

# National Response Protocol

Church Authorities in Australia responding to concerns and allegations of abuse against children and vulnerable adults

Adopted by the Australian Catholic Bishops Conference May 2022

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## Foreword

Jesus Christ has come that we may have life (John 10:10). He is the Way to that life (John 14:6) and the Gospel places before us the attitudes of heart and mind that speak of a new way of being in relationship with one another, reflective of — and instrumental for — the destiny of each of us to find ourselves in the communion of God's own life.

The way of Christ confronts the patterns of power by which people are abused. Those systems exist in many ways, and they have presented within our community of faith: the Church. The Word of God calls us constantly to face the reality of disorder and to open our hearts to the message of freedom and possibility at the heart of Jesus' vision of a world reconciled and restored. We are caught up always in the mystery of his death and resurrection through which we turn from all that diminishes us and towards that which offers us a new horizon.

In this paschal journey, we acknowledge with great remorse the immense harm and loss of trust and faith in the Church when it fails in the call that it has received from the Gospel and the mission given it by the Risen Christ. The abuse of others by members of the Church is contrary to all that it has been given by the Spirit. It ruptures the lives of those who are hurt and wounded, and it tears the fabric of communion which is to be the very mark of its identity. The damage that is occasioned for those who have been abused, their families and the broader community can be incalculable.

We are grateful for the strength and courage of those who have disclosed or reported the abuse to which they were subjected. Their determination, and the public inquiries that have followed, have in no small way contributed to forming a new culture of care and safety. We acknowledge with deep sadness those subjected to abuse who have taken their own lives because of the immense harm they suffered. Learning from past wrongs, the voices of those abused have been heard and listened to and they will continue to be listened to in the future.

*Looking back to the past, no effort to beg pardon and to seek to repair the harm done will ever be sufficient. Looking ahead to the future, no effort must be spared to create a culture able to prevent such situations from happening, but also to prevent the possibility of their being covered up and perpetuated. The pain of the victims and their families is also our pain, and so it is urgent that we once more reaffirm our commitment to ensure the protection of minors and of vulnerable adults.*

Pope Francis, Letter of His Holiness Pope Francis to the People of God, 20 Aug 2018

Every member of the Church, and especially its leadership, is entrusted, then, with the imperative to foster and develop a culture of safety for everyone. At every level we must work together especially to protect children and vulnerable adults from abuse or harm. This obligation to safeguard all those within the community is moral, legal and spiritual. It is underscored by the fundamental sanctity of each human person. Making the Church a safer place is at the heart of our commitment to the mission that has been entrusted by the Spirit of Pentecost to the community of faith.

Everyone, but particularly those with responsibility for the care of others, must be accountable for any situation in which such an environment is diminished or threatened. The National Response Protocol is a most important commitment to the development of a culture of safety, defined by transparency and accountability. This we owe to those whose lives have been forever affected by abuse, their families, their loved ones and the entire People of God.

## Introduction

### Purpose of the Protocol

The National Response Protocol (**NRP**) is a framework for Church Authorities and Entities to offer a consistent response to children and adults who have been subjected to abuse by Church personnel. Church personnel include clerics and religious, employees and volunteers currently or previously associated with a Church Authority or entity.

The Church operates in a landscape where there is a duty to report matters to State authorities, the obligation to take part in reportable conduct schemes and the requirement to respond with independent investigative processes. The Catholic Church in Australia welcomes these developments and understands their purpose and complies with them, as do other religious bodies, governments and community organisations.

The Protocol seeks to ensure that all those involved in matters relating to concerns or allegations of abuse are treated with justice and compassion and supported with appropriate therapeutic and pastoral care when sought. It acknowledges the terms “survivor” and “victim” when referring to someone who has been subjected to childhood abuse (adult or child). It recognises that some people who have been subjected to abuse prefer the term “survivor” due to the resilience conveyed by this word. It also acknowledges that some people do not feel they have “survived” their abuse and prefer the word “victim”. It recognises that others do not identify as either a “victim” or survivor”. When referring to abuse of a historical nature, the Protocol uses the term “adult subjected to childhood abuse”.

This Protocol has been adopted by the Australian Catholic Bishops Conference.

### The Framework

The Protocol has been divided into four parts;

- Part One: Principles**
- Part Two: Procedures**
- Part Three: Guidance on Engaging with Victims and Survivors**
- Part Four: Guidance on Canon Law**

#### Part One: Principles

Details five high-level principles to be applied at each stage of the process of responding to concerns or allegations regarding the contemporary and historical abuse by Church personnel.

#### Part Two: Procedures

Provides high-level procedures on how to respond to concerns and allegations of abuse.

The Protocol seeks to provide consistency of approach where possible and is established as the national benchmark against which local policies and procedures should be aligned.

It is accepted that there will be variation between individual cases which need to be considered and these procedures may be adapted where it is reasonable and justifiable in the circumstances. For example, the different regulatory and legislative requirements in State and Territory jurisdictions, and of different sectors and settings, particularly those of education and social services, should be reflected in comprehensive local policies and procedures.

### **Part Three: Guidance on Engaging with Victims and Survivors**

Provides a public statement of commitment from Church entities about their engagement with those affected by child abuse. The principles provide an overarching trauma-informed framework of responding pastorally and sets out specific steps to be taken to ensure a sensitive and just response to people.

### **Part Four: Guidance on Canon Law**

Provides a guide to complement the principles and procedures set out in the Protocol, acknowledges that canonical processes need to be applied when concerns of allegations relate to cleric or religious, and clarifies the processes and maintains the paramountcy principle of the assessment and minimisation of harm.

## **How the Protocol was developed**

The Final Report of the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) included many recommendations regarding the provision of a person-centred and trauma-informed approach in response to concerns and allegations of child abuse. Specifically, recommendation 7.7, consistent with Child Safe Standard 6, requires processes to respond to complaints of child abuse which are child-focused, with a clear, accessible and child-focused complaint handling policy and procedure that sets out how the institution should respond to complaints.

In response to Recommendations 7.7 and 16.37 of the Royal Commission, the Australian Catholic Bishops Conference (ACBC) and Catholic Religious Australia (CRA) commissioned a review of the previous relevant protocols, namely Towards Healing and The Melbourne Response. Stakeholder engagement and consultation have been an essential part of the Protocol's development. Specific thanks go to those subjected to childhood abuse who generously gave their time to contribute their insights and perspectives, which were invaluable in developing the Protocol, as was the advice of safeguarding policy and legal experts, trauma-informed practitioners and State regulators.

Considerable time was also given by safeguarding and professional standards experts within the Catholic Church in Australia.

## **The Protocol and the National Catholic Safeguarding Standards**

The Protocol is part of the comprehensive approach to safeguarding across Catholic Church authorities in Australia supporting the 10 National Catholic Safeguarding Standards (NCSS), themselves based closely on the Australian Government's National Principles for Child Safe Organisations and the 10 Child Safe Standards proposed in Recommendation 6.6 of the Royal Commission.

Under NCSS Standard One: Committed leadership, governance and culture, Church authorities must publicly commit to safeguarding and embed safeguarding processes and culture at all levels. The Protocol is designed in accordance with the NCSS and provides detail on the principles and procedures applying to responses to alleged or reported abuse at all levels of the Catholic Church in Australia that are compatible with the NCSS.

The Protocol is also informed by and supports:

- Standard Four: Equity is promoted and diversity is respected
- Standard Six: Effective complaints management
- Standard Seven: Ongoing training and education
- Standard Eight: Safe physical and online environments
- Standard Nine: Continuous improvement

## Who is the Protocol for

The Protocol provides a framework for:

- Church Authorities in Australia and their delegates;
- Church personnel (current clerics and religious, employees and volunteers), including safeguarding and professional standard personnel in roles at national, provincial, diocesan or organisational levels.

Part One sets out the expectations for how a process will be managed for all those involved in responding to concerns and allegations of child abuse – historical and contemporary. This includes:

- those who raise concerns and allegations of abuse, whether they are the person alleging abuse or who is at risk of abuse, or a third person;
- those subjected to childhood abuse, and others directly impacted by abuse such as their family members;
- respondents who are the subject of a concern or allegation of child abuse;
- legal representatives;
- other members of the community.

It is acknowledged that adults subjected to child abuse will be among those for whom the Protocol will be often engaged.

## What the Protocol covers

In the Protocol:

- Abuse refers to neglect and maltreatment, and physical, psychological and sexual abuse of children or vulnerable adults, including grooming. This includes abuse that is facilitated through online platforms, including online grooming and the production, distribution and/or access of exploitation materials. A more expansive definition of “abuse” consistent with the NCSS is provided in the glossary.
- The abuse of children is also inclusive of adults subjected to childhood abuse.
- Vulnerable Adult refers to any person aged 18 years and over who is at increased risk of abuse, such as those who: are elderly, have a disability, suffer from mental illness, have diminished capacity, have cognitive impairment, are experiencing transient risks, such as bereavement or relationship breakdown (or other such adversity) have any other impairment that makes it difficult for that person to protect themselves from abuse or exploitation.

A concern of abuse is a belief that it is reasonably founded that a person has been abused. A concern may be a report by a person who is generally worried about the welfare of a particular child or vulnerable adult without knowing the cause. An allegation of abuse is a belief reasonably founded that abuse has occurred. An allegation implies that there is a person or Church Authority identified potentially as responsible for the abuse.

The Protocol also should be applied to alleged inappropriate or unreasonable acts of omission of Church personnel who had knowledge of conduct of another Church personnel involving abuse of children or vulnerable adults.

## What the Protocol does not cover

The Protocol has been developed with specific consideration to the abuse of children and vulnerable adults.



Forms of professional misconduct or unprofessional behaviour that fall outside of the scope of abuse are covered by professional standards policies and procedures of Church entities, and national codes of conduct, especially Integrity in Ministry and Integrity in the Service of the Church. Such misconduct may be represented, for example, in adult boundary violations, pastoral incompetence or financial improprieties.

It is incumbent on all Church Authorities and entities to have codes of conduct by which complaints involving such matters can be addressed. (See NCSS 1.4, 6.3.3, 7.1.2, 8.20.) Notwithstanding, the principles and procedures contained in the Protocol will be helpful in these processes. They may be engaged to the extent they are considered appropriate.

Declarations of Clergy and Religious in Good Standing, covered in previous frameworks, are instruments developed by Australian Catholic Safeguarding Limited (ACSL) in line with the Australian Catholic Ministry Register. (See NCSS 5.7.1)

### **Key resources to support the Protocol**

Significant resources and reference materials for the Protocol were reviewed and utilised during its development. These included: the relevant findings and recommendations of the Royal Commission (in particular Recommendations 6.6, 7.7, 8.1, 8.4, 16.17, 16.31, 16.37, 16.39-41, 16.47, 16.50-57); the NCSS, which provides a comprehensive framework for creating organisations that are safe from harm and drive continuous improvement and cultural change – based closely on the Australian Government’s National Principles for Child Safe Organisations; the National Office of Child Safety publication Complaint Handling Guide: Upholding the rights of children and young people (2019); the Standards of the National Board for Safeguarding Children in the Catholic Church in Ireland; together with the NSW Office of the Children’s Guardian’s Engaging sensitively with survivors of abuse – A guide for faith organisations.

The canonical documents outlined in the Protocol also have provided key resources.

### **The implementation of the Protocol**

In accord with the NCSS, each Church entity — or aggregate of entities — is to have clearly established structures and processes to manage complaint handling.

Church entities which do not have the capacity or capability to meet the obligations of Protocol are expected to partner with another suitable entity to assist them in meeting these obligations. This joint approach may take different forms, including establishing a common entity for a province as it applies in those Church entities, this can also promote desirable functional independence.

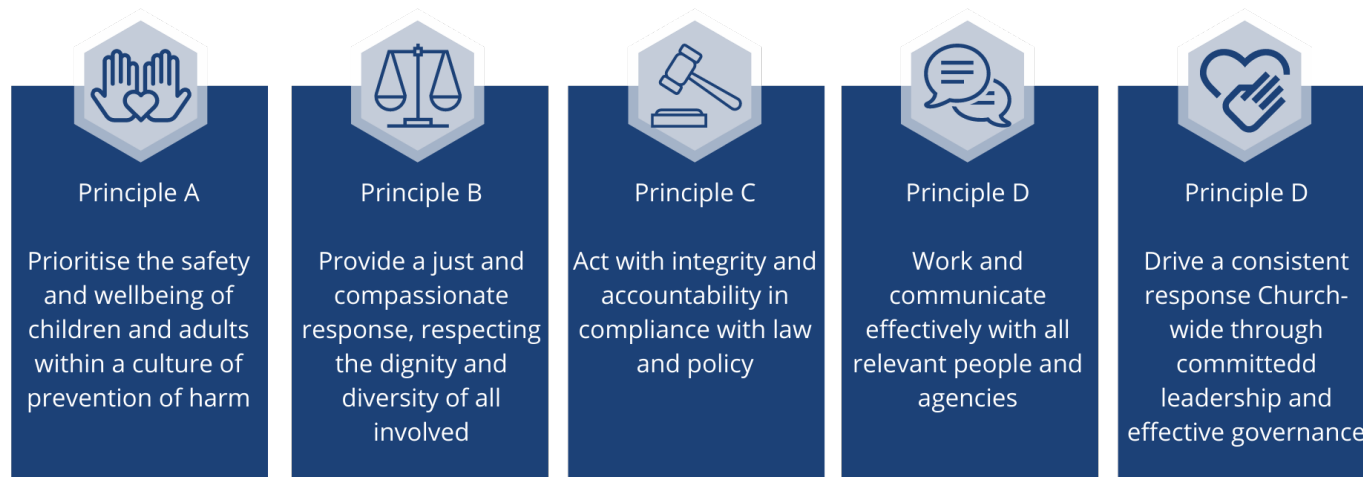
#### **Status of the Protocol:**

The Protocol is introduced with interim status for application while approbatio is sought from the Holy See, after which time it will be reviewed.

The Protocol is a publication of Australian Catholic Safeguarding Ltd, which has responsibility for its implementation and continuous review.

