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Archbishop of Melbourne

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Bishop Christopher Prowse
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Monsignor Frank Marriott
Administrator of Sandhurst

Submission
to Protecting Victoria's Vulnerable Children Inquiry

14 November 2011

1. INTRODUCTION

This submission is made by the Catholic Bishops of Victoria by:

- Archbishop Denis J Hart on behalf of the Catholic Archdiocese of Melbourne;
- Bishop Peter Connors on behalf of the Catholic diocese of Ballarat;
- Bishop Christopher Prowse on behalf of the Catholic diocese of Sale; and
- Monsignor Frank Marriott, Administrator, on behalf of the Catholic diocese of Sandhurst.

The Catholic Church divides Victoria into four geographic regions known as dioceses. The Archdiocese of Melbourne, together with the three regional dioceses, serve the entire State of Victoria.

The Catholic Archdiocese of Melbourne, through the Vicar General of the Archdiocese of Melbourne, previously made a submission to the Inquiry on 23 August 2011, responding to media reports as well as written and oral submissions made to the Inquiry by a group styled “The Melbourne Victims’ Collective” (**earlier submission**).

The earlier submission stood alongside a separate submission made by Peter O’Callaghan QC, the Independent Commissioner appointed by the Archbishop of Melbourne under the *Melbourne Response*, to investigate allegations of abuse within the Archdiocese.

This submission is made in response to the extension of the Terms of Reference, as confirmed in a letter from the Inquiry to the Archdiocese of 17 October 2011, to examine the following matters:

- Whether the requirement of mandatory reporting of suspected child abuse should be extended in relation to religious personnel and, if so, with what limitations;
- Whether the requirements of the *Working with Children Act 2005* should be extended in relation to religious personnel and if so, with what limitations; and
- Whether in churches or religious entities in Victoria there are processes procedures, doctrines or practices which operate to preclude, deflect or discourage the reporting of child abuse to secular authorities.

Accordingly, the Catholic Archdiocese of Melbourne as well as the dioceses of Sandhurst, Sale and Ballarat, now wish to make submissions to the Inquiry in relation to the above matters.

This submission is made in the context of the recognition by the Catholic Church¹ that the well-being of children is of paramount concern. “*Whoever humbles himself like this child, he is the greatest in the kingdom of heaven*” (Matt 18, 4).

Empowerment of children and families is recognised as an essential aspect of the prevention of abuse. One aspect of empowerment involves education so that children are aware of their dignity and of when it is being interfered with. A second aspect of empowerment is ensuring the ability to verbalise and disclose abuse.

The Church recognises and acknowledges the importance of co-operation with civil authorities.

¹ See “The Church’s Role in Child Protection”, address by Monsignor Charles Scicluna, Promotor of Justice at the Congregation for the Doctrine of the Faith in Rome, November 2011.

2. RESPONSES TO CLERGY ABUSE

The earlier submission explained that within the Archdiocese of Melbourne, the *Melbourne Response* comprises a range of initiatives to respond to allegations of clergy abuse. A brochure describing the Melbourne Response can be found at http://www.cam.org.au/index.php?option=com_docman&task=doc_download&gid=365. The initiatives include the appointment of Mr Peter O'Callaghan QC as Independent Commissioner. The Independent Commissioner's role is to receive and investigate allegations of abuse and to advise the Archbishop as to necessary action.

As noted in the earlier submission, the Independent Commissioner encourages all complainants to report their complaints to the police.

A different but analogous procedure applies in the dioceses of Ballarat, Sandhurst and Sale. This procedure is known as *Towards Healing*. A brochure describing the *Towards Healing* procedures can be found at http://www.catholic.org.au/index.php?option=com_docman&Itemid=158

Like the *Melbourne Response*, *Towards Healing* encourages the reporting of crimes to the police. The provisions of section 37 of *Towards Healing*, entitled "Criminal Offences and the Reporting of Child Abuse", are of particular relevance to this Inquiry.

3. WHETHER THE REQUIREMENT OF MANDATORY REPORTING OF SUSPECTED CHILD ABUSE SHOULD BE EXTENDED IN RELATION TO RELIGIOUS PERSONNEL AND, IF SO, WITH WHAT LIMITATIONS

It is submitted that the requirement of mandatory reporting of suspected child abuse should not be extended in relation to religious personnel.

