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The Honourable Georgie Crozier MLC
Chair
Family and Community Development Committee
Parliament House
Spring Street
MELBOURNE VIC 3000
Email: fcdc@parliament.vic.gov.au

Dear Ms Crozier

I write concerning the submission made by Chief Commissioner, Ken Lay, on behalf of Victoria Police to the Inquiry into the handling of child abuse by religious and other non-government organisations.

The submission raises a number of serious matters that have not previously been raised by the police in correspondence or in meetings – which have been consistently cordial – between the Independent Commissioner, representatives of the Melbourne Archdiocese and senior police.

Scope of Victoria Police Submission

The Victoria Police submission acknowledges that allegations of child abuse perpetrated by persons from religious organisations are a relatively small percentage of Victoria Police's child sexual assault investigations. Nevertheless, given the serious criticisms made of the Church in the police submission, it is perplexing that no detailed information, statistics or analysis have been included in that submission.

Offences considered by Victoria Police

In our submission, *Facing the Truth*, the Catholic Church in Victoria records the number of complaints of criminal abuse upheld under the *Melbourne Response* and *Towards Healing* against children by decade of incident. The information contained in Appendix 3 is consistent with the statement in the Police submission that offending was more prevalent in the 1960s, 1970s and 1980s with the majority of offences reported relating to the 1970s, and very few offences relating to the period since 1990.

The Victoria Police submission refers to offences relating to other Churches and faiths and to current investigations in the Jewish education system, but provides no further information or comments that would assist the Inquiry in its deliberations.



Clergy Offenders

In Section 1, the submission from Victoria Police notes that in the last 15 years “over 30 religious leaders have been convicted of child sexual offences within Victoria”. It is not clear whether Victoria Police are referring only to the Catholic Church or religious organisations more generally. To the best of my knowledge, whilst some priests and religious personnel have been convicted, no Bishop or leader of a religious congregation of the Catholic Church in Victoria has been convicted of child sexual offences.

In the case of the Archdiocese of Melbourne, I can advise that 14 priests have criminal convictions for the abuse of children and that eight of the 14 have been laicised with four of the 14 now deceased

Facing the Truth deals in some detail with the Church’s relationship with and reporting to Victoria Police (see Sections 8.13, 9.5 and Chapter 16). The submission makes clear that both the *Melbourne Response* and *Towards Healing* encourage victims to report criminal abuse to the police.

Many victims who have engaged with the *Melbourne Response* and *Towards Healing* have already exercised their rights to report matters to the police or have done so subsequently, often as a result of the encouragement and assistance provided to them by the Church. The reasons the Church has not itself reported complaints to Victoria Police are explained in detail in our submission.

Of the cases addressed through the *Melbourne Response*, (as at July 2012) 100 involved allegations against priests who were deceased at the time of the complaint. Another 99 involved complaints that had been referred to police by the victims, the majority before the victim approached the Church and some afterwards. The reasons why the remaining victims did not go to the police are varied and are summarised in section 16.6 of *Facing the Truth*.

The complaint that the Archdiocese has not itself reported matters to the police was raised for the first time by Deputy Commissioner Ashton in the media in April 2012. I have corresponded with Mr Lay about this issue twice since, and we respond in detail in sections 16.8 and 16.12 of *Facing the Truth*. We also set out the Victorian legal situation in section 16.2. Importantly, in sections 8.13 and 16.5 we refer to our attempts to develop a reporting mechanism with Victoria Police, in the absence of a legislative framework, that would strike the appropriate balance on this difficult issue, taking into account the desire of many victims for confidentiality.

An important issue for the Inquiry and Victoria Police to address is what needs to be done to encourage victims to report their abuse to the Police, and to ensure that those who do so have a reasonable prospect of securing a conviction through the criminal justice system. This is particularly relevant when one considers the low rates of reporting child sexual assault to the police that is described in reports such as the 2005 Australian Bureau of Statistics *Personal Safety Survey Australia* and in the submission by Bravehearts Inc to the Inquiry. Concern about this issue is reinforced by the decline in conviction rates of sexual offenders in 2009/10 compared to five years earlier, as identified by the Department of Justice and referred to in the submission of the Law Institute of Victoria.



It is relevant to note that of the cases reported to the *Melbourne Response* that fall within the Inquiry's terms of reference, over 97% have been upheld in favour of the victim.

Church Inquiry Processes

The Catholic Church acknowledges that the police are the appropriate authority to investigate criminal conduct. As noted in *Facing the Truth* victims are encouraged to report criminal conduct to the police. A Church process is only undertaken if the victim clearly states that they do not wish to report the matter to the police. If the victim elects to take the matter to the police after a Church process has commenced, the Church process is suspended until the police investigation and any resulting proceedings have concluded.

I emphasise that victims who do go to the police are in no way precluded from then seeking assistance – including compensation or reparation – through the Church processes. Equally it is not correct that the Church offers financial incentives to victims to avoid the criminal justice system.

I note that other submissions lodged with the Inquiry confirm our first-hand experience that not all victims share Victoria Police's views about their interview techniques. Undoubtedly no system is perfect, which is why the Church processes place the emphasis on empowering victims to make the choice.