## Part One – Principles of Response

The five principles set out in this section underpin all aspects of the response of Church Authorities and entities to concerns and allegations of child abuse. These principles reinforce the National Catholic Safeguarding Standards, which provide a comprehensive framework for creating organisations that are safe from harm and drive continuous improvement and cultural change.



### 1.1 Principle A - Prioritise the safety and wellbeing of children and adults subjected to childhood abuse within a culture of prevention of harm

All Church Authorities and entities are to:

- 1.1.1 Champion and model a robust culture of safeguarding and professional standards by personnel at all levels, strengthened by the participation of children, families, carers and the community, and adults subjected to childhood abuse.
- 1.1.2 Take appropriate steps to address any risk of harm in relation to the:
  - a. safety and wellbeing of children, young people or any other person;
  - b. safety and wellbeing of complainants;
  - c. safety and wellbeing of the one who is subject of a complaint;
  - d. wellbeing of the Church community;
  - e. wellbeing of the broader community.
- 1.1.3 Adopt and maintain a comprehensive recruitment process to ensure Church personnel who work with children are suitable and supported in their work.

- 1.1.4 Adopt a clear approach within their organisational structure for responding to concerns and allegations of abuse, showing lines of authority, responsibility and accountability.
- 1.1.5 Eliminate barriers to disclosure of allegations or to raising concerns of abuse by Church personnel. All Church Authorities and entities are to:
- a. make sure that children and adults who engage with the Church are aware of their right to be safe and know who to contact if they have concerns for themselves or others;
  - b. make all relevant processes, policies and procedures publicly accessible in written form, easily understood and for all members of the community reflective of their diverse needs and circumstances, and in languages not only in English;
  - c. promote an open culture that supports people to speak up about concerns, with a commitment that they will not come to harm as a consequence;
  - d. take all concerns and allegations of abuse seriously, and provide a prompt and compassionate response to them when raised.
- 1.1.6 Embed processes to identify, manage and review risks of potential harm to children and take steps to reduce as far as reasonably practicable opportunities for the concealment of harm or failure for Church personnel to act. All Church entities are to:
- a. have a comprehensive risk management plan in place that considers risks of child abuse posed by the entity's activities in both physical and online environments;
  - b. equip appropriate personnel with the awareness and skills to recognise potential signs of harm to children and to assess proactively and mitigate risk and opportunities for abuse to occur;
  - c. undertake appropriate initial and ongoing risk assessment and mitigation when a concern or allegation of abuse is raised;
  - d. after finalising a response to a concern or allegation of abuse, complete a review to identify and address potential causes of abuse. This will include:
    - i. addressing and monitoring any remaining risks to children within the Authority or entity; and
    - ii. identifying any learnings which may indicate relevant risks of harm in other settings.

## 1.2 Principle B - Provide a just and compassionate response, respecting the dignity and diversity of all involved, and ensuring inclusive and supportive processes

All children and adults who were subjected to abuse for which the Church is responsible are to be provided with a just and compassionate response that respects the dignity and diversity of all involved.

All engagement with those affected must be trauma-informed, with an understanding and commitment to pastoral care and treatment with the kindness and understanding at the heart of the Gospel. The courage and resilience of those harmed must be recognised, with full regard to what is known about the nature and impact of institutional abuse. This should include acknowledgement and recognition of the potential for re-traumatisation and prevention thereof for adults who were subjected to childhood abuse by personnel of the Church.

All Church Authorities and entities are to:

- 1.2.1 Ensure that adults coming forward that have been subject to child abuse for which the Church is responsible are treated with full acknowledgment of the failings of the Church and the trauma of their experience.
- 1.2.2 Ensure responses are delivered by suitably trained and skilled personnel.
- 1.2.3 Ensure any therapeutic services that may be offered be based on best practice and trauma-informed approaches.
- 1.2.4 Make available pastoral support (including spiritual support if requested) to an individual who may have suffered abuse and to a respondent. Pastoral support should be provided by ways independent of the investigation of concerns and allegations of abuse. Pastoral support may also be provided to those affected, including the family members and carers of children and adults subjected to child abuse who have been harmed or the family members of the respondent.
- 1.2.5 Any other support that may be offered is culturally safe and reasonably accessible for all. Anticipate and seek to understand the diverse circumstances and individual needs of those impacted. This includes people who identify as Aboriginal or Torres Strait Islanders, people living with disability, people from culturally and linguistically diverse backgrounds, and people with diverse sexuality.
- 1.2.6 Offer pastoral support to communities who are impacted beyond those people directly involved.
- 1.2.7 Ensure that an investigator, if interviewing children or adults subjected to childhood abuse, has the relevant qualifications and experiences to do so.

## 1.3 Principle C - Act with integrity and accountability in compliance with law and policy

All Church personnel and representatives must act with integrity, accountability and impartiality, and apply procedural fairness in the Church's responses to concerns and allegations of abuse. All concerns must be acknowledged, assessed and addressed in a consistent, efficient and timely manner. Actions must be in full compliance with the law and policy in the relevant jurisdiction(s) and in accordance with this Protocol.

All Church Authorities and entities are to:

- 1.3.1 Require all personnel and representatives acting on behalf of the Church to understand and comply with the current legal and policy requirements of each jurisdiction. This includes meeting all external reporting obligations and record-keeping requirements.
- 1.3.2 Follow law enforcement procedures and directives, and cooperate throughout with external authorities, regulators, operators of reportable conduct schemes and Working with Children Check screening bodies, as required.
- 1.3.3 Apply the principles of procedural fairness necessary for just and impartial processes. This requires balancing fairness with a need for confidentiality, which should be assessed with regard to all the relevant circumstances such as the directives of external authorities including police, potential risks to the integrity of investigations or to the safety of children and others.
- 1.3.4 Ensure that investigations are conducted with integrity and impartiality, ensuring that processes and outcomes can withstand reasonable external scrutiny and that conflicts of interest (perceived, potential or actual) are identified, addressed and managed appropriately. Investigations must be conducted on behalf of the Church by skilled parties with appropriate expertise, and with reference to canonical requirements and procedures where required. There must be a consistent standard and level of accountability regardless of the role or status of the respondent within the Church entity.
- 1.3.5 Ensure that each party to the complaint is provided with the opportunity to seek a review of the:
  - a) investigators' findings and/or recommendations,
  - b) way in which the matter was managed, and/or
  - c) the outcome of the matter.

Reviews can be facilitated by ACSL, or for reviews of the way in which a matter was managed or the outcome of a matter, by way of an independent external review process.

- 1.3.6 Keep information provided in relation to the concern or allegation confidential. Information is to be shared as required or permitted, with due regard for privacy principles and relevant legislation. Personnel maintain knowledge of legislative obligations and what information they can share, with whom, how and when.
- 1.3.7 Have effective systems and practices to support compliance and accountability. All aspects of the response process and evidence gathered during an investigation are documented, with comprehensive and timely record-keeping, in accordance with best practice principles of record storage, protection and disposal.
- 1.3.8 Outsource to, or partner with, another Church entity if a Church Authority is unable to fulfil safeguarding and professional standards obligations.

- 1.3.9 Abide by requirements relating to the Australian Catholic Ministry Register (ACMR) and professional standards forms in relation to the appointment and movement of clergy and religious in good standing.

## 1.4 Principle D - Work and communicate effectively with all relevant parties and agencies

All Church Authorities and entities are to deliver coordinated and transparent responses to concerns and allegations of child abuse. They are to communicate effectively with all parties involved and collaborate and share information with relevant agencies as required.

All Church Authorities and entities are to:

- 1.4.1 Communicate and engage effectively with children and adults who may have suffered abuse, their families and carers, the community and the media. Church authorities and entities:
  - a) make information available and accessible to the public in written form about how to raise a concern or allegation of abuse with the Church Authority or entity and what can be expected throughout the response process, especially in respect to timeframes for resolution, and including the obligations and accountabilities of the Church Authority;
  - b) where there is a public or media inquiry about a concern or allegation, provide information in a transparent and accountable manner where possible, especially if it is already in the public domain. Where the matter is the subject of a police investigation, no information should be passed on without prior consultation with police;
  - c) ensure the sharing of information is balanced with confidentiality and privacy requirements including the wishes of any child or adult who may have suffered abuse;
  - d) only have personnel who have the authority to speak to the media or public do so.
- 1.4.2 Encourage and support full cooperation and collaboration with relevant agencies:
  - a) Report concerns and allegations of abuse of children or vulnerable adults to the appropriate statutory authorities, regardless of whether there is a mandatory reporting obligation.
  - b) seek specialist advice from the statutory child protection services when necessary.

## 1.5 Principle E - Drive a consistent response Church-wide through committed leadership and effective governance

Committed and effective leadership and good governance practice includes an ongoing commitment to continuous improvement through monitoring, reviewing and updating the processes for Church Authorities' responses to concerns and allegations.

Australian Catholic Safeguarding Ltd (ACSL) was established by the ACBC, CRA and AMPJP in order to support Church Authorities and entities by:

- 1.5.1 assisting Church Authorities and Catholic Entities to implement and maintain the National Catholic Safeguarding Standards;
- 1.5.2 assisting Church Authorities and Catholic Entities to comply with their safeguarding obligations under Commonwealth and State or Territory laws;
- 1.5.3 developing a flexible, risk-based framework for overseeing, and where necessary ensuring the regular auditing of the safeguarding policies and practices of Catholic Entities who are Subscribers of ACSL and reporting the results of the audits;
- 1.5.4 encouraging a 'community of practice' among Church Authorities, Catholic Entities and Catholic Entity personnel to assist them in implementing this Protocol and supporting survivors of sexual abuse;
- 1.5.5 overseeing the implementation and maintenance of this Protocol for responding to allegations and concerns of sexual abuse;
- 1.5.6 assisting Church Authorities with the implementation of Vos Estis Lux Mundi in accord with protocols approved by the ACBC;
- 1.5.7 providing an independent process for responding to complaints against a Church Authority where not provided for by Vos Estis Lux Mundi;
- 1.5.8 providing a national review mechanism for complaints managed under the Protocol;
- 1.5.9 identifying and managing appropriate data collection by Church Authorities, and working with the ACBC and State and Territory regulators, to promote the safety of all who come in contact with Church Entities;
- 1.5.10 administration of the Australian Catholic Ministry Register;
- 1.5.11 acting as a policy, research and resource hub for Catholic Authorities;
- 1.5.12 publishing an annual report or other reports prepared in connection with its activities; and
- 1.5.13 undertaking any other activities in furtherance of the above as requested by the Members of ACSL.



## Part Two: Procedures for responding to concerns and allegations of abuse

Section Two sets out the key procedural stages and related actions required when responding to concerns and allegations of both historical and contemporary abuse of children and adults at risk by any Church personnel.

In accord with NCSS 1.2.2, a Church Authority is to establish an office, or a committee that meets periodically, to receive and manage the handling of concerns and allegations. The office or committee may be styled “Professional Standards Committee/Office” or “Safe Ministry Committee” or “Complaints Committee” or other appropriate name.

- making a preliminary risk assessment;
- determining by what pathway to deal with the concern or allegation; and
- overseeing the appointment of an investigator, if required.

A designated officer (Professional Standards Officer) may act with delegated authority to receive concerns and to manage the processes outlined in the following procedures. The officer might also be termed “Professional Standards Director” or “Safe Ministry Director” or “Complaints Officer” or other appropriate name.

A Church Authority is to consider the establishment of a Board of Review to assess the evidence of an investigation and to make recommendation to the Church Authority or integrates these functions into their professional standard office.

Where a cleric or member of a religious institute, including a bishop or religious superior, is the respondent to a concern or allegation of abuse of a child or vulnerable adult, the procedures of this section can be supplemented with additional guidance in respect of canon law outlined in Part Two, Section Two Guidance on response to concerns and allegations of child abuse with regard to relevant aspects of canon law.

Throughout, there are ongoing processes considered and undertaken at each stage of response. These are:



## 2.1 Procedural Stages of Response



While the response procedures transition through separate stages there are four critical ongoing procedures that must be considered and applied through the entire response process:

- b) Identification and mitigation of risk of harm to children and vulnerable adults
- c) Critical reporting and information sharing, and
- d) Secure and thorough record-keeping

### 2.1.1 Providing support and engagement that is person-focused and trauma-informed

Trauma-informed responses recognise the prevalence of trauma throughout society. Such responses acknowledge the profound neurological, biological, psychological and social effects of trauma and violence on an individual and their interactions with a service. All engagement with those affected by abuse must be trauma-informed, with an understanding of and a commitment to pastoral care, in accordance with Principle B of the Protocol. This should reflect a comprehensive understanding of the nature and impact of institutional child abuse, and the unique needs and circumstances of each person.

### 2.1.2 Assessing and reducing risks of further harm to adults subjected to childhood abuse

Processes are in place within Church entities to identify, review and take reasonable steps to manage the risk of further harm to an adult coming forward with a concern or allegation of historical child abuse. These processes include minimising any opportunity for the concealment of harm or failure of Church personnel to respond with compassion and care to an adult coming forward, which includes ongoing assessment of the risk of further harm and/or traumatisation (See Section 3: *Guidance on engaging those affected by contemporary and historical child abuse*).

### 2.1.3 Reporting and information-sharing at critical points

The need for earlier and/or additional reporting to external authorities is reviewed on an ongoing basis. This requirement may arise at any stage in the process as new information emerges or risks are identified that trigger a further requirement for reporting.

Information may need to be shared with statutory authorities for criminal justice and child protection purposes at different stages in the process of response. The legal requirements for information-sharing with any other

organisations vary across the different jurisdictions and specific advice should be sought from the relevant State authorities.

#### **2.1.4 Secure and thorough record-keeping and data collection**

In accord with the NCSS Standards 1.6.2, records are updated and kept secure to document processes and record outcomes at each stage.

These records can be used for profiling and managing risks posed by individuals. Data collected over time can also be used to show trends from investigation outcomes and highlight systemic issues as a critical aspect of continuous improvement.

