understated. Guidelines, standards and protocols as to the proper operation of the scheme, including for example the weight to be given to reported suspicions and unsubstantiated or untested allegations, will be required. Other safeguards will be also required, including criminal penalties for improper sharing, or other use of information outside the provisions of the scheme.
44. The Council notes that in its experience, health professionals including doctors, counsellors and psychologists tend to place emphasis on ethical codes of conduct and confidentiality. There can be a general reluctance to share information even if it is relevant to the ability of another prescribed body to ensure the safety and wellbeing of children. Education of these professionals around the operation of the information sharing scheme may assist in alleviating their concerns about appropriate exchange of information in accordance with it.

Requiring and permitting information sharing

45. The Council considers that all prescribed bodies should have equal capacity and obligation to share information related to the safety and wellbeing of children. A tiered approach to information sharing would create unnecessary complexity.
46. It would also be beneficial under certain circumstances, for prescribed bodies to be compelled to share information as opposed to that ability being optional. The circumstances might properly be described in guidelines or standards for proactive information sharing, for the assistance of prescribed bodies.
47. In terms of exceptions to information sharing, the Council considers those outlined by the Commission in the discussion paper to be sufficient and appropriate.

Protection of reporter identity

48. The Council submits that notifier confidentiality is a critical aspect of the efficacy of mandatory reporting systems, and that information sharing schemes should also recognise this.

Our current experience: In Queensland, the education sector has a number of mandatory reporting requirements relating to the abuse and harm of students. Under the *Child Protection Act 1999* (Qld), the identity of a person who makes a report to the Department of Communities, Child Safety and Disability Services (known as a 'notifier') is confidential (with some limited exceptions).

49. The identity of confidential reporters disclosing information in good faith should be maintained where the confidentiality is required by law, where disclosure would generate risk to any party, and where disclosure would have an adverse effect on any investigation or industrial process. The Council also assumes that the information exchange scheme will also as a matter of course provide appropriate protections and exemptions for notifiers/organisations against any competing privacy requirements.

Compliance and accountability

50. Prescribed time limits for responding to requests for information would be preferable as they would increase the timely flow of required information. Currently, time delays in some organisations responding to Chapter 16A requests for information are sometimes experienced.
51. Requiring prescribed bodies to provide written reasons for declining a request would be appropriate. Written reasons will promote compliance and accountability. The model might be further strengthened by including an appeal mechanism where the requesting party considers the reasons for refusal invalid.

Prioritising children's safety

52. The Council is aware that, even in jurisdictions with information sharing schemes, including in NSW, there is anxiety in organisations around perceived conflict between information sharing and privacy law. This can ultimately result in a reluctance to share relevant information. This reluctance to share information can come from government agencies as well as non-government organisations. Clarification and education regarding the overlap between information sharing schemes such as that contained in Chapter 16A with other laws relating to privacy and confidentiality is required. Education about the protections available to those appropriately sharing information under the scheme would also be necessary.

Conclusion

53. The features of a nationally consistent information sharing scheme outlined on page 29-30 of the discussion paper are fully supported. The Council considers that sharing of information under the scheme recommended by the Commission should be required where a recipient of a request reasonably believes such information may assist the requestor to meet their responsibility for ensuring the safety and wellbeing of children (not would).

2.5 Supporting implementation

54. The establishment of a nationally consistent information sharing scheme will require a cultural shift for many organisations which will become prescribed bodies under the scheme. As outlined elsewhere in this response, guidelines, standards, education and training of those operating within the scheme will be vitally important to ensure consistent understanding of and confidence in the information sharing arrangements.

55. An appropriately resourced oversight body will be required to take responsibility for effective implementation of information sharing processes and to support and assist smaller organisations, particularly those constituted predominantly by volunteers in the practical implementation of the requirements. Production of guidance material, management of training for personnel in prescribed bodies and (perhaps) management of appeals around issues to do with refusal, failure or inappropriate release of information might also form part of the oversight body's responsibilities.