The practice that the Catholic Church has long followed is to encourage victims of abuse to report that abuse to the police. This is enshrined in the *Melbourne Response* and in *Towards Healing*. The Church's approach enables the victim to have control over their destiny and in no way inhibits the rights of complainants to report complaints to the police.

It is submitted that the most appropriate avenue for reporting of criminal conduct is the police. As such, that is what the Catholic Church encourages complainants to do. It should also be noted that the overwhelming majority of clergy child abuse in Victoria are first reported many years after the event and in a context in which the alleged victim has become an adult.

3.1 Sanctity of Confession

It is vital that the inviolability of the seal of confession is maintained. The absolute sanctity of confession is enshrined within Catholicism. This is made clear by Church law, known as "Canon law".

Canon § 1388.1 provides that a confessor who directly violates the sacramental seal is subjected to the most extreme penalty available under Canon law, being ex-communication. Compliance is thus not optional for priests.

The sanctity and confidentiality of the confessional is reflected in the 1994 address to the Apostolic Penitentiary by Pope John Paul II who said: "The priest who hears sacramental confessions is forbidden, without exception, to reveal the penitent's identity or sins."

The Catechism (i.e. teachings) of the Catholic Church provides as follows:

- **§ 1467:** Given the delicacy and greatness of this ministry and the respect due to persons, the Church declares that every priest who hears confessions is bound under very severe penalties to keep absolute secrecy regarding the sins that his penitents have confessed to him. He can make no use of knowledge that confession gives him about penitents' lives. (n72 can 1388.1) This secret, which admits of no exceptions, is called the "sacramental seal", because what the penitent has made known to the priest remains "sealed" by the sacrament.

- **§ 2490:** The secret of the sacrament of reconciliation is sacred, and cannot be violated under any pretext. ‘The sacramental seal is inviolable; therefore, it is a crime for a confessor in any way to betray a penitent by word or in any other manner or for any reason’ (n283 can 983.1).

The sanctity of confession is respected in all Australian jurisdictions and in most other locations around the world. Further, legislation throughout Australia provides a specific privilege in respect of religious confessions.

In Victoria, section 127(1) of the Evidence Act 2008 (Vic) states:

“A person who is or was a member of the clergy of any church or religious denomination is entitled to refuse to divulge that a religious confession was made, or the contents of a religious confession made, to the person when a member of the clergy.”

Religious confession is defined in the *Evidence Act* as “a confession made by a person to a member of the clergy in the member’s professional capacity according to the ritual of the church or religious denomination concerned.”

In addition to being inconsistent with the *Evidence Act*, legislation purporting to override the sanctity of the sacramental confession would interfere with freedom of religion as recognised by the Victorian *Charter of Human Rights and Responsibilities Act 2006* (Vic). We refer to section 14 of the *Charter*, concerning freedom of religion. In particular, we refer to section (2) which provides that “a person must not be coerced or restrained in a way that limits his or her freedom to have or adopt a religion or belief in worship, observance, practice or teaching.”

Extending the requirement of mandatory reporting to religious personnel would place an impossible obligation on priests to violate the sacramental seal of the confession. Such legislation will be ineffective as priests will be unable to comply. In democratic societies it has historically been extremely rare for Canon Law and domestic or civil law to contain inconsistent provisions. However Canon Law is clear that a priest’s Canonical obligations override inconsistent obligations purportedly imposed by civil law.

The desire to do everything possible to protect children from abuse is certainly compelling. Mandatory reporting of child abuse is an important part of this vital task. However, if the sanctity of confession could not be assured, it is unlikely that anyone would confess to the terrible sin and crime of the abuse of children.

An important dimension of confession is that it gives the penitent a chance, and perhaps the only chance they are open to, to confront the terrible nature of their behaviour. The imposition of mandatory reporting, and the subsequent removal of the confidentiality of confession, would remove any hope that this outcome might eventuate. Abusers will not take the risk of revealing their crimes in this forum.

However, if an offender discloses information about any crime to a priest, it is wrong to assume that the priest would do nothing. On the contrary, the priest has a clear and unquestionable moral obligation to seek to ensure that justice is done. One primary response of a priest in such circumstances is to encourage the penitent to confess to civil authorities. In the absence of such confession, or such other steps as are appropriate to ensure that justice is done, absolution (ie forgiveness) sought by the penitent may be withheld.

As such, the destruction of the confidentiality of confession would result in the opportunity for the offender to be encouraged to cease offending, to go to the police, to obtain assistance for the victim or to take other appropriate action, being lost.