Document records include details of all the information received or communicated and by whom. Records also detail time and date, together with the action taken and/or planned.

Records are retained for a minimum of 50 years.

## 2.2 Stage 1: Receive and acknowledge the concern or allegation

- 2.2.1 Concerns and allegations may present from any source, including from a child, an adult subjected to abuse in childhood or from those concerned about the safety of a child currently.
- 2.2.2 It is imperative that all concerns and allegations of abuse of a child be recognised, however they are received. They must be taken seriously when they are first received or identified, and not missed or prematurely dismissed. Expert advice should be sought whenever there is uncertainty or assistance is required.
- 2.2.3 The person who receives the concern or allegation of child abuse follows internal reporting procedures to inform the relevant Church personnel with appropriate responsibility. If the person receiving the disclosure is not the Professional Standards Officer appointed by the Church entity, they must convey the disclosure to the Professional Standards Officer immediately. It is not the role of those other than the Professional Standards Officer to provide information about how a concern or allegation will be responded to or to arrange pastoral support or to give advice.
- 2.2.4 The child or adult raising the concern or allegation of abuse of a child is acknowledged as soon as possible. Clear information is provided as to how the concern will be responded to.
- 2.2.5 A person-focused and trauma-informed approach with the child or adult is adopted from the start and continued throughout the response process.
- 2.2.6 A person coming forward with a concern or an allegation has the right to be accompanied by a support person.
- 2.2.7 The response process must be embedded in an understanding and commitment to care. From the start, access to therapeutic support is offered and expedited, including spiritual support when requested.
- 2.2.8 If the concern or allegation comes to the attention of Australian Catholic Safeguarding Ltd or a state-based Professional Standards Office, the matter will be referred to the local Church entity involved immediately. Protocols are developed as to how the two offices may work together if required to do so.
- 2.2.9 A contact point for the Church Authority (always a lay person and never the Church Authority themselves) is identified for the person raising the concern or allegation to communicate continually with the person. Where the individual is a child, a contact point for the child and their parent/carer is identified.

### Commentary on Stage 1

#### Recognising disclosures or allegations

Some concerns or allegations of abuse of a child may be explicitly and clearly stated; others may be more indirect, such as through partial or non-verbal disclosures, or expressed through ambiguous behaviour.

Sometimes a concern or allegation may appear insignificant when considered in isolation and only become a more serious concern when a pattern emerges over time.

Many adults who are coming forward with a concern or allegation of historical child abuse have remained silent about the abuse for many years. It may be the first time the adult has told anyone about the abuse. The first response is crucial. Listening to concerns and acknowledging what has been told is critical to ensure that the engagement is with care and compassion.

A concern or allegation of abuse of a child is not prematurely dismissed because it:

- appears to be based on weak evidence;
- appears to have been previously dealt with;
- has been withdrawn by the person who raised it;
- appears “vexatious”;
- is brought forward by someone with mental health issues or with a history of addiction or imprisonment.

## 2.3 Stage 2A: Report to External Authorities

- 2.3.1 All personnel, regardless of their role, understand and comply with their legal and additional obligations with respect to protecting children, including any delegated and/or obligatory reporting requirements.
- 2.3.2 A concern or allegation of abuse of a child by either current or former Church personnel while they were a member of, or employed by, the Church Authority or entity is reported immediately to the police, or to the statutory child protection authority (if required by the State jurisdiction) if it involves alleged criminal conduct (unless the matter has already been reported). A report is also made immediately to the police and to the child protection authority, if it is reasonably believed that the subject of the allegation continues to pose a risk to children. State jurisdictions also detail other reasons for reporting to the child protection authority.
- 2.3.3 An entity's external reporting obligations depend on the Australian jurisdiction(s) in which it operates, the sector(s) in which services are delivered and on the nature and circumstances of the concern or allegation of child abuse. In some jurisdictions there are requirements for reporting historical child abuse. Jurisdictional differences include:
- who must make a report;
  - the type of abuse of a child that must be reported, and the threshold required to activate a reporting obligation;
  - whether penalties apply for failing to make a report.
- 2.3.4 The specific requirements for external reporting within the relevant jurisdiction(s) and sectoral setting is clearly set out in organisational policies and procedures. These are regularly updated to reflect ongoing legislative reform in the area of child protection.
- 2.3.5 External reports may be required to one or more of the statutory authorities listed below. These requirements may arise at any stage in the process. The requirements for external reporting below are described generally as a guide only. The specific requirements for each jurisdiction are considered so that there may be effective cooperation.
- 2.3.6 Report to police
- Any concern or allegation of abuse of a child which involves an allegation of criminal conduct or creates a suspicion of criminal conduct must be reported to the police.
- 2.3.7 Make a mandatory report to the child protection authority
- It is a legislative requirement for certain groups of people to report to child protection authorities a reasonable suspicion of a current risk to a child of abuse or neglect. "Current" can also mean historical abuse where the impact is still having a current effect on a child.
  - The report varies between States and sectors. It is the responsibility of the Church entity to know its obligations and to train its personnel.
  - Persons who are not legally required to make a report to child protection authorities are still encouraged and supported to do so.
- 2.3.8 Make a notification under a reportable conduct scheme

- a. Defined entities are required by legislation to report allegations of reportable conduct against employees, including volunteers, to the regulatory oversight body in certain States and Territories.

#### 2.3.9 Report to the Working with Children Check screening body

- a. “Reporting bodies” are required by legislation to report certain categories of investigative findings of abuse of a child against people engaged in child-related work.

#### 2.3.10 Report to other relevant external bodies

- a. There are a number of other regulatory bodies that may require a report to be made.
- b. Church personnel can contact the Office of the e-Safety Commissioner for expert advice about responding to concerns and allegations relating to online child sexual abuse material and image-based abuse.

## 2.4 Stage 2B: Report to Internal Authorities

2.4.1 A report is made to the Church Authority with canonical responsibility and to the relevant safeguarding and professional standards personnel.

2.4.2 Processes for internal reporting set out under canon law in accordance with Vos Estis Lux Mundi are followed in cases where the respondent is a cleric, religious, Bishop or Major Superior of a clerical religious institute or a religious institute of pontifical right.

2.4.3 Internal and/or canonical reporting of allegations may also be required to the following:

- a. other Church Authorities, for example where the respondent resides or ministers;
- b. those entities detailed in canonical procedures as outlined in Section 4: Guidance on response to concerns and allegations of child abuse with regard to relevant aspects of canon law.
- c. Australian Catholic Safeguarding Ltd to ensure effective screening of clergy and religious in alignment with the Australian Catholic Ministry Register.

## 2.5 Stage 3: Determine course of action

- 2.5.1 An assessment by the Professional Standards Officer of the Church entity about the appropriate course of action is made based on the potential nature and seriousness of the concern or allegation. This includes:
- a. identifying any immediate reporting and legal obligations if not already reported under Stage 2;
  - b. an initial risk assessment to identify risks to children and the steps required to address these;
  - c. when to inform the child's parent or carer, where the concern or allegation has not been made by them;
  - d. offering support for a child as appropriate, or a referral to expert support services, if needed;
  - e. after receiving notice of the concern or allegation, the Church Authority, after consultation with the structures established under this section, informs the respondent of the nature of the concern or allegation, unless through death, disappearance or disability is not possible to do so. This should occur as soon as possible unless a delay in so doing is necessary on account of civil law obligations;
  - f. this decision must be weighed with any potential risk to children or other people, in addition to any risk to the possibility of the respondent fleeing;
  - g. the respondent is given sufficient detail about the concern or allegation, and the person who was allegedly abused, to be able to offer a response;
  - h. the respondent is entitled to information about their rights and about the process of dealing with the concern or allegation. The respondent is advised that they have the right to obtain independent legal advice. The advice shall normally be at the respondent's expense, although the Church Authority may exercise a discretion to make loans or to reimburse a respondent (who is a cleric or a religious) for reasonable legal expenses, if he or she is unable to afford legal assistance;
  - i. the respondent is offered a support person to represent their needs to the Church Authority and to assist where appropriate with the pastoral care of the respondent and with the communication between the respondent and the Church Authority. The respondent support person cannot be the respondent's therapist;
  - j. the Church Authority seeks a response from the respondent in order to determine whether the facts of the case are significantly disputed. If they are not, then the Church Authority proceeds to resolve the matter without the need for an investigation. There does not need to be an investigation of the facts if the Church Authority is satisfied of the validity of the complaint. Where there is a significant dispute or uncertainty about the facts the Church Authority has the matter investigated in accordance with the procedures set out in the Protocol to the extent that it is reasonably practicable to do so;
  - k. if a complaint of abuse against a person in ministry is plausible, and if there is a risk that person may come into contact with children in the course of their ministry, the person should be stood aside from their ministry while the complaint is investigated. See NCSS 6.3.2;
- 2.5.2 Expert advice is sought whenever there is uncertainty or assistance is required.



- 2.5.3 Decisions about the course of action to be taken are communicated to the person who has brought forward the concern or allegation.
- 2.5.4 Where a Bishop, Provincial or cleric or member of a religious institute is the respondent, see Section 4: Guidance on response to concerns and allegations with regard to relevant aspects of canon law.
- 2.5.5 All decisions and advice are documented and kept secure.

### **Commentary on Stage 3**

#### **Determining responsibilities where more than one Church Authority or entity is involved**

An allegation may be made against a cleric or religious while engaged by another Church Authority or entity. The Church Authority or entity responsible for the activity relating to the alleged conduct takes primary responsibility for reporting and investigating. In certain State jurisdictions, however, the requirement of reporting extends to the Church Authority where the cleric is incardinated.

Where there is shared responsibility for an investigation across two or more Church Authorities or entities, one Church Authority is to take the lead role and in consultation with the other determine the roles and responsibilities for managing any investigations and acting on their outcomes. Records of the investigations and implemented outcomes are retained by each Church Authority involved.

The provisions of the Privacy Act 1988 (Ct) Section 16A provides the capacity for the proper exchange of information in such circumstances.

#### **If respondents are located in overseas jurisdictions, all reasonable efforts must be made to engage them in the investigative process**

A concern or allegation of child abuse by current Church personnel while they were working elsewhere requires assessment and management of current risks to children, reports to police and/or the child protection authority, as well as a notification under a reportable conduct scheme in relevant jurisdictions. Additionally, a report may need to be made to sector or professional registration or licensing bodies if the person is still engaged in work in that sector or profession.

## 2.6 Stage 4: Investigate

- 2.6.1 An investigation undertaken by the Church Authority or entity is in cooperation and coordination with police and child protection authorities, where relevant.
- 2.6.2 It is the role of police and statutory authorities to investigate criminal allegations of abuse of a child. If an allegation relates to criminal conduct and has been reported to police, the Church Authority or entity does not start its own investigation until police have advised it can proceed.
- 2.6.3 If a Church Authority or entity commences an investigation and is then notified that police are investigating the same conduct (or if potentially criminal conduct is identified during the investigation), the Church Authority or entity must contact police immediately and the Church Authority's own investigation should be suspended until the police investigation is concluded.
- 2.6.4 The aim of an investigation is to decide whether allegations can be proven on the balance of probabilities (taking into account the standard set in *Briginshaw v Briginshaw*) and to identify which actions the Church Authority or entity needs to take following the investigation.
- 2.6.5 Investigations must be conducted with integrity and impartiality, ensuring that processes and outcomes can withstand external scrutiny. There is to be a consistent standard and level of accountability regardless of the role or status of the respondent within the Church Authority or entity.
- 2.6.6 The general procedural stages are set out in Stages 4A to 4E.

### Commentary on Stage 4

#### Purpose of the Investigation

An investigation into the concerns or allegations received by a Church Authority is required to assess the concerns or allegations and to provide an impartial and independent review of the facts and circumstances disclosed, including the fitness of the relevant Church personnel to continue in ministry and the risk of harm that may present.

#### Factors that indicate when investigation may be required

A Church Authority or entity, through its professional standards officer, office or committee, has a safeguarding and professional standards obligation to assess all concerns or allegations raised in relation to historical child abuse and contemporary child abuse as part of a risk assessment and management strategy and to determine if an investigation is required.

Investigations proceed when:

- law enforcement or criminal justice authorities consent to the investigation proceeding;
- there is a semblance of truth;
- a respondent has been acquitted following a criminal trial and the Church Authority determines further investigation is required;
- procedural fairness to the reputation of a deceased respondent indicates that an investigation should be undertaken;

- a risk assessment otherwise indicates that an investigation should be undertaken.

Church Authorities also determine if they have a legal obligation and policy requirement to investigate allegations, including:

- complying with regulatory obligations under reportable conduct schemes, registration bodies e.g. teacher registration, Working with Children Check legislation;
- complying with duty-of-care obligations under common law and recent and forthcoming “Failure to Protect” laws.

### **Applying procedural fairness throughout the investigation**

Procedural fairness is afforded throughout the investigation process for all affected individuals including the respondent, if they are alive and their whereabouts known. Procedural fairness principles include, but are not limited to:

- affording all those involved a reasonable opportunity to put forward their case, including the opportunity to seek legal advice and representation;
- providing sufficient detail of all allegations to the respondent to enable an adequate response;
- providing clear information about processes and potential findings and outcomes, including the right to a review;
- conducting the investigation without unnecessary delay (allowing for criminal and statutory child protection investigations, which must take precedence);
- communicating regularly with the persons directly involved about the progress of the investigation. Written communication must be given to relevant persons, including the person subject to the alleged abuse and also the respondent, regarding the outcomes/ findings and their right to a review.

Where the respondent is deceased, a family member or friend of the deceased nominated by the Professional Standards Officer is given a reasonable opportunity to present to the investigator and through the Officer to any Assessment Board any relevant facts or circumstances or submissions on which they wish to rely on behalf of the deceased respondent.

### **Ensuring confidentiality**

Information gathered is only disclosed on a need-to-know basis, as permitted by law and policy and in the best interests of any adults subjected to child abuse or any children who are or may be affected. Unauthorised or inappropriate disclosure of investigation information can be very damaging to those involved and may prejudice other responses and criminal justice processes.