2.6 Developing child safe information-sharing cultures

56. The culture of organisations providing services to children will be an important factor in the successful implementation and operation of a nationally consistent information sharing scheme. As the Royal Commission has highlighted, a culture of secrecy and confidentiality has contributed to the problem of sexual abuse in the Church. For organisations including the Church, governance structures have created closed systems and the maintenance of secrecy and confidentiality, both around operations and individual employment conditions, wages and disciplinary matters. Changing this culture will be a challenge for the Church and other organisations. Cultural change will be required in order to adjust to the required perspective that the safety and wellbeing of children is of greater importance than individual privacy and confidentiality.
57. Any change of culture comes from the top down. If senior leadership are supportive of the organisation being open and transparent the organisation is more likely to be 'open' in its information exchanges.
58. If a nationally consistent information exchange scheme is developed properly, with explicit parameters and extensive communication, education and training of prescribed bodies, there is a high likelihood that prescribed bodies will be compliant with its implementation and operation. The work of the Royal Commission has engendered a high level of good will towards the concept of appropriate disclosure of information designed to ensure safety and wellbeing of children. That goodwill should be harnessed in this process.

3 Improving information sharing in key sectors

3.1 Information sharing mechanisms in the schools sector

Information sharing about teachers: information on teacher registers

1. The Council is supportive of any initiative that promotes a register of teachers containing information about potential risk that can be checked. As noted in other submissions to the Commission, working with children checks alone are not adequate to alert employers about past conduct issues of teachers who may pose a risk.
2. The Council considers sensible the types of information the Commission proposes be maintained by teacher registration bodies nationally, namely:
 - a. details of former and current employers
 - b. particulars of disciplinary steps taken in response to allegations or incidents of child sexual abuse, including:
 - i. withdrawal/refusal of applications for registration
 - ii. current and past disciplinary actions, conditions on, suspension or cancellation of registration
 - iii. grounds for any disciplinary action (current and past)
 - iv. pending investigations into conduct, allegations or complaints
 - v. findings or outcomes of investigations, and
 - vi. resignation or dismissal from employment.
3. As the Council has previously submitted,⁶ 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'.
4. Where previous employer details are included, in many cases, this will be a corporate entity or education system, not an individual school. Noting that including details of the schools where the person worked would have resourcing implications for employers, it would be beneficial for employers to specify an appropriate 'agent of the employer', who would be the source of the relevant information.

⁶ see Truth Justice and Healing Council (2016) Submission in response to Consultation Paper: Best practice principles in responding to complaints of child sexual abuse in institutional contexts: <http://tjhcouncil.org.au/media/122081/160828-TJHC-SUBMISSION-RC-Consultation-Paper-Complaints-Handling-As-provided-to-RC.pdf> at p. 16.

Information sharing by registering authorities

5. The Council agrees with the stronger of the propositions put by the Commission that state and territory teacher registration legislation should provide that teacher registration authorities:
 - a. 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
 - b. 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.
6. The Council also agrees that state and territory teacher registration legislation should require:
 - a. teacher employers to check their jurisdictional teacher register before employing a teacher
 - b. state and territory registering authorities to check teacher registers in other jurisdictions before registering a teacher.
7. A compulsion to notify these circumstances is preferred because if prescribed bodies are permitted, rather than required to notify, 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.

Access to information on teacher registers

8. The Council supports information sharing that allows for mutual, intra and cross-jurisdictional access and disclosure of information on teacher registration between employing authorities.
9. The Council submits that there should be no limit on information sharing between state and territory registration authorities.
10. 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.

Our current experience: In NSW, some division between state, independent and catholic school systems has traditionally inhibited full information flow under Chapter 16A between these sectors. The NSW Ombudsman has recently facilitated a quarterly meeting between school sectors to discuss child protection issues that span across the three school systems. This has improved relationships, allowed for joint consultation and streamlined approaches to information sharing between the state, independent and catholic school sectors. Further improvement is required and open communication between the systems needs to continue.

11. Standard 4 of the Victorian child safe standards requires schools to put in place clear protocols for school staff selection, supervision and management practices for a child-safe environment. The capacity for principals to seek information directly from registration bodies as part of the pre-employment screening would inject further rigor and reliability into selection processes.

12. In states including Victoria, teachers are required to establish that they are registered with the Victorian registration authority prior to commencing employment. For teachers coming from interstate this involves transferring their registration to Victoria through existing mutual recognition procedures. It would seem appropriate for inclusion of a requirement that the Victorian registration body obtain and check the information held by the previous registration authority as to the standing of the teacher seeking to transfer as part of the transfer process. There should be no limit to the information the incoming registration body can access during the transfer process.

13. Assuming that:

- a. registration bodies will maintain up to date information centrally, and
- b. checking by registration authorities will occur as described above when teacher registration is transferred between states

there should be less need for employers to obtain this information from each other or from interstate registration authorities as it will be available locally. However, for abundant caution, upon request there should also be a requirement for interstate registration authorities to provide information relevant to incidents or allegations of child sexual abuse to prospective employers in other jurisdictions.