3.2 Mandatory reporting obligations in Victoria

Increased knowledge of the issues associated with child sexual abuse has led to a dramatic increase in the reporting of sexual assaults of children² and also demonstrates a cognizance that the Australian community has a moral obligation to protect its most valuable citizens.

However, as set out in other submissions to the Inquiry, studies show that the majority of reports in relation to abuse are from non-mandated people.

The Inquiry called for submissions regarding the impact of the Victorian system of mandatory reporting

² Department of Human Services, available at: http://www.dhs.vic.gov.au/__data/assets/pdf_file/0019/574210/child-sexual-abuse-understanding.pdf

on the statutory child protection services, whether there have been any unintended consequences of that system and, if so, how those might be addressed. Various submissions have stated that the introduction of the mandatory reporting system in Victoria saw an enormous increase in cases entering the system. It is submitted that the system was not prepared for such case numbers and that it is struggling to cope. In turn, an inefficient, ineffective response from statutory child protection services dissuades notifiers from reporting, despite mandatory reporting requirements. In these circumstances, one must question the merit of any extension to mandatory reporting requirements.

As noted in the Independent Commissioner's submission to the Inquiry, the great majority of clergy sexual abuse within the Melbourne Archdiocese relates to abuse committed decades ago. Further, it can be seen that the events that are the subject of nearly all complaints took place before the Archdiocese implemented its current procedures, processes and practices which provide safeguards for the reporting of child abuse.

We firmly believe that all that can be done to prevent, detect and respond to clergy sexual abuse of children is being done. There is a resolute "zero tolerance" attitude to the abuse of children. It is certainly acknowledged that there were failings in the past. But just as society's understanding of the pernicious nature of paedophilia has increased, so too has the Church's.

Past errors of the Catholic Church involved cases where the hierarchy knew of suspected abuse and simply moved the priest to another parish. This is no longer happening and is evidenced by the fact that as soon as a complaint is made in relation to a priest, it has been the invariable practice under both the *Melbourne Response* and *Towards Healing* that a priest's faculties to act as a priest are withdrawn. Priests who are convicted of sexual offences against children, or found by the Independent Commissioner or by *Towards Healing* assessors to have offended against children, are no longer allowed to continue in Ministry.

It is our submission that if a child is suffering or has suffered from abuse, it is highly likely that someone other than a priest will be aware (or be told by the child) of such abuse, eg a friend, parent, or teacher in the first instance. In the latter case, a teacher is a mandatory reporter.

In circumstances where the "relevant date" has not yet been proclaimed under section 182 (f) – (l) of the *Children, Youth and Families Act 2005* (Vic) such as to impose mandatory reporting obligations on professionals who are likely to become aware of abuse allegations, the extension of mandatory reporting to clergy cannot be supported.

4. WHETHER THE REQUIREMENTS OF THE WORKING WITH CHILDREN ACT 2005 SHOULD BE EXTENDED IN RELATION TO RELIGIOUS PERSONNEL AND IF SO, WITH WHAT LIMITATIONS

The Archdiocese of Melbourne and the dioceses of Ballarat, Sandhurst and Sale have all adopted a blanket approach in relation to Working with Children Checks. They require:

- all clergy and other religious who are in active Ministry; and
- all persons over 18 years of age who are engaged as workers (be it employees, contractors or volunteers) associated with a parish or school

to hold a Working with Children Check except where expressly excluded (eg because they hold VIT registration).

5. WHETHER IN CHURCHES OR RELIGIOUS ENTITIES IN VICTORIA THERE ARE PROCESSES, PROCEDURES, DOCTRINES OR PRACTICES WHICH OPERATE TO PRECLUDE, DEFLECT OR DISCOURAGE THE REPORTING OF CHILD ABUSE TO SECULAR AUTHORITIES

5.1 Processes, procedures or practices

The Archdiocese's current procedures, processes and practices provide many safeguards for the reporting of child abuse to secular authorities. As set out in the earlier submission, there is no evidence that the safeguards now in place are deficient and no evidence of a lack of compliance with the safeguards. This is particularly so having regard to the increased awareness within the community of child abuse issues.

The submission previously made to the Inquiry by Peter O'Callaghan QC sets out his practice of informing complainants of alleged clergy abuse of their unfettered right to report their complaints to the police and encouraging them to do so. If the complainant does not wish to report the complaint to the police, Mr O'Callaghan QC invites them to acknowledge in writing of being advised of that right and being encouraged to exercise it.