## 2.7 Stage 4A: Appoint an Investigator

- 2.7.1 A suitably qualified external investigator with experience investigating child abuse — historical and/or contemporary — is appointed as soon as possible.
- 2.7.2 Investigations are delegated on behalf of the Church Authority to an independent investigator with appropriate expertise. Only as a last resort are investigations undertaken by personnel within the entity itself. The independence of the investigation from both the Church Authority and entity is paramount. Notwithstanding, it is understood that in Catholic education and social services sectors internal, trained investigators may be engaged. Where an investigator appointed is a member of or employed by the Church Authority or entity itself, procedures must be put in place to ensure that any real, perceived or potential conflict in the investigation process and report is mitigated (for example, oversight of the investigation or review of the investigator's report by an independent external review panel or the Church Authority's safeguarding/professional standards committee). See Recommendation 16.39 of the Royal Commission.
- 2.7.3 Timeliness in making the appointment is essential for compliance with statutory reporting and investigations timeframes. Timely appointment of an investigator will minimise delays in proceeding with an investigation in consideration of all parties.
- 2.7.4 It is critical that the investigator appointed:
- is able to maintain impartiality and does not have any conflicts of interest (real, perceived or potential);
  - has appropriate knowledge and expertise in interviewing children and adults subjected to child abuse, including an understanding of trauma-informed responses.
- 2.7.5 The Church Authority or their delegate, or the relevant office or committee managing the Protocol, provides the investigator with a letter of appointment and instructions that set out:
- the statement of complaint;
  - the terms of reference of the investigation (what is the investigator being asked to investigate);
  - the powers of the investigator.
- 2.7.6 Investigation timeframes should be no longer than six months from commencement to conclusion unless there are extraordinary circumstances.
- 2.7.7 The Church Authority, or their delegate, requires an investigator to sign a conflict of interest declaration prior to appointment or commencement of the investigation.

## 2.8 Stage 4B: Plan the Investigation

- 2.8.1 An investigation plan is developed by the investigator following appropriate consultation between the investigator and Church Authority or entity and/or their delegate. Planning decisions are documented in the plan. A copy of the investigation plan is kept on the file.

- 2.8.2 The investigation plan includes:
- a. the investigation terms of reference and scope;
  - b. applicable laws, regulations and Church policies;
  - c. lines of inquiry;
  - d. order of interviews to minimise contamination of evidence or collusion;
  - e. anticipated timeframes.
- 2.8.3 The Church Authority decides — taking into account the initial and ongoing risk assessment and the paramountcy of the safety of children — what initial action to take in regard to the respondent, if they are alive and their whereabouts known, while the allegation is being investigated. Should a complaint of abuse be received against a person in ministry, the person is stood aside while the complaint is being investigated. See Recommendation 16.52 of the Royal Commission.
- 2.8.4 The Church Authority ensures that therapeutic support mechanisms for those affected are in place for those involved in an investigation, including the person raising the concern, the accused person and any other relevant persons.

## 2.9 Stage 4C: Conduct the Investigation

- 2.9.1 All interviews are person-centred, trauma-informed and carefully planned. Only an investigator with experience in interviewing children or adults subjected to child abuse conducts such interviews.
- 2.9.2 It is the responsibility of the investigator to note and act on any risks involved in the interview process for either a child or adult. Any action should be reported to the Church Authority at the first available opportunity.
- 2.9.3 During an investigation, the Church Authority seeks advice from, shares information with, consults with and reports to relevant external authorities (police, child protection authorities and regulators) at key points during the investigation.
- 2.9.4 Evidence collected is relevant, reliable and probative. This may include direct evidence from the alleged victim, witnesses and the respondent through interviews or written statements; physical evidence; site inspections; and forensic evidence from experts if required.
- 2.9.5 The investigator takes all reasonable steps to reduce the risk of contamination of evidence or collusion, including collusion between witnesses. The investigator should consider the order of interviews, prioritising witness interviews where there is a greater risk of evidence contamination or collusion.
- 2.9.6 The investigator takes all reasonable steps to address confidentiality and privacy concerns.
- 2.9.7 All evidence is securely stored in a confidential area of the Church entity's safeguarding and professional standards offices and documented for use in any potential legal proceedings.

## Commentary on Stage 4C

### Considerations when conducting an interview with a child

Once a Church Authority has received confirmation that any statutory response to the child has been finalised or determined not to proceed, the Church Authority can commence with an

investigation. The investigator seeks to understand and meet the individual needs of the child to maximise their ability to participate and make choices. This includes considering the nature of the allegation of abuse of a child and its potential impact, the child's age and level of maturity, and their communication needs. The investigator confirms whether the child has already been interviewed, whether parental permission is required given the age of the child and undertakes the interview process as soon as possible. A support person, such as a parent or another adult, should be present during the interview, though a child may request to meet with the investigator independently.

Therapeutic support is offered to the child throughout the investigation process.

### Considerations when conducting an interview with an adult subjected to historical child abuse

Recounting aspects of the circumstances or experience of abuse can retraumatise a person who is likely to be particularly vulnerable. The investigator seeks to understand and meet the individual needs of the adult to maximise their ability to participate and make choices. This includes considering the nature of the allegation, its impact, the age at which the abuse occurred, the adult's current mental health and wellbeing and/or any specific communication needs. Any adult has the right to have a support person present with them during any interview. Therapeutic support is offered to the adult throughout the investigation process.

### There may be a number of challenges in gathering evidence for investigations relating to concerns and allegations of historical child abuse that need to be considered

Unless considerations of risk to the current safety of children mitigate against it, the investigator exhausts all lines of inquiry (even if there is relatively little evidence available) and document them carefully, including noting where evidence could not be obtained.

These challenges include, but are not limited to:

- the respondent may be deceased or may not be able to be located;
- some witnesses may be deceased, may be elderly with poor or no memory, or may not be able to be located;
- an applicant who raises an allegation of abuse as a child through a claim to the National Redress Scheme (NRS) cannot be contacted without them first providing their explicit consent (See NRS Internal Investigations Process Factsheet);
- a person who raises an allegation of abuse as a child through a civil claim or court proceeding cannot be contacted other than through their legal representative and any request to cooperate with an investigation would need to be communicated through that representative. The claimant's preparedness to participate in an investigation will be influenced by the outcome of their civil claim or court proceeding. It is also questionable whether statements prepared for the purposes of legal proceedings can be used in a separate investigation without the claimant's consent or leave of the Court;

- an investigator is unable to compel witnesses to participate in an investigation if they are no longer a member of, or employed by, the Church Authority or entity, but may offer them the opportunity to participate;
- documents and records may not or may no longer exist, cannot be located or are of limited probative value;
- some entities may have closed down and some of the original venues or buildings may have been modified, re-purposed or demolished;
- canonical investigations may be required in historical abuse matters if the person accused is still living and currently in ministry. It should be noted that the investigation can be used to determine the “semblance of truth” requirement of a preliminary investigation under Canon 1717. The proper decrees are required to be in place from the outset. If further canonical action is required, it is important to note that there is a different standard of proof required in canon law;
- in cases where the allegation of abuse has arisen through a civil or NRS claim, a Church Authority or entity still determines if an investigation is required as part of a risk assessment and management strategy and also having regard to the outcome of the civil claim or NRS process.

## 2.10 Stage 4D: Consider the Evidence

- 2.10.1 In the absence of an admission by the respondent, the investigator assesses and weighs the evidence with regard to reliability, relevance, corroboration, plausibility, objectivity and consistency.
- 2.10.2 In determining whether the available evidence is sufficient to sustain an allegation, investigators apply the “balance of probabilities” as the standard of proof. This means that an investigator determines whether it is more likely than not that the abuse happened. A sustained finding is based on material that shows that all the facts necessary to establish the incident are made out to the reasonable satisfaction of the investigator as provided in *Briginshaw v Briginshaw*.
- 2.10.3 The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description and the gravity of the consequences flowing from a particular finding are considerations which affect the answer to the question whether the allegation has been proved.

## 2.11 Stage 4E: Complete the Report

- 2.11.1 The investigator provides a report to the Church Authority or entity at the completion of an investigation.
- 2.11.2 The investigation report reflects the investigation’s terms of reference and sets out at a minimum:
  - a. the allegation(s);
  - b. a summary of the investigation, including:
    - i. the approach adopted by the investigator;

- ii. a record of the evidence obtained and the investigator’s assessment of the evidence, including the weighting of the evidence;
- c. the findings made by the investigator;
  - i. assessment of any ongoing unacceptable risk in relation to children if the respondent were to continue to engage with or re-engage in child-related work;
  - ii. formal recommendations to the Church Authority or entity as to any action to be taken.

2.11.3 Typically, findings either reach the conclusion that the allegation is “sustained” or “not sustained” or “unable to be determined” or “unfounded”. In the case of reportable conduct investigations, findings are made according to their own more detailed category of findings and consistent with the guidance material for any reportable conduct scheme for those matters within that scope.



## 2.12 Stage 5: Assess the report and make a determination

This stage involves the determinations that occur on receipt of the report. To avoid any allegation that the process contains apprehended bias and is, therefore, invalid, Church Authorities may consider establishing a Board of Review comprising qualified persons who have not been involved in early stages of the investigation. The feasibility of such a recommendation needs to be considered in respect to Church education and social services sectors and in light of the provisions of Fair WorkAustralia.

- 2.12.1 The investigation report is provided to the Church Authority or entity, through their Professional Standards Office or Board of Review, which assesses the report and conveys it to the Church Authority.
- 2.12.2 If the respondent has admitted misconduct, this should be reported to the Professional Standards Office or a Board of Review. Findings of fact (aided by admission) and assessment are still made and recommendations of what course of action are to be taken by the Church Authority.
- 2.12.3 The Church Authority considers thoroughly the investigator's findings and recommendations and the Office or Board's assessment of the report.
- 2.12.4 If the Church Authority disagrees with the investigator's findings and/or recommendations, and the Office or Board's assessment, they seek a review of the matter. Australian Catholic Safeguarding Ltd can provide the mechanism for the review.
- 2.12.5 A review of the process and/or the findings of the investigation, is available to the complainant, the respondent and the Church Authority. A person requesting a review facilitated through Australian Catholic Safeguarding Limited makes the request in writing to the executive officer of Australian Catholic Safeguarding Limited and should provide reasons for their dissatisfaction with the process or findings. The executive officer shall refer the request to the chairperson of a review panel who shall arrange for a review to take place.
- 2.12.6 A review is available for respondents only if they cooperated with the investigation process.
- 2.12.7 A review is an independent evaluation, not only as to whether there is substance in any of the grounds for complaint, but also as to whether the principles established in the Protocol have been adhered to.
- 2.12.8 A review of process and findings is not a review of the outcomes determined by the Church Authority.
- 2.12.9 A complainant may seek a review within three calendar months of the end of the investigation or otherwise when the Church Authority gives its response to the complaint, or has failed to offer a response within three months of the time when an investigation has been completed. The respondent and the Church Authority may seek a review within three months of the time when the investigation report has been furnished to the Church Authority.
- 2.12.10 The chairperson of the review panel may allow a review outside of the three months' time limit if there are compelling reasons to accept a request for review.
- 2.12.11 The reviewer shall determine the procedures for the conduct of the review. Where it is necessary to do so, this may involve speaking to the complainant, the respondent or any other person concerned with the case.

- 2.12.12 The complainant or respondent as the case may be, who is not the applicant for review, should be made aware of the grounds for the review that concern factual matters about which they may be able to provide further information.
- 2.12.13 The reviewer shall have access to all relevant documentation. The reviewer shall conduct a review expeditiously and within three calendar months unless the review panel provides for a further extension of time.
- 2.12.14 At the end of the review, the reviewer shall provide a written report with recommendations to the chairperson of the review panel. If the reviewer considers that there has been a failure to observe the required processes, or identifies a deficiency in the findings, the chairperson shall discuss the case with the reviewer and at least one other member of the review panel.
- 2.12.15 The panel shall consider the reviewer's report and make such recommendations as it sees fit to the Church Authority in connection to the matter. The review panel may substitute its own findings for those of the investigator, provided that it has all the information available to do so. The review panel may direct that a further investigation be undertaken.
- 2.12.16 A copy of the report and the review panel's recommendations shall also be given to each party. The Church Authority is to be responsible for all reasonable and ordinary expenses of the review.
- 2.12.17 The Church Authority cannot replace the findings and recommendations with their own but can modify the recommendations consistent with any facts that present through the assessment of the investigation report.
- 2.12.18 If the Church Authority does not agree with the decision of the review panel, they seek advice on how to proceed in response to the determination and recommendations.
- 2.12.19 A Church Authority is responsible for informing the person who raised the concern or allegation as to the steps being taken by the Church Authority. This is done with the utmost care and compassion.
- 2.12.20 The Church Authority may have an obligation to initiate a canonical process in response to matters that are sustained. In this instance, it is noted that there is a differing requirement of proof than that of the balance of possibilities in order to issue a canonical penalty. This is explained to all parties involved in the process, including the person bringing forward the concern or allegation. Once a canonical process is completed, the Church Authority informs all parties directly involved of the outcomes of that process.
- 2.12.21 Irrespective of the canonical outcomes, the Church Authority still has an obligation to consider any risk to children based on the information contained in the investigation required by the Protocol and any canonical investigation. There is the requirement to consider the scope of a person's ministry.
- 2.12.22 Irrespective of the canonical outcomes, the Church Authority still has an obligation to respond with care and compassion to the person bringing forward their concern or allegation and explain to them what (if any) changes will occur as a result of the canonical investigation and the reasons why.
- 2.12.23 A decision is made about any actions to be taken in response to the person who brought forward the concern or allegation.

- 2.12.24 A decision is made about the actions to be taken in relation to the respondent, if they are alive and their whereabouts are known, in accordance with employment/industrial and canon law. Actions may include:
- a. disciplinary proceedings;
  - b. amending the respondent's role and/or responsibilities;
  - c. training;
  - d. counselling;
  - e. additional supervision;
  - f. being dismissed;
  - g. no change to work or ministry.
- 2.12.25 Where the respondent is a cleric or religious, specific actions apply. Guidance on those actions is provided in Section 4: Guidance on response to concerns and allegations of child abuse with regard to relevant aspects of canon law. See also NCSS Standards 6.3.8 and 6.3.9.