Claims are also made by Victoria Police about the skills and competency of those engaged by the Church to assist the victims of criminal abuse. Both Independent Commissioners under the *Melbourne Response* are very experienced Senior Counsel who have worked across all courts and dispute resolution processes. All former chairs of the Compensation Panel have become eminent judges and the current Chair is a senior QC. In *Towards Healing*, some assessors are former and experienced police officers.

In relation to the reference in the police submission offering to provide the Church with a briefing on its new investigative techniques, I note that I accepted that invitation in a letter sent to Mr Lay before the police submission was published on the Inquiry website.

A further inaccuracy is the suggestion that victims are not permitted to have legal representation under the Church processes. This is wrong, as reflected by the submissions to the Inquiry lodged by a number of law firms. Clause 41.4 of *Towards Healing* makes express reference to the Church's commitment to fund a victim's legal advice in relation to deeds of release.

In Section 3.3 of their submission, the Police include a copy of a letter from the Independent Commissioner at Appendix A, as an example alleging the provision of inappropriate and perhaps incorrect advice to complainants. The Committee should be aware that this letter was to a person whose complaint falls outside the scope of the Inquiry, because it relates to the alleged abuse of an adult woman by a priest. The Police submission does not state that the views of the Independent Commissioner expressed about this complaint were later vindicated when the Director of Public Prosecutions discontinued the prosecution in this case. The Church rejects the interpretation made by Victoria Police in relation to the letters at Appendix A and B of its submission.



Section 8.10 of ***Facing the Truth*** makes clear that victims whose claims are resolved under the *Melbourne Response* have never been bound by any confidentiality restrictions whatsoever. These victims have never been bound to confidentiality in discussing the abuse, identifying the offender or criticising the Church. For those victims who have settled claims outside the *Melbourne Response*, and who have agreed to confidentiality about the details of the settlement, the Archdiocese has sought to reassure them that they are not restricted in any way from making submissions to the Inquiry. The position in relation to *Towards Healing* is set out at Section 9.9 of ***Facing the Truth***.

I am unaware of any of the instances of misleading information being provided to police by “church administration”, or of a reported reluctance to provide information under warrant to Victoria Police. In my experience since 1996 as Vicar General and then Archbishop of Melbourne, I have no knowledge of the Independent Commissioner or the Archdiocese being anything other than cooperative and properly responsive in their dealings with Victoria Police. If police have evidence to the contrary, I would ask that they make that evidence available, along with details where “similar issues to varying degrees” are said to have occurred.

The police submission claims that in 2009 the Church alerted an offender to a police investigation, who then destroyed evidence. I understand this was alleged to be on his computer. Yet there was evidence that confirmed the last occasion the computer of the alleged offender had been accessed was well before the Independent Commissioner wrote a letter to the priest’s solicitors, stating he was ceasing investigation because the matter had been referred to the police. Mr O’Callaghan would be able to provide more information about this matter if and when he attends before the Committee.

Because of police concerns about this incident we sought discussions between the Archdiocese and Victoria Police, referred to in Section 8.13 of ***Facing the Truth***. These discussions led us to revise the Terms of Reference for the Independent Commissioner, which were announced with the explicit approval of Victoria Police.

Policies and Procedures for Dealing with Allegations

In relation to the liaison arrangements between the Archdiocese and Victoria Police, referred to in Section 4 of the Police submission, I refer you and the Committee to Section 8.13 and Chapter 16 (particularly Section 16.5) of ***Facing the Truth***.

Proposals for Law Reform

The Church explicitly supports the role of Victoria Police as the appropriate authority to investigate criminal activity. I am unaware of the Church having deliberately impeded police investigations. The Church accepts its obligations under civil law and should obey all laws which apply to it. If we do not, we should be held to account rather than being subjected to generalised assertions that we cannot address or correct. In relation to the Sex Offenders Registry, I assure you that the Church does not move offenders in contravention of restrictions that are placed on them.



The Church accepts its obligation to assist Victoria Police in their task, and consistently cooperates with them. It encourages victims to report their complaints to police, assists them in doing so, and has made constructive proposals to facilitate this in the future. However, the Church believes that it also has an obligation to treat with respect and uphold the rights of those victims who do not wish to approach the police; it would be unconscionable to compel them to make a report to police against their will (see Section 16.5 of *Facing the Truth*).

If Victoria Police has evidence that the Church of today deliberately conceals evidence or impedes investigations, or conceals or facilitates child sexual assault, of course this should be investigated and I am puzzled why this has not already been done under existing laws.

The submission by the police portrays the Church as being uncooperative and obstructive towards Victoria Police. I do not think that is the case. I am willing to provide any further clarification that your Committee would find helpful.

In view of the widespread reporting of what I believe to be unfair criticism of the Church and of the Independent Commissioner, I respectfully request the Committee accept this letter as a supplementary submission to be published on your website prior to the commencement of the public hearings.

Yours sincerely in Christ

ARCHBISHOP OF MELBOURNE

Copy to: *Members of the Family and Community Development Committee*
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Mrs Andrea Coote
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Mr Frank McGuire
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