Mr O'Callaghan QC's submission also states that if a complainant does take their report to the police, it is his "invariable practice" to take no further steps in respect of the complaint until the police investigation and any proceedings resulting thereof have been completed. Mr O'Callaghan QC's practice is set out in further detail on pages 10 to 12 of his submission.

In relation to the dioceses of Sandhurst, Sale and Ballarat, *Towards Healing* has clear provisions regarding the reporting of complaints to the police and in particular:

37.1 When the complaint concerns an alleged crime, the contact person or Director of Professional Standards shall explain to the complainant that the Church has a strong preference that the allegation be referred to the police so that the case can be dealt with appropriately through the justice system. If desired, the complainant will be assisted to do this. Where it applies, the contact person shall also explain the requirements of the law of mandatory reporting.

37.3 In all cases other than those in which reporting is mandatory, if the complainant indicates an intention not to take the matter to the police, this shall be recorded and confirmed by the signature of the complainant³. Unless and until the complainant signs this document, the matter cannot proceed to an assessment.

Further, within the Catholic education structure, the Catholic Education Offices of the Archdiocese and the dioceses have a range of compliance and complaints procedures, a number of which are set out in the earlier submission. These procedures support, intervene, advise and make recommendations on a range of issues including but not limited to matters of harassment, bullying, child protection, mandatory reporting and industrial relations.

In 2004 the Catholic Church in Australia introduced *Integrity in Ministry*⁴ as a practical day to day behavioural guide for clergy and religious.

³ When a complainant does not wish to go to the police or other appropriate authority and asks the Church to investigate an alleged crime, the complainant is required to sign the following statement before the Church takes any action:

"The Catholic Church has strongly urged me to take my complaint to the police or other civil authority. It has been carefully explained to me that any process the Church establishes will not have the same powers to investigate the matter and to test evidence as the courts have. A Church process cannot impose the same penalties as a criminal court. Aware of these limitations, I still state that I do not wish to take my complaint to the police or other civil authority at this time and I ask that a Church process be established."

⁴ http://www.catholic.org.au/index.php?option=com_docman&Itemid=158

Section 8.3 provides:

“In cases of proven violation of the principles of this document, Church authorities should have as their first concern the care and healing of those who have been harmed by ministers of their community.

To express the primacy of this concern, it is essential that Church authorities:

- *have a concern both for those who have been directly harmed and also for others who have been affected, eg the parents and family of those harmed and the community where the violation has occurred;*
- *be concerned both to heal any harm that has been done and to prevent future harm;*
- *offer support and assistance, as appropriate, to those who have been harmed.”*

5.2 Doctrines

Sexual abuse by Catholic priests, particularly of children, is deplorable. Many children and their families have been damaged. It is a matter of public record that a number of priests and religious have been convicted of abominable crimes. In more recent years, and particularly over the last two decades, there has been an increasing understanding within the Church and within the general community of the full extent of the problems.

The Church acknowledges that the criminal offences and breaches of vows committed by priests and others bring great shame upon the Church and cause untold damage to the community including to some of its most vulnerable.

None of these matters can be disputed. However, and contrary to inaccurate and sensationalist claims that are made from time to time, at the heart of Christianity is not the belief that Catholic priests, or any other individual associated with the Catholic Church, should be excused of heinous crimes. In fact, the belief at the heart of Christianity is quite the opposite - it promotes the sanctity of all life and the protection of children⁵.

6. CONCLUSION

The Archdiocese and the Dioceses of Ballarat, Sandhurst and Sale firmly believe that all that can be done to prevent, detect and respond to clergy sexual abuse of children is being done.

The extension of mandatory reporting obligations to religious personnel is not necessary and would interfere with freedom of religion and directly violate the sacramental seal of confession. The Catholic Church already provides many safeguards for the reporting of child abuse to secular authorities.

The Archdiocese and the dioceses require all clergy and all Church workers associated with a parish or school, to possess a Working with Children Check.

The processes, procedures, doctrines and practices of the Church promote the protection of children. It is the Church’s view that the wellbeing of children should be the paramount concern of all.

The Inquiry is dealing with extremely complex matters which, as is evidenced by this submission, have already been expanded once. We ask that if the Inquiry is minded to make any recommendations that will impact the Catholic Church, we be provided with an opportunity for further comment.

We are, of course, happy to meet to discuss anything that may be of further assistance to the Inquiry.

⁵ Refer section 1 of this submission.