## 2.13 Stage 6: Address and communicate outcomes

- 2.13.1 Confidentiality and privacy are borne in mind and balanced with the duty to inform all relevant parties that the investigation has concluded, and findings made that may lead to further actions being taken.
- 2.13.2 A letter to the person who brought forward the concern or allegation includes information the findings and outcomes.
- 2.13.3 A letter to the respondent includes information on the findings and outcomes of the investigation and the actions to be taken (if they are still alive and their whereabouts known), and any further canonical action that may be undertaken.
- 2.13.4 All communications take into account privacy and confidentiality considerations of all parties. Names can be de-identified if required. In a particular case, the public interest may require that the name of a perpetrator be made public.
- 2.13.5 If either the person raising the concern or allegation of abuse of a child (and in the case of the person being a child, their parents or carer) or the respondent has reason to object to how a matter has been managed, or the outcome, the Church Authority or entity provides, in writing, the option of an independent external review of the process and/or outcome.
- 2.13.6 If a Church Authority does not have an independent external review panel, information about the conduct of such a review facilitated through Australian Catholic Safeguarding Ltd is to be provided in writing to all relevant parties at the time the outcome of a response is provided to them.
- 2.13.7 Additional therapeutic support for those affected is made accessible by the Church Authority. Where explicitly requested by an individual, pastoral care, including spiritual support and guidance if requested, is made available and delivered through trauma- informed practice by appropriately trained persons.
- 2.13.8 Final reports are made to relevant external statutory authorities where they have jurisdictional oversight, such as reportable conduct schemes and Working with Children Check bodies.
- 2.13.9 Internal and/or canonical reporting of outcomes, or certain actions taken as a result of an outcome, may also be required to the following:
- a. other Church Authorities;
  - b. Australian Catholic Safeguarding Ltd and the Australian Catholic Ministry Register in relation to declarations of clerics or religious in good standing;
  - c. those entities detailed in canonical procedures as outlined in Section 4: Guidance on response to concerns and allegations of child abuse with regard to relevant aspects of canon law.
- 2.13.10 Assessment of risk to children is undertaken and strategies to prevent harm are fully implemented.
- 2.13.11 All records are updated and kept secure to document final processes and record outcomes. These records can be used for profiling and managing risks posed by individuals. Records are retained for no less than 50 years.

## 2.14 Stage 6A: Communicate with and support affected persons

- 2.14.1 An appropriate pastoral response is provided promptly to the affected persons, with due regard to the right of privacy of those directly involved. These will involve a number of initiatives for engagement including, but not exclusive to, apologies, mediation, counselling and redress. Support services for those affected by abuse are developed at the provincial level or, for religious institutes, at the level of congregation leadership and may be delivered through the office of professional standards managing the processes under the Protocol. See Section Three: Guidance on engaging with those affected by contemporary and historical child abuse.

## 2.15 Stage 6B: Communicate with and support affected communities

- 2.15.1 Pastoral concern is shown towards affected communities who, all in varying degrees and ways may suffer. The impact on communities can be devastating – leading to confusion, loss of faith and belief, and loss of confidence and trust in a Church Authority or entity, and even deep divisions within the affected community. An appropriate pastoral response is provided promptly to the affected community, with due regard to the right of privacy of those directly involved. This is offered by qualified persons who are trained and have the necessary skills to engage with affected communities. The Church Authority or entity engages with the local community and listens to, and addresses as far as they can, the needs and concerns of the community. Based on the needs expressed by the people of the community, a program of pastoral support and spiritual renewal for the affected community is prepared. Such programs may be developed at a provincial level or, for religious institutes, at the level of congregation leadership.

## 2.16 Stage 7: Continuous Improvement

- 2.16.1 In order to inform continuous improvement, after the outcome of a response to a concern or allegation is known, individual cases are analysed by the Church Authority or entity for child and adult safeguarding practices and/or failures.
- 2.16.2 From time to time, feedback is sought from adults who were subjected to childhood abuse within the Church and involved in a response to identify improvements that can be made to processes.
- 2.16.3 Appropriate reports are submitted to Australian Catholic Safeguarding Ltd in a format and intervals to be developed.
- 2.16.4 Data collected over time is used to show trends from investigation outcomes and reviewed to highlight systemic issues.
- 2.16.5 Any systemic issues or failures that led to children being harmed or put at risk of harm are identified and examined and responded to comprehensively.
- 2.16.6 Systemic issues identified are used to inform continuous improvement in safeguarding and professional standards policies and practices, including in their regular review.
- 2.16.7 After the outcome of a response to a concern or allegation, the operation of the response process is considered for the purpose of identifying good practice or practice to be improved upon for the purpose of monitoring, reviewing and updating response processes for Church Authorities and entities (see Principle E).

## Part Three: Guidance on engaging with those affected by contemporary and historical child abuse

The principles outlined in this section serve as a public statement of commitment from Church entities about their engagement of those affected by child abuse. The principles provide an overarching trauma-informed framework of responding pastorally and also set out specific steps to be taken to ensure a sensitive and just response to people.

### 3.1 How these principles have been developed





These principles are modelled on the relevant findings and recommendations of the Royal Commission and specifically the Redress and Civil Litigation Report; the Truth, Justice and Healing Council [Model Litigant Guidelines \(2016\)](#); the National Catholic Safeguarding Standards (Standard 6.6 — Support of adult complainants); the National Board for Safeguarding Children in the Catholic Church in Ireland's Standards (Standard 3 — Care of complainants).

The NSW Office of the Children's Guardian document [Engaging sensitively with survivors of abuse – A guide for faith organisations](#) is a comprehensive guide that can be adopted by Church personnel in their engagement with those subjected to abuse. The guide is a tool that is essential to understanding the practical application of a pastoral, sensitive and trauma-informed approach. It has been created by the NSW Ombudsman who worked with the Survivor and Faith Group Child Safe Standing Committee (which included survivors, survivor advocates, safeguarding experts and ecumenical Church leadership).

RMIT University's Innovative justice responses to sexual offending – Pathways to better outcomes for victims, offenders and the community (2014) includes an outline of effective sexual offence restorative justice conferencing. It provides that the focus of restorative engagement should be on healing, offender accountability, community restoration and redress for harm and loss caused.

### 3.2 Different avenues of approach

A person may seek a response from a Church Authority or entity using one or more of the following avenues or pathways:

 <b>Direct Approach</b>	Approaching the Church Authority or entity directly or through a representative
 <b>Redress Scheme</b>	Making an application through a redress scheme, such as the National Redress Scheme ( <a href="http://www.nationalredress.gov.au">www.nationalredress.gov.au</a> )
 <b>Civil Claim</b>	Pursuing a civil claim against the Church Authority or entity
 <b>Other Process</b>	Other relevant process that is available to a person

The appropriate avenue(s) for a person will depend on individual factors and may include:

- 3.2.1 the nature of the abuse they experienced;
- 3.2.2 what a person seeks from the process;
- 3.2.3 a person's eligibility for redress under different pathways; and
- 3.2.4 whether a person wants to engage directly with a Church Authority or entity.

A person may engage with more than one avenue. In such cases, any prior response is considered in offering further support. For example, in Victoria the State Government has made it easier for deeds of release to be overturned regarding claims for redress in relation to abuse occurring in institutions. This means people may seek additional redress through a civil pathway or through a claim to the National Redress Scheme.

However, in certain cases, a person may not legally be entitled to pursue further responses under additional pathways. For example, where a person accepts an offer of redress from the National Redress Scheme, they accept a legally binding agreement not to pursue a civil claim against the entity responsible for their abuse.

A claim for redress or compensation may be the way in which a Church Authority is notified of an allegation of abuse.

### 3.3 The elements of response

A comprehensive response to those who have experienced child abuse is made up of three elements:

- 3.3.1 **the offer of a personal/pastoral response** from the Church Authority or entity, including an apology; an opportunity for a person who has been abused to meet with a senior representative of the entity; and/or an assurance as to the steps that the Church Authority or entity has taken, or will take, to protect children against future abuse;
- 3.3.2 **access to therapeutic counselling, psychological and/or psychiatric care** as needed throughout a person's life who has experienced abuse; and
- 3.3.3 **a financial payment** as a tangible means of recognising the harm which the person may have suffered.

A person may seek and receive a response from a Church Authority or entity in respect to any combination of these elements.

### 3.4 Removing barriers for engagement

Mechanisms and processes must be in place for a compassionate, respectful and supportive engagement for all people who approach Church Authorities. This may include the family members and carers of children who have been harmed or the family members of the respondent. All engagement by Church Authorities and entities needs to occur with a comprehensive understanding of the nature and impact of institutional child abuse and the cultural needs of those subjected to childhood abuse. It is essential that Church Authorities and entities engage with adults and children who have been subjected to abuse within the Church in a respectful way that acknowledges the abuse was not their fault.

It is acknowledged that the approach of those affected by child abuse can be a traumatic experience and that there is the need to minimise any potential harm.

Removing barriers to the engagement of those affected by child abuse includes a number of considerations:



- 3.4.1 applying a flexible “no wrong door” approach. This means that regardless of the pathway(s) chosen by a person, Church Authorities and entities must clearly set out all available elements of response and help the person to access these. A person seeking a response must decide the nature and extent of any process between themselves and a Church Authority or entity. Some will want to re-engage with Church Authorities or entities and others may not. Regardless, the engagement and support of the Church Authority or entity must be made available to all;
- 3.4.2 minimising difficulties, delay, and costs for people. Church Authorities and entities must provide a response with minimal difficulty and cost and engage in each process in a timely manner so as not to cause any unnecessary delay;
- 3.4.3 acknowledging that adversarial processes do not provide a compassionate or sensitive response to those who have experienced abuse;
- 3.4.4 responding with compassion and fairness in a timely and flexible way. Responses to claims by Church Authorities and entities must be timely and apply consistent principles of fairness, justice and compassion. They must also address the unique circumstances of each person;
- 3.4.5 addressing cultural and individual barriers. This includes the cultural needs of people who identify as Aboriginal or Torres Strait Islander; who are living with disability; who are from culturally and linguistically diverse backgrounds; and persons with diverse sexuality. Regular cultural awareness and sensitivity training to representatives and personnel of Church Authorities and entities engaging with people seeking a response should be provided;
- 3.4.6 assisting people in identifying the correct entity. If a person engages with a Church Authority or entity, where another entity or more than one entity is responsible, the first Church Authority or entity must assist the person to identify the proper Church Authority or entity, where possible;
- 3.4.7 making information clear and available. Information about processes and the decision- making by a Church Authority or entity about a Church entity’s processes of response is transparent, clear and readily accessible;
- 3.4.8 training all personnel who interact with people who have experienced child abuse trauma or make decisions affecting them, so they fully understand the nature and impact of child abuse trauma;
- 3.4.9 acknowledging the ongoing responsibilities and obligations to the person seeking a response as outlined in these principles and the need to maintain this in their instruction to any legal representative or lawyers.

### 3.5 Specific steps that impact on a compassionate and just process

Specific steps can be taken to foster a compassionate and just response. When a Church Authority is engaged in responding whether through direct legal negotiation, the Protocol, the National Redress Scheme or civil proceedings, there are specific ways in which they can minimise the potential harm of the process for the person. These include:

- 3.5.1 enabling for a person who does not want to be contacted directly by a Church Authority or entity an authorised and qualified representative to assist in the communication and liaison;
- 3.5.2 being clear about what support and assistance the Church Authority is willing to offer. Each Church Authority needs to avoid further harm and must be clear about what the entity is offering and deliver on the offer accepted by the person;

- 3.5.3 ensuring an ongoing commitment that the process chosen will be completed as quickly as possible and avoid unreasonable delay;
- 3.5.4 fully engaging in each process and maintaining a helpful and supportive response to requests for information and access to records relating to the claim, subject to privacy and confidentiality considerations of third parties and documents that are covered by legal professional privilege;
- 3.5.5 determining at the earliest possible stage, based on all the available and relevant evidence whether:
  - a. a particular claim should be challenged and notify the person as soon as possible if the claim is to be challenged;
  - b. the potential liability of the Church Authority in relation to the claim;
- 3.5.6 not relying on the period of time between the incidents reported and the time of disclosure as a reason not to engage in a response. Following the Royal Commission, the limitation period in relation to claims for damages arising from child sexual abuse has been removed in some jurisdictions and it is anticipated that this will occur in more jurisdictions in the future;
- 3.5.7 not taking advantage of persons seeking restitution whose financial resources are known to be a significant factor in the form and extent to which they can pursue a claim;
- 3.5.8 considering all reasonable requests for counselling, pastoral and psychological and/or psychiatric care assistance, and other kinds of acknowledgement, including meetings with relevant members of the Church Authority, site visits, etc;
- 3.5.9 when possible, co-operating and agreeing on the choice of a single expert to avoid the person having to repeat their experiences to multiple clinicians;
- 3.5.10 ensuring that there is an ongoing commitment to negotiation and early settlement and that reasonable claims are met without unnecessary litigation or protracted negotiations;
- 3.5.11 prioritising the provision of and participation in effective and trauma-informed alternative dispute resolution processes wherever possible;
- 3.5.12 being sensitive to such practicalities as:
  - a. choice of venues/sites of any meetings;
  - b. choice of gender of person with whom the adult is meeting;
  - c. awareness of any religious symbols that may be placed in rooms which could be potentially re-traumatising to the person;
  - d. reducing the need for the adult to retell their story more than once;
  - e. reducing the need for the adult to engage with multiple people to access a service or a response;
  - f. encouragement of a support person at any meetings or contacts with the Church entity.

If a Church Authority identifies that one of its members, employees or legal representatives has breached these principles or acted wrongfully or improperly, an acknowledgement and apology must be provided to the person.

