



Report of the Scoping Inquiry into Historical Sexual Abuse in Day and Boarding Schools Run by Religious Orders

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Chapter 19:

Critical Analysis of Previous Inquiries' Impact on Policy and Practice

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A. Introduction

1. The Scoping Inquiry's Terms of Reference direct us to consider the impact of previous inquiries on policy and practice, including in the area of child protection. In performing this task, we have been greatly assisted by the expert report provided by Dr Helen Buckley, Child Protection Consultant and Fellow Emeritus of the School of Social Work and Social Policy of Trinity College, Dublin.¹
2. It should be noted at the outset that the causal links between recommendations made by inquiries and the implementation of reforms are not always clear. This is because some of the policy reforms contemplated by the recommendations have already been formulated before or during the currency of the inquiry, and the inquiry recommendation provides the impetus required to implement or resource it.² On other occasions, the recommendation may be implemented but in a different way than that anticipated, again obscuring the link between an Inquiry's recommendation and the implementation of the measure.
3. Where a structured system of implementation of an Inquiry's recommendations is established, identifying the implementation and impact of recommendations is made easier. For example, following the publication of the Report of the Commission to Inquire into Child Abuse ('CICA'), (for the purposes of this chapter hereinafter referred to '**the Ryan Report**'), the Minister for Children and Youth Affairs established the Ryan Report Implementation Group. This group analysed the recommendations of the Report and identified a series of actions in relation to each one.³
4. It should be acknowledged that apart from the issue of implementation, a difficulty lies in assessing the operational impact of changes in policy and practice. As Dr Buckley points out, it is more difficult to assess how recommendations have been operationalised on the ground.⁴ For the most part, the Scoping Inquiry is not in a position to offer detailed comment on how all of the recommendations have been operationalised on the ground.

1 Dr Helen Buckley, *Report on child protection for the Scoping Inquiry into Historical Sexual Abuse in Schools run by Religious Orders*. Dr Buckley's report is set out at Appendix 4.

2 Dr Helen Buckley, *Report on child protection for the Scoping Inquiry into Historical Sexual Abuse in Schools run by Religious Orders*, p. 18.

3 Ibid, pp. 21 – 22. Dr Buckley further notes that the Minister published an implementation report that laid out 99 actions to be completed with timelines, identifying reforms that were already underway, as well as current deficits in policy and services. It was then possible to measure how far the actions were addressed during the first few years following publication of the report.

4 Ibid, pp. 29.

B. Legislative reforms arising from inquiries

(i) Mandatory reporting

5. The 1993 Kilkenny Report was the first to recommend that there should be a legal obligation on persons responsible for the care of children to report suspected cases of child abuse to the relevant Health Board (as it then was). Further, it was recommended that there should be immunity from legal proceedings for such persons who reported suspicions of child abuse in good faith. The Kilkenny Report recommended that failure to report child abuse should become an offence.⁵
6. The Kilkenny Report further identified that the Guidelines on Procedures for the Identification, Investigation and Management of Child Abuse, issued by the Department of Health in 1987, were not being implemented uniformly by Health Boards and recommended that the Minister for Health prepare revised procedures for dealing with child abuse, to be given statutory effect under the provisions of ss. 68 and 69 of the Child Care Act 1991. It recommended that these revised procedures should include, *inter alia*, a mandatory system of reporting.⁶
7. Following the Kilkenny Report, mandatory reporting was discussed and debated, but it was felt that its disadvantages outweighed its advantages, and it was not introduced at that time. However, the recommendations of the Kilkenny Report providing for immunity for persons reporting child abuse in good faith were introduced, in the form of the Protections for Persons Reporting Child Abuse Act 1998.⁷
8. Further, in 1999, the Children First: National Guidelines for the Protection and Welfare of Children were adopted by the Department of Health and Children as a national policy document. This sets out guidelines for individuals and agencies who have contact with or provide services to children in respect of identifying and reporting child abuse. However, as a policy document, it did not introduce mandatory reporting, but provided guidance as to how child abuse should be identified and reported.

5 McGuinness et al, *Report of the Kilkenny Incest Investigation* (1993) pp. 99-101.

6 *Ibid*, pp. 96-97.