14. 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.

Notification of certain circumstances

15. The Council is supportive of state and territory legislation including a requirement that teacher registration authorities notify employers and registration authorities in other states and territories of information they hold or receive about allegations or incidents of child sexual abuse by a teacher.

Issues for consideration

16. The Council considers that the provisions for recording, checking and sharing information on teacher registers, as outlined in the discussion paper, would contribute to children's safety in schools.

17. The main challenge or barrier to implementing the reforms being considered by the Commission in this context relate to the fact that each Australian jurisdiction would need to harmonise their legislation and policy requirements. A national approach to teacher registration generally would be preferable.

18. Appropriate safeguards are needed to protect teachers' personal information recorded on teacher registers and subject to information sharing by registering authorities. These would include safeguards to ensure privacy and confidentiality, and to prevent inappropriate or unauthorised accessing and publication of information held by the registration body. In the same way, information maintained must be at a level that is more than bare complaints or allegations.

Information sharing about non-teaching staff

19. In NSW, Chapter 16A allows information sharing relating to high risk non-teaching staff as required. The establishment of a register for non-teaching staff might enhance child safety in schools. It would in effect be a broadening of the working with children check. In the Church context, a non-teaching staff register might be expanded to include priests and other Church personnel working in schools.
20. Recognising that such a register would create resourcing issues, ideally it should be maintained centrally (similar to the expanded register being proposed for teachers). The question as to which body would maintain this list and be responsible for disseminating appropriate information from it when required is open for consideration. In NSW, the NSW Ombudsman or Office of the Children's Guardian may be the appropriate choice.

Information sharing about students

21. 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.
22. 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.

Our current experience: The transfer note process under the provisions of the *Education (General Provisions) Act 2006* (Qld) is instigated on request and is therefore not proactive. Practice around use of transfer notes is not consistently implemented in Queensland, and transfer notes provided do not necessarily raise or identify detailed information around behaviours of concern.

While in NSW any particularly sensitive information regarding the safety and wellbeing of students is shared under Chapter 16A, or where appropriate Part 5A of the *Education Act 1990* (NSW), these information sharing practices could be strengthened to afford better supportive and risk management processes being adopted in schools for the safety and wellbeing of students.

Standard collection notices

23. 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.
24. 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 does not have a preference for a particular lead agency to develop such a notice. Given that examples exist already in the non-government education sector, a proposed wording should not be something that is too difficult for a body such as the COAG Education Council to develop.

Safeguards

25. 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.
26. 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.

3.2 The use of databases or registers in other sectors

Out of home care and carer's registers

27. The Council supports the key elements of a nationally consistent model for jurisdictional carers registers, including registers for those providing out of home care, to overcome the considerable variability (and siloing) in the existing carers registers / directories.
28. A register of out of home carers would facilitate timely sharing of information regarding suitability of carer applicants. Checking could be objective as historic information would be maintained and there would be less need to rely on previous caring history and references provided by prospective carers. Checking between jurisdictions might be facilitated via the ability of jurisdictional registers to seek and provide information about carers to each other and then to local providers.
29. Further work must be done to resolve the mainly jurisdictional issues the Commission has identified on pages 48-49 of the discussion paper that currently limit the effectiveness of carers registers and could constrain any national approach to the establishment of carers registers. The Council considers that the implementation of nationally consistent carers registers would facilitate greater collaboration across agencies, particularly those working across jurisdictions, and would ensure that decisions made about carer safety, suitability and placement are made on the basis of full information. This will also ensure the safety and wellbeing of children in care.
30. The Council considers that state and territory governments should legislate to establish a carers register based on a set of nationally consistent minimum features and requirements for their respective jurisdictions. Registers should be maintained by a body with responsibility for out of home care in each jurisdiction. Registers should require certain essential information about carers (and others residing with them) including the status of their carer's authorisation and details of any grant, refusal, withdrawal or suspension of that authorisation, to be recorded, checked and updated.

Such information should be capable of being accessed and shared by the authorising bodies, out of home care services providers and child protection agencies in each jurisdiction.

31. While barriers to the establishment of carers registers may be argued to be inhibitive, the Council considers that such issues are capable of being overcome when the ultimate goal of the protection of children and young people in care is the overarching principle.