## 3.6 A process of restorative justice

Restorative engagement provides a mediated forum for the one affected by abuse to explain the impact of the offending either themselves or through their nominated representative and for the Church Authority to provide a genuine apology and learn from the person's account.

There are a number of key elements in an effective restorative engagement process:

- 3.6.1 Participation by the complainant needs to be voluntary.
- 3.6.2 Its use must be fully considered. It should be widely available but undertaken only in appropriate cases.
- 3.6.3 The Church Authority or delegate, suitably trained, participates.
- 3.6.4 Participation of the respondent is not advisable, unless the respondent admits responsibility for the abuse and the complainant actively seeks their engagement.
- 3.6.5 Informed consent needs to be obtained from participants throughout the process.
- 3.6.6 Conferences are organised, facilitated, and conducted by a suitable trained and experienced facilitator who is independent and impartial.
- 3.6.7 All participants are treated with respect and dignity.
- 3.6.8 Appropriate support should be provided to participants throughout the process.
- 3.6.9 The confidentiality, privacy, safety and wellbeing of the complainant is of paramount importance throughout.

## 3.7 Reaching outcomes and applying a consistent approach that is just and fair

- 3.7.1 Following a determination, Church Authorities and entities ensure that there is a consistent, principled approach in:
  - a. Its decision-making process;
  - b. What response is offered and provided.
- 3.7.2 In their engagement with people Church Authorities account for:
  - a. Different forms and severity levels of abuse experienced;
  - b. The impact of the abuse on the person; and
  - c. The provision of the particular needs of individual persons.

## 3.8 Lifelong engagement and support

Many people subjected to abuse when they were children experience harm that can be long-lasting. Some people may seek engagement and support from Church Authorities and entities after a process is complete. Church Authorities and entities ensure processes that recognise and support this potential need. Their engagement with and support of a person after a process use the same principles required during any process. Engagement and support with a relevant person must only occur if they want it.

At the end of a process, notwithstanding a therapeutic need for closure, Church Authorities and entities ensure:

- 3.8.1 they offer appropriate ongoing engagement and support to the relevant person; and
- 3.8.2 the provision of information about how the person can seek engagement and support from the Church

Authority in the future.

## Part Four: Guidance on response to concerns and allegations of child abuse with regard to relevant aspects of canon law

The canon law procedures contained in this section are a distinct process and are applied in addition to the process set out in the Protocol, though certain aspects such as the preliminary investigation and the appointment of the investigator can, under canon 1771, in certain circumstances, combine with Stage 4 of the Protocol. The processes of the Protocol are applied without compromising the substantive and procedural penal norms of canon law applicable to the rights and obligations of clerics and religious. These national principles apply to historical, current and future concerns and allegations against a living cleric or religious made to Church Authorities and entities in Australia.

The purpose of the canon law guide is to:

- a. Complement the principles and procedures as set out in the Protocol;
- b. Acknowledge that canonical processes need to be applied when concerns or allegations relate to clerics or religious;
- c. Clarify that the canonical processes do not remove or change any of the responsibilities that each Church Authority must meet as set out in the Protocol;
- d. Maintain the paramountcy principle of the assessment and minimisation of the risk of harm to children and adults as outlined in the Protocol while acknowledging that other disciplinary and redress processes may occur simultaneously to the Protocol process.

Generally, the procedures and processes of the Protocol should precede the invocation of canonical penal processes. It is advisable that a Church Authority delay processes beyond a preliminary investigation pending the outcome of the procedures and processes of the Protocol.

There are five documents involved: the *Code of Canon Law (1983)*; *Code of Canons of the Eastern Churches (1990)*; Norms on Delicts Reserved to the Congregation for the Doctrine of the Faith, issued Motu Proprio *Sacramentorum Sanctitatis Tutela (2010)*; the Motu Proprio *Vos Estis Lux Mundi (2019)*; and *Vademecum On Certain Points of Procedure in Treating Cases of Sexual Abuse of Minors Committed by Clerics (2020)*.

### 4.1 The Code of Canon Law (CIC 1983)

The Code of Canon Law is the Church's official book of its laws, published in 1983. It assists in bringing order to the life of the Church in all its activities. "The Code is not intended as a substitute for faith, grace, charisms, and especially charity in the life of the Church and of the faithful" (Pope John Paul II, Apostolic Constitution *Sacrae Disciplinae Leges*, 25 January 1983).

The Code legislates the rights and obligations of all the Christian faithful. It is divided into seven sections or books. Book VI is called "Sanctions in The Church". Its laws (called canons) regulate those persons and situations where the law is not obeyed. The Church has the right to discipline members of the Church who offend (Canon 1311).

### 4.2 The Code of Canons for the Eastern Churches (CCEO 1990)

If a cleric is a member of any one of the Eastern Catholic Churches, then this Code and the following three documents are relevant. The CIC and CCEO contain very similar laws on penal processes and sanctions. These are clearly distinguished in CCEO 1468-1482; *Vos Estis Lux Mundi* Arts 2, 6 & 9, *Vademecum* 130-141; 155-156.

#### 4.3 Sacramentorum Sanctitatis Tutela (SST 2010)

This document takes its name from the first words in the text, “The safeguarding of the sacraments”. It was issued in 2001 by Pope St John Paul II and updated by Pope Benedict XVI in 2010. The document included the Norms on Delicts Reserved to the Congregation for the Doctrine of the Faith, often abbreviated to SST. Delicts are offences or crimes in canon law. These delicts are defined as:

- a. Crimes against the Faith (SST Art 2);
- b. Crimes against the sacraments (SST Arts 3-5);
- c. Crimes against morality (SST Art 6).

The Protocol concerns itself with number three: crimes against morality. In canon law, these are called “the more grave delicts against morals” and defined in SST Art 6 §1 1°:

- a. The delict against the Sixth Commandment of the Decalogue committed by a cleric with a minor below the age of eighteen; in this case, a person who habitually lacks the use of reason is to be considered equivalent to a minor.

SST Art 6 §1 2° also defines a second “more grave delict”:

- a. The acquisition, possession, or distribution by a cleric of pornographic images of minors under the age of eighteen\* for purposes of sexual gratification, by whatever means or using whatever technology.

\*SST (2010) stated the age as 14. A rescript (3.12.19) by Pope Francis increased the age to 18.

#### 4.4 Vos Estis Lux Mundi (VELM 2019)

This document takes its name from the first words in the text, “You are the light of the world. A city set on a hill cannot be hidden” (Mt 5:14). It was issued by Pope Francis in 2019. VELM details the reporting obligations of clerics and members of Institutes of Consecrated Life and Societies of Apostolic Life regarding crimes of sexual abuse committed by clerics (including Bishops) and the concealing of crimes of sexual abuse by Cardinals, Bishops, Patriarchs, Leaders of Personal Prelatures and Supreme Moderators.

The document elaborates in more detail the meaning of the offence of sexual abuse of a minor by a cleric, namely:

- a. Forcing someone, by violence or threat or through abuse of authority, to perform or submit to sexual acts;
- b. Performing sexual acts with a minor or a vulnerable person;
- c. The production, exhibition, possession or distribution, including by electronic means, of child pornography, as well as by the recruitment of or inducement of a minor or a vulnerable person to participate in pornographic exhibitions.

The document defines more clearly the meaning of the words minor, vulnerable person and pornography:

- a. Minor means any person under the age of eighteen, or who is considered by law to be the equivalent of a minor;
- b. Vulnerable person means any person in a state of infirmity, physical or mental deficiency, or deprivation of personal liberty, which, in fact, even occasionally, limits their ability to understand or to want to otherwise resist the offence;

- c. Child pornography means any representation of a minor, regardless of the means used, involved in explicit sexual activities, whether real or simulated, and any representation of sexual organs of minors for primarily sexual purposes.

When a cleric or member of an Institute of Consecrated Life or of a Society of Apostolic Life receives a complaint, allegation or notice of sexual abuse of a minor, he or she informs the local Ordinary where the events occurred or another Ordinary referred to in CIC Can 134 or CCEO Can 984 (VELM Art 3 §1). In reference to religious institutes, the informant contacts their major superior.

VELM makes it clear that Church Authorities will treat with dignity and respect those (and their families) who state they have been harmed. They are also to be offered medical, therapeutic and psychological assistance if required.

A major innovation in VELM is that those in major positions of authority in the Church may be subject to the same provisions as the clerics described above. These include Cardinals, Patriarchs, Bishops, heads of Personal Prelatures and Supreme Moderators of religious institutes and monasteries. This means they must report a crime if known to them and they must not in any way hinder or interfere with both civil and canonical investigations into clerics or higher Church Authorities (VELM Art 1 §1 b).

If someone brings to the Church Authority a complaint of child sexual abuse allegedly perpetrated by a Bishop or his equivalent, then that Church Authority is to inform the Holy See as well as the Metropolitan of the ecclesiastical province where the alleged perpetrator is residing. When he is informed of such a complaint, the reporting paths are outlined in VELM Art 3 §3. The investigation procedures are stated in VELM Arts 12-18. When the investigation is completed, the Metropolitan informs the Congregation of the Doctrine of the Faith (CDF), which then proceeds in accordance with the law (VELM Art 18).

The Australian Catholic Bishops Conference has established an online portal for reporting in accordance with VELM which is revised from time to time: <https://catholic.org.au/vosestisluxmundi>. The online portal provides the relevant documents and reporting instruments for the implementation of VELM in Australia. The link and the related documents should be accessed during each canonical response process to comply with all relevant reporting obligations and documentary processes as set out in this section.

#### 4.5 Vademecum: On certain Points of Procedure in Treating Cases of Sexual Abuse of Minors Committed by Clerics (VM 2020)

The Latin word “vademecum” literally means “go with me”. It is a guide or handbook outlining procedures to be used in applying the law. It does not change or introduce new (canon) law. It was issued and published by the Congregation for the Doctrine of the Faith on 16 July 2020 and called “Version 1.0”. This indicates that the handbook can be updated as necessary.

In its introduction, it makes clear for whom the handbook is primarily written: “The present manual is meant to serve as a handbook for those charged with ascertaining the truth in such criminal cases, leading them step-by-step from the *notitia criminis* (notice of the crime) to the definitive conclusion of the case.”

The Vademecum provides a more detailed step-by-step guide as to how to apply the various canons in both Codes and the instructions in the other official documents cited above. For example, in its 164 paragraphs, it provides detailed reflections on what the words “minor” and “vulnerable adult” mean; it defines a “possible delict”; it provides a very detailed way of applying the canons on the preliminary investigation and penal process (Cann 1717-1731), noting the slight differences in approach between CIC and CCEO; it outlines the role of the CDF in dealing with crimes; and it makes clear the avenues of appeal. The Vademecum is not the last word on the

matter for it says: “Intended to be flexible, this manual can be periodically updated if the norms to which it refers are modified, or if the praxis of the CDF calls for further clarifications and revisions.”

## 4.6 Key Concepts in Canonical Processes

### 4.6.1 Ordinary

An Ordinary may be of two kinds. An Ordinary is the diocesan Bishop. Within the territory of his diocese, he is the Ordinary of the place. The subjects of the diocesan Bishop include the laity (including lay religious) who have a domicile within the territory of his diocese. Clerics are also his subjects. Major Superiors of clerical religious institutes of pontifical right are also Ordinaries. Clerics who belong to such an institute are subjects of the Major Superior, who is also called an Ordinary for his subjects only (CIC Cann 134, 620, CCEO 984, 418; VELM Arts 2 §3, 3 §1).

### 4.6.2 The Responsible Church Authority

Complicated questions may sometimes arise about which Ordinary has the responsibility for investigating a report concerning a cleric or religious. Circumstances may arise where two Ordinaries may have an equal responsibility to investigate an allegation, that is, the Ordinary of the person (being investigated) and the Ordinary of the place where the alleged abuse occurred.

Where there is shared canonical responsibility for an investigation and that responsibility is shared between two Ordinaries or between two or more Church Authorities or entities, those Ordinaries or Church Authorities or entities should consult and agree in writing which one of the two will assume responsibility for managing and conducting the canonical investigation and for acting on outcomes regarding the relevant cleric or religious. Records of investigations must be retained by the relevant Ordinary or Church Authority or entity as required by law (VM 21, 22).

### 4.6.3 Crime in Canon Law

A crime (delict) is committed when there is an external violation of a law. With the exception of CIC Can 1399, there can be no punishment of a crime which does not already contain a sanction in the law. Three elements are present in a crime: objective element of an external violation of a law or precept; subjective element of grave imputability (responsibility) for a crime; and a legal sanction against the specified action.

### 4.6.4 Notice of crime (notitia criminis or notitia de delicto)

Notice of a crime consists of any information about a possible delict that comes to the attention of an Ordinary. It need not be a formal complaint, see CIC Can 1717 §1, CCEO Can 1468 §1; SST Art 16; VELM Art 3; VM 9. A notice can come from various sources (VM 10):

- a. Formal complaint, oral or written, to the Ordinary by the alleged victim, his or her guardians or other persons who know about the matter;
- b. The Ordinary’s own knowledge through his duty of care;
- c. Formal complaint to the Ordinary from civil authorities;
- d. The Ordinary’s own knowledge through general and social media;
- e. The Ordinary’s own knowledge through hearsay or in any other form.

### 4.6.5 Anonymous Complaint

Anonymous complaints are now accepted, with provisos, as stated in VM 11: “At times, a notitia de delicto (notice of a delict) can derive from an anonymous source, namely, from unidentified or unidentifiable persons. The



anonymity of the source should not automatically lead to considering the report as false. Nonetheless, for easily understandable reasons, great caution should be exercised in considering the type of notitia, and anonymous reports certainly should not be encouraged.”

#### 4.6.6 Role of the Canonical Investigator

The preliminary investigation may be undertaken in conjunction with an investigation under the Protocol, provided there are no criminal matters involved. In cases where State legislation prohibits investigations running parallel to its own, Church Authorities must refrain from initiating the preliminary investigation. Where it is necessary to await the conclusion of a criminal investigation, the Ordinary may seek the advice of the CDF (VM 26). The preliminary investigation must be carried out with respect for civil laws (VELM Art 19; VM 27).

The preliminary investigation is not a trial. It does not seek to attain moral certainty as to whether the alleged events occurred. Its purpose is to gather data useful for a more detailed examination of the complaint and to determine the plausibility of the same (VM 33). The preliminary investigation also reconstructs, to the extent possible, the facts on which the accusation is based, the number of crimes and the times these occurred. It also considers the circumstances in which the crimes took place and general details about the alleged victim(s), together with a preliminary assessment of the eventual physical, psychological and moral harm inflicted (VM 34).

#### 4.6.7 Interviewing children

The interviewer (often the investigator) should be guided by practice and procedure adopted by Australian courts when interviewing children (VM 5). Such witnesses are to be treated without discrimination, with respect and in a sensitive manner taking account of their personal

circumstances (VM 44). Any interference in the private life of such a witness should be limited to the minimum necessary. The privacy of such a witness is to be protected. Information which could tend to identify such a witness should not be published. Confidentiality of all information on such a witness acquired in the course of the investigation should be respected. The interviewer should

be appropriately trained. Protective measures may be necessary if the safety of a child witness may be at risk. Simple language able to be understood by the witness should be used. All possible care should be taken that such a witness in the course of giving testimony does not come into contact with the alleged perpetrator. Such a witness must not be interviewed in the absence of the person’s parent(s) or guardian(s).

#### 4.6.8 Precautionary Measures

This is the term used when an Ordinary imposes some restrictions on a cleric if it is warranted, following the notice of a complaint which may appear to be a delict (CIC Can 1722, CCEO Can 1473; VD 58-62). This is the term favoured instead of the more traditional “suspension”.

These cannot be called a suspension since the latter is a penalty which can only be imposed after a process (CIC Cann 1333-1334, CCEO Cann 1432-1433). The term “suspension” was used by some in a pre-emptory and generic way to indicate that a cleric was being punished or that one or more of his rights as a cleric was taken away by the competent authority as the result of some wrongdoing.

#### 4.6.9 Principle of Moral Certainty

This is the type of certainty required of judges and other Tribunal officials in making decisions in canonical trials and processes (CIC Can 1608, CCEO Can 1291). It is not absolute certainty which leaves no room for error at all. It is not the same as “beyond reasonable doubt” or coming to a decision “on the balance of probabilities” — both principles used in criminal and civil law.

Moral certainty falls between the two extremes of absolute certainty and probability. Moral certainty removes all prudent doubt in the mind of a judge (cf SST Art 14), investigator or assessor that he or she has made the correct decision in a matter.

A preliminary investigation does not have to reach moral certainty (CIC Can 1717, CCEO Can 1486, VM 33), whereas the decision made as a result of a penal process has to be based on moral certainty (VM 84, 119, 125).

#### 4.6.10 Confidentiality

Information gathered must only be disclosed on a need-to-know basis, as permitted by law and policy and in the best interests of any children and others who are or may be affected. Unauthorised or inappropriate disclosure of investigation information can be very damaging to those involved and may prejudice other responses and criminal justice processes. All information is documented and kept secure.

Prejudice, retaliation or discrimination as a consequence of having submitted a report is prohibited and may constitute conduct which is reportable under VELM Art. 4 §§1-3; VM 30, 47, 58.

An obligation to keep silent may not be imposed on any person with regard to the contents of his or her report made under VELM Art. 4 §3, VM 30. The good name and privacy of the persons involved in a report as well as the confidentiality of their personal data is to be protected (VELM Art. 5 §2).

#### 4.6.11 Rights of the Accused

These are detailed as follows:

- a. Good name protected (CIC Cann 220, 1717 §2, CCEO Can 23; VELM Art 5 §2);
- b. Presumption of innocence (CIC Can 1526, CCEO Can 1207; VELM Art 12 §7);
- c. To be judged according to the law (CIC Can 221 §2, CCEO Can 24);
- d. Represented by an advocate/procurator (CIC Can 1481, CCEO Can 1139);
- e. Not to be put under oath or to confess to any crime (CIC Can 1728 §2, CCEO Can 1471 §2; VM 54);
- f. To be punished with a penalty according to the law (CIC Can 221 §3, CCEO Can 24 §3);
- g. Challenge a decision (CIC Cann 1614, 1625, 1628, 1732-1739, CCEO Cann 1297, 1306, 996-004);
- h. Appeal a decision (CIC Can 1727 §1, CCEO Can 1481 §1; SST Art 26; VM 88, 142-149);
- i. Access to pastoral, health and material support (CIC Can 1350, CCEO Can 1410, VM 55).

If the accused denies the complaint, and the complainant then does not pursue the claim or fails to provide evidence within a reasonable time of first making the complaint, and if the Ordinary has placed restrictions on the ministry of the accused as a precaution, the Ordinary may consider the lifting of those restrictions, notwithstanding that there has been no decision made, having regard to:

- j. whether other complaints have been received in relation to the accused;
- k. the risk posed by the accused returning to ministry;
- l. the duration of time since the complainant first made the complaint,
- m. any other matter within the Ordinary's discretion.

## 4.7 Summary of the Canonical Process

The procedures of the Protocol outline seven main stages that are required when responding to concerns and allegations of child abuse, depending on the nature of the concern or allegation. The steps outlined in a canonical process complement the stages outlined in the procedures of the Protocol and need to be read in conjunction with those, in accord with Recommendation 16.54 of the Royal Commission.

### 4.7.1 Stage 1: Receive and Acknowledge Concern or Allegation

- a. An Ordinary receives notification of a possible crime.
- b. When an Ordinary (diocesan Bishop) receives a complaint, allegation or notice of sexual abuse of a minor by a cleric or religious, he sends it to the Ordinary of the place where the events occurred. He also sends it to the Ordinary of the person reported (VELM Art 2 §3).
- c. If the complaint, allegation or notice of sexual abuse of a minor by a Bishop or Major Superior is received, the matter must be referred to the Metropolitan Archbishop. If the matter refers to the Metropolitan himself, it is referred to the senior suffragan Bishop. Both may request the service of Australian Catholic Safeguarding Ltd.

### 4.7.2 Stages 2 and 3: Report and Determine Appropriate Course of Action

- a. After assessing the complaint, with all criminal matters resolved, and with the advice from police that Church processes are free to ensue, the Ordinary establishes a preliminary investigation according to Cann 1717-1719. If the result of this investigation is that there is a “semblance of truth” to the complaint, he will seek the advice of the CDF as to the next steps. If the result of this investigation is that there is no “semblance of truth”, he will refrain from pursuing a formal investigation but may engage with the complainant in pastoral ways.
- b. If notification appears to be plausible, the Ordinary establishes the investigation according to CIC Can 1717, CCEO Can 1468, VM 32-58.
- c. Meanwhile, the Ordinary may decide on precautionary measures (not suspension) to be imposed on the cleric (CIC Can 1722, CCEO Can 1473; VELM Art 15; VM 58-65).
- d. If the preliminary investigation concludes that it is very likely that a crime has been committed, the Ordinary or Superior informs the CDF.

### 4.7.3 Stage 4: Investigate

- a. Following the Ordinary’s recommendation, the CDF is likely to instruct the Ordinary to carry out an extra-judicial (administrative) penal process or (less often) a judicial penal process. The former lacks a number of legal formalities which must be part of the latter. The CDF can choose a variety of responses after reviewing the case. If the CDF agrees with the Ordinary that it is likely (but not yet proven) that a canonical crime occurred, it will instruct the Bishop to undertake one of two processes:
  - b. An extra-judicial process according to Can 1720; or
  - c. A judicial penal process according to Cann 1721-1728.
- d. Either penal process can result in one of three verdicts: conviction (guilt is established); acquittal (innocence is established); or dismissal (guilt not proven) (CIC Can 1726, CCEO Can 1482; VM 84).

### 4.7.4 Stage 5 : Assess the Report and Make Determination

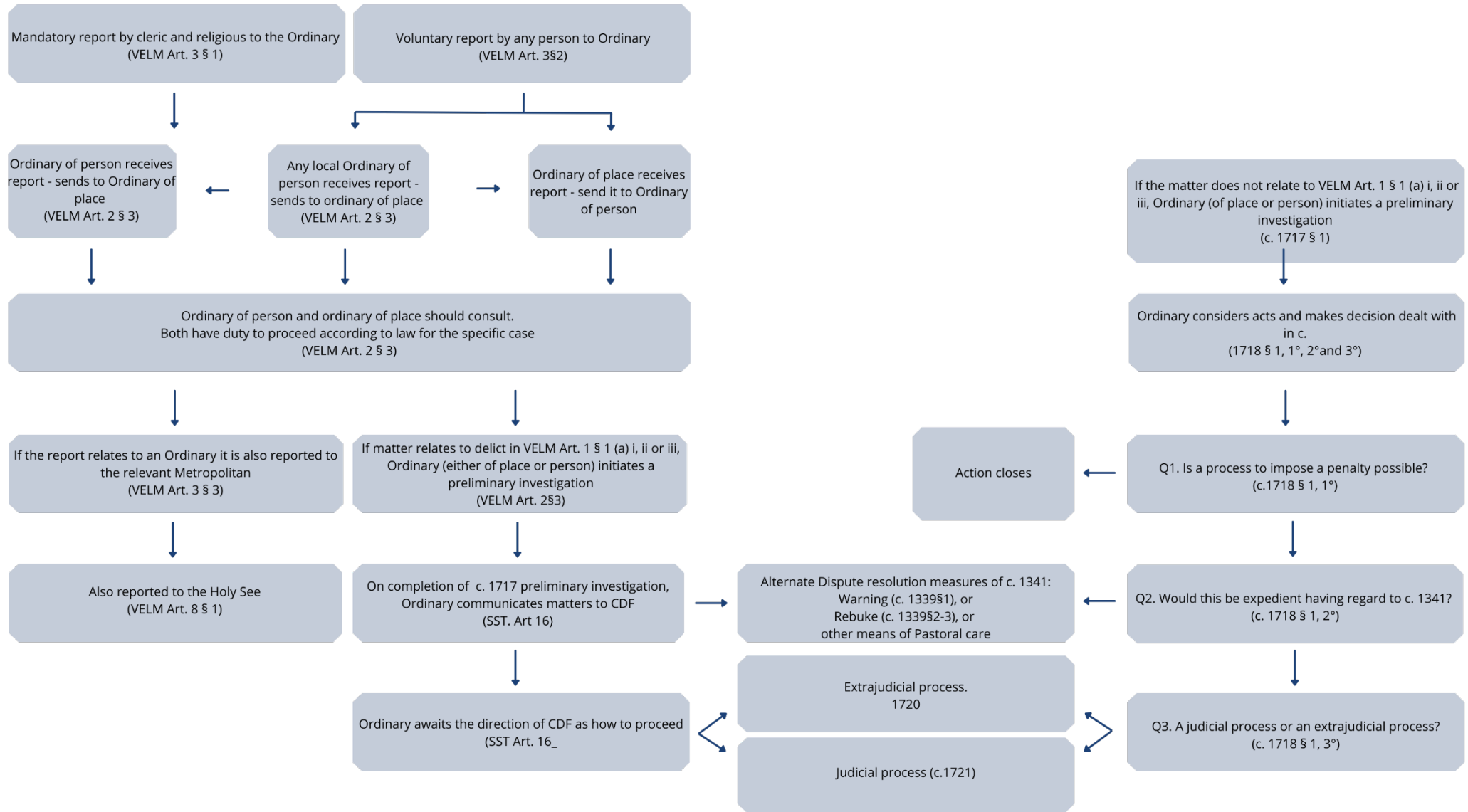
- a. The result of a penal process can be (VM 84):
  - i. The accused is found guilty. A penalty is then applied; or

- ii. The accused is found not guilty (acquittal); or
  - iii. The accusation is dismissed because the offence is not proven.
- b. This responds to Recommendation 16.56 of the Royal Commission.
  - c. If a cleric or religious is found guilty of the offence, he can accept the verdict and suffer the penalty – which, if a cleric, can include dismissal from the clerical state – or they can appeal the decision to the CDF. The final decision of the Holy Father cannot be appealed.
  - d. Only in those cases where conviction is the decision can a penalty be imposed. The most serious penalty is dismissal from the clerical state, authorised only by the CDF. Other penalties are penal remedies, penances and public rebukes (CIC Cann 1339-1340, CCEO Can 1427; VM 83).
  - e. Depending on the type of penal process, a cleric who is found guilty can appeal (take recourse) to his Ordinary or the CDF. There is no appeal against a decision personally made by the Pope, (CIC Cann 333 §3, 1628-1640, CCEO Cann 45 §3, 1309-1321; VM 119, 142- 149,151-154).
  - f. In the case of a cleric whose penal process declares the result either acquittal or dismissal (not proven), the Ordinary cannot impose any kind of penalty. It will normally be the practice to restore the cleric to ministry (acquittal) or to caution him (not proven) if the Ordinary so decides (CIC Can 1348).

#### 4.7.5 Stages 6 and 7: Address and Communicate Outcomes and Continuous Improvement

- a. All canon law mechanisms and processes must be in place for a dignified, compassionate, respectful and supportive engagement for all people involved in the process (VELM Art 5). All engagement by Church Authorities and entities with persons raising a concern or allegation must occur with a comprehensive understanding of the nature and impact of institutional child abuse and the cultural needs of those affected. It is essential that Church Authorities and entities engage with people in a respectful way that acknowledges the abuse was not their fault.
- b. Church Authorities must avoid the retraumatisation of those affected during processes of engagement, with awareness and acknowledgement of potentially harmful associations with the Church, its personnel, settings and practices. VELM (Art 12 §3) requires that when it is necessary to hear from a child or a vulnerable person, appropriate procedures are to be adopted which take into account their status.
- c. Access to therapeutic support during each and every process in response to an allegation of abuse must be offered at the outset and provided throughout the process. Therapeutic support provided during an investigation or redress process is separate to any entitlement to counselling, psychological and/or psychiatric care as part of the outcome of a response process (VELM Art. 12 §3).

### 4.7.6 Flow Chart



#### 4.7.7 Further Guidance

- a. For more on CIC, see [https://www.vatican.va/archive/ENG1104/\\_INDEX.HTM](https://www.vatican.va/archive/ENG1104/_INDEX.HTM)
- b. For more on CCEO, see [https://orthocath.files.wordpress.com/2010/01/1990\\_code\\_of\\_canons\\_of\\_the\\_eastern\\_churches.pdf](https://orthocath.files.wordpress.com/2010/01/1990_code_of_canons_of_the_eastern_churches.pdf)
- c. For more on SST, see [http://www.vatican.va/content/john-paul-ii/en/motu\\_proprio/documents/hf\\_jp-ii\\_motu-proprio\\_20020110\\_sacramentorum-sanctitatis-tutela.html](http://www.vatican.va/content/john-paul-ii/en/motu_proprio/documents/hf_jp-ii_motu-proprio_20020110_sacramentorum-sanctitatis-tutela.html)
- d. For more on VELM, see [http://www.vatican.va/content/francesco/en/motu\\_proprio/documents/papa-francesco-motu-proprio-20190507\\_vos-estis-lux-mundi.html](http://www.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio-20190507_vos-estis-lux-mundi.html).

See also the website of the Australian Catholic Bishops Conference, <https://catholic.org.au/vosestisluxmundi>.

The online portal provides the relevant documents and reporting instruments for the implementation of VELM in Australia. The link and the related documents should be accessed during each canonical response process to comply with all relevant reporting obligations and documentary processes as set out in this document.

- e. For more on VM, see [http://www.vatican.va/roman\\_curia/congregations/cfaith/documents/rc\\_con\\_cfaith\\_doc\\_20200716\\_vademecum-casi-abuso\\_en.html](http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20200716_vademecum-casi-abuso_en.html)

## Glossary & Definitions

**Acts of the investigation:** In canon 1717, a preliminary investigation or an investigation under Art. 12 Vos Estis Lux Mundi, the acts of the investigation is the documentary record of the investigation which is in the nature of a brief comprising the witness depositions, other documentary evidence, the recommendations (or observations) of the investigator and copies of the decrees opening and closing the investigation.

**Apostolic Nuncio:** The Apostolic See's diplomatic representative in a foreign country such as Australia. The Apostolic Nuncio is also the Pope's personal representative to the local Church of that country. Always an archbishop.

**Apostolic See:** The central government of the Catholic Church, consisting of the Pope and the various bodies that make up the Roman Curia. It is a non-territorial institution, but also a sovereign entity recognised under international law. It operates from the Vatican City State, which is an independent sovereign territory.

Also referred to as the Holy See. The Apostolic See is often informally referred to as "the Vatican".

**Australian Catholic Bishops Conference (ACBC):** The assembly of the Catholic bishops of Australia, established to provide a structure in which the bishops jointly exercise certain pastoral functions.

**Australian Catholic Safeguarding Limited (ACSL):** A company set up by the leadership of the Catholic Church in Australia to assist Church Authorities to meet their safeguarding and professional standards responsibilities towards children and vulnerable adults. The company was formerly known as Catholic Professional Standards Limited.

**Bishop (diocesan):** A cleric appointed to lead a diocese.

**Briginshaw v Briginshaw:** In essence, the principle stands for the proposition that more convincing evidence is necessary to meet the standard of proof where an allegation is particularly serious, or unlikely to have occurred.

**Canon law:** The revised Code of Canon Law promulgated by Pope John Paul II in 1983 and the Code of Canons of the Eastern Churches as promulgated in 1990 and any other universal or particular legislation promulgated by the competent ecclesiastical authority.

**Canonical Steward:** the person or other entity canonically responsible for the Catholic entity.

**Child/ren:** Individuals under 18 years of age

**Child abuse:** As outlined in the NCSS, there are different legal definitions of child abuse in Australia. Most commonly, the categories of child abuse include sexual, physical, psychological, neglect, ill-treatment, exploitation and exposure to family violence.

The following provides general definitions only. For specific legal definitions related to your State or Territory, consult: <https://aifs.gov.au/cfca/publications/reportingabuse-and-neglect>

Child abuse, when referenced throughout the NCSS includes:

- physical abuse refers to any non-accidental physically aggressive act towards a child. Physical abuse may be intentional or may be the inadvertent result of physical punishment. Physically abusive behaviours include shoving, hitting, slapping, shaking, throwing, punching, biting, burning and kicking;
- sexual abuse refers to a person who uses power, force or authority to involve a child or young person in any form of sexual activity. This can involve touching or no contact at all. This may take the form of taking sexually explicit photographs or videos of children, forcing children to watch or take part in sexual acts and forcing or coercing children to have sex or engage in sexual acts with other children or adults;
- neglect refers to a failure by a caregiver to provide the basic requirements for meeting the physical and emotional development needs of a child. Physically neglectful behaviours include a

failure to provide adequate food, shelter, clothing, supervision, hygiene or medical attention;

- psychological abuse refers to inappropriate verbal or symbolic acts and a failure to provide adequate non-physical nurture or emotional availability. Psychologically abusive behaviours include rejecting, ignoring, isolating, terrorising, corrupting, verbal abuse and belittlement;
- exposure to family violence is generally considered to be a form of psychologically abusive behaviour, where a child is present (hearing or seeing) while a parent or sibling is subjected to physical abuse, sexual abuse or psychological maltreatment, or is visually exposed to the damage caused to persons or property by a family member's violent behaviour; and
- grooming refers to a pattern of behaviour aimed at engaging a child as a precursor to sexual abuse. It includes establishing a "special" friendship or relationship with the child. Grooming can include the conditioning of parents and other adults to think that the relationship with the child is "normal" and positive. The process can take as little as a few days or as long as months or even years.

**Church Authority:**

- The bishop (or Archbishop, as appropriate) of a diocese or its administrator from time to time.
- the Australian Major Superior in respect of religious institutes; or
- the Canonical Steward in relation to a particular Catholic entity in respect of other Catholic entities other than referred to above.

**Church entity:** A diocese, religious institute or other Catholic agency including social welfare, health or educational institutions.

**Church personnel:** A cleric, member of a religious institute or other person (other than a cleric or a member of a religious institute) who is employed by the entity or engaged on a contract, subcontract, voluntary or unpaid basis.

**Cleric:** A person who is a member of the clergy.

**Conflicts of interest:** Situations where a conflict arises between a person's official duties and their private interests, which could influence the performance of those official duties. Such conflict generally involves opposing principles or incompatible wishes or needs. Conflicts of interest can be actual or perceived. A conflict of interest arises when a person acting in their official capacity within a Church entity is in a position to derive either a personal or professional benefit, or for their organisation to derive a benefit, from actions or decisions made in their official capacity which runs contrary to the ethos and spirit of the Protocol.

**Congregation of the Doctrine of the Faith (CDF):** The dicastery of the Roman Curia responsible for promoting and safeguarding official Catholic Church teaching. Formerly known as the Holy Office. It currently has jurisdiction over cases of child sexual abuse by clergy and other grave crimes.

**Complainant:** Any person who makes a complaint that may include any allegation, suspicion, concern or report of a breach of the Church entity's code of conduct. It also includes disclosures made to an institution that may be about, or relate to, abuse in the entity's context.

**Decree:** A decree can be legislative or executory. A legislative decree is an act of legislative power and binds those to which it applies as a law.

An executory decree is an act of the executive power of an administrator.

**Delict:** A canonical crime pursuant to penal law.

**Dicastery:** A department of the Roman Curia.

**Fraternal correction (reproof):** One of the alternatives to a penal judicial trial or extrajudicial process recommended by canon 1341. Fraternal correction (a Gospel-inspired practice) is to be employed when it will sufficiently repair the scandal, restore justice and reform the offender.

**Institutes of Consecrated Life and Societies of Apostolic Life:** Two categories of religious communities where members live the religious life



according to the evangelical counsels of poverty, chastity and obedience. In the former, members take vows. In the latter, the members make promises or other forms of commitment.

**Leaders:** Personnel who are responsible for important governance decisions within a Church entity and/or who lead and coordinate Church improvement initiatives.

**Metropolitan:** An Archbishop who presides over an ecclesiastical province. A Metropolitan is also Archbishop in his own diocese. The subordinate dioceses of a province are known as suffragan dioceses, and their Bishops as suffragan Bishops.

For example, the Archbishop of Brisbane is also the Metropolitan of the Province of Brisbane which includes all of Queensland. The dioceses of Townsville, Cairns, Rockhampton and Toowoomba are suffragan dioceses. Metropolitans have certain limited powers in relation to the affairs of suffragan dioceses, which are set out in canon law.

**Norms on the More Serious Crimes (CDF), Article 6:** The substantive and procedural norms promulgated by the Motu Proprio, Sacramentorum sanctitatis tutela (2010).

**Ordinary:** The Roman Pontiff, diocesan Bishops and all who, even for a time only, are set over a particular Church or a community equivalent to it, as well as those who in these have general ordinary executive power, that is, vicars general and episcopal vicars; likewise, for their own members, it means the Major Superiors of clerical religious institutes of pontifical right and of clerical societies of apostolic life of pontifical right, who have at least ordinary executive power.

**Ordinary of person:** The Ordinary who has responsibility for the cleric or religious who is the subject of the allegation.

**Ordinary of place:** The Ordinary who has responsibility for the particular Church or equivalent where the alleged incidences of abuse are reported to have occurred.

**Penal extrajudicial procedure:** Administrative penal procedure dealt with in canon 1720.

**Penal judicial process:** Penal judicial trial conducted as an ordinary judicial trial following the procedure outlined in canons 1501-1655.

**Penal law:** The canonical law and procedure that governs the response to all putative canonical crimes or “delicts”.

**Person-centred approach:** A person-centred approach is where the person is placed at the centre of the service and treated as a person first. The focus is on the person and what they can do, not their condition or disability.

Support should focus on achieving the person’s aspirations and be tailored to their needs and unique circumstances. A person-centred approach should support and enable a person to build and keep control over their life by:

- Supporting the person, at the “centre of the service”, to be involved in making decisions about their life;
- Taking into account each person’s life experience, age, gender, culture, heritage, language, beliefs and identity;
- Requiring flexible services and support to suit the person’s wishes and priorities;
- Being strengths-based, where people are acknowledged as the experts in their life with a focus on what they can do first, and any help they need second;
- Including the person’s support networks as partners.

**Pope:** The Bishop of Rome and leader of the worldwide Catholic Church. The Pope is elected by the College of Cardinals.

**Preliminary investigation:** An investigation pursuant to canon 1717 §1 (1983 CIC) and issued by decree. A preliminary investigation is required for all putative canonical crimes or “delicts” pursuant to penal law, whether described in Article 1§1(a) of Vos Estis Lux Mundi or not, where the relevant Ordinary has knowledge of a putative delict which has at least the semblance of truth.

**Putative delict:** A putative (supposed or alleged) canonical crime or “delict” pursuant to penal law,

whether described in Article 1§1(a) of Vos Estis Lux Mundi or not.

**Religious:** A member or members of a religious institute of the Catholic Church.

**Religious institute:** An entity within the Catholic Church whose members commit themselves through religious vows to lead a life of poverty, chastity and obedience. Societies of apostolic life resemble religious institutes in that their members also live a life in common. They do not take religious vows but live out the apostolic purpose of the group. Many religious institutes and societies of apostolic life are commonly referred to as orders or congregations.

**Respondent:** An individual who is the subject of a concern or allegation of abuse.

**Risk assessment(s):** In the context of the Protocol, an assessment that determines whether, as a result of a concern or allegation about the abuse of a child, any risk of potential harm to children or exists and to identify what steps should be taken to mitigate any risk. An initial risk assessment needs to be conducted when the concern or allegation is first raised to identify and minimise any risk to children. Ongoing risk assessments need to be conducted throughout all investigations.

**Sacramentorum sanctitatis tutela (2010):** The motu proprio of Benedict XVI which restated the law in norms, both substantive and procedural, to be observed concerning the graver delicts reserved to the Congregation for the Doctrine of the Faith.

**Safeguarding committee:** A committee established to advise and support the Church Authority on all matters relating to safeguarding, including the development and implementation of a safeguarding plan and coordination of annual self-audits at a local level. Committee members need relevant and varied professional expertise in relation to, but not limited to safeguarding, child protection, organisational culture and structure, and policy development, and membership must include lay women and men. Some members need to be independent and external and accordingly not employed by or members of the Catholic Church Authority.

**Spiritual abuse:** Abuse that is perpetrated by an individual in a position of authority and trust within the Church, supposedly in the name of God. It can cause a lifelong loss of faith and/or feel distanced from the Church.

**Therapeutic support:** Access to professional counselling and/or psychological services.

**Trauma Informed Response** Response from service providers that recognises and acknowledges the prevalence, impact and dynamics of trauma. This approach views the person as having been harmed by something or someone. It is located in an understanding of the neurological, biological, psychological and social effects of trauma and interpersonal violence and the prevalence of these experiences in those receiving mental health support (Bateman et al 2013:9).

**Best practice principles:**

- Safety — Ensure physical and emotional safety;
- Trustworthiness — Maximise trustworthiness through task clarity, consistency, and interpersonal boundaries;
- Choice — Maximise persons choice and control;
- Collaboration — Maximise collaboration and sharing of power;
- Empowerment — prioritise empowerment and skill building (Kezelman & Stavropoulos 2012:10).

**Vos Estis Lux Mundi (2019):** The motu proprio of Pope Francis that details the reporting obligations of clerics and members of Institutes of Consecrated Life and Societies of Apostolic Life (lay religious) regarding crimes of sexual abuse committed by clerics (including Bishops) and members of Institutes of Consecrated Life and Societies of Apostolic Life, and the concealing of crimes of sexual abuse by Bishops, Archbishops and Major Superiors.

**Vulnerable Adult:** any person in a state of infirmity, physical or mental deficiency, or deprivation of personal liberty which, in fact, even occasionally, limits their ability to understand or to want to otherwise resist the offence