7 The 1998 Act provides immunity from civil liability to a person who communicates their opinion that a child has been or is being subject to abuse provided that he or she has acted reasonably and in good faith in making such communication.

9. The inquiries that followed in the 2000s did not, in fact, in specific terms, recommend a system of mandatory reporting be adopted on a legislative basis. Recommendations were instead made in more general terms. The Ferns Report recommended that every effort should be made by legislation and publicity to promote a more open environment of prompt reporting of inappropriate sexual behaviour towards children⁸ and endorsed the system of mandatory reporting which was voluntarily adopted by the Catholic Church in its Framework Document of 1996.⁹ Further, it was recommended that every person to whom a complaint of child sexual abuse is made, be it a member of the public authorities or a member of the clergy, should immediately create a written record of the complaint.¹⁰ Many professional organisations and employers made it a condition of registration, membership and employment that suspected child abuse should be reported to the relevant authority.
10. The Ryan Report recommended that the Children First guidelines should be uniformly and consistently implemented throughout the State in dealing with allegations of abuse.¹¹ Further, the Report highlighted that childcare services depend on good communication between all departments and agencies responsible.¹² The Ryan Report recommended that overall responsibility for this process should rest with a designated official.
11. In addition, the Ryan Report made a number of broader recommendations in respect of the implementation of the regulatory framework governing child sexual abuse in schools; it was recommended that rules and regulations be enforced, breaches be reported, and sanctions applied, and further that a culture of respecting and implementing rules and regulations and of observing codes of conduct should be developed.¹³
12. Although not specifically recommended by the Ryan Report, the action plan set out in the First Progress Report of the Ryan Report Implementation Plan outlined that legislation should be drafted to provide that all staff employed by the State and staff employed in agencies in receipt of State funding have a duty to comply with the Children First national guidelines.¹⁴

8 Murphy et al, *Ferns Report* (2005) p. 263.

9 Ibid, p. 264.

10 Ibid, p. 263.

11 Ryan et al, *Report of the Commission to Inquire into Child Abuse* (2009) p. 464.

12 Ibid, p. 463.

13 Ibid, pp. 462 and 463.

14 Ryan Report Monitoring Group, *Report of the Commission to Inquire into Child Abuse 2009 Implementation Plan: First Progress Report* (July 2010), p. 19, Action 85.

13. In 2010, the Ombudsman for Children published an investigation into the implementation of the Children First guidelines and was highly critical in her findings. The investigation found that there was a failure to ensure clarity and consistency regarding the basis for reporting abuse concerns across the Health Service Executive ('HSE') and that there was a lack of consistency in implementation in respect of the investigation of child protection issues.¹⁵
14. Following the publication of the Cloyne Report in 2011, the Minister for Children and Youth Affairs announced her intention to introduce mandatory reporting on a legislative basis.¹⁶ Whereas other inquiries had dealt with earlier periods of time when complaints of abuse were made, the Cloyne Report dealt with incidents of abuse complained of between 1996 and 2004. This was a period when child abuse was known about, and the Catholic Church had introduced its own guidelines as to the handling of abuse allegations, including requiring allegations of child abuse to be reported to the relevant authorities, and for steps to be taken to protect the child complainant. The Cloyne Report found that the diocese of Cloyne had failed to comply with Catholic Church's 1996 voluntary guidelines as to the handling of child sexual abuse allegations. That finding caused considerable disquiet and was instrumental in the decision to introduce mandatory reporting.
15. In the following years, legislation was introduced to place mandatory reporting on a statutory footing. The Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Act 2012 provides that a person shall be guilty of an offence if they know or believe that a scheduled offence has been committed against a child or vulnerable person and fail, without reasonable excuse, to disclose that information to An Garda Síochána as soon as reasonably practicable.¹⁷
16. The Children First Act 2015, which came fully into effect on 11th December 2017, places obligations to report on certain categories of persons who have contact with children, such as clergy, teachers and others, who are referred to in the legislation as a "mandated person".¹⁸

15 Ombudsman for Children, *A report based on an investigation into the implementation of Children First: National Guidelines for the Protection and Welfare of Children* (2010) pp. 55, 59-65.

16 "The days of voluntary compliance are over when it comes to child protection"; Speech by Minister Frances Fitzgerald T.D., Publication of Cloyne Report, 13th July 2011, available at <https://merrionstreet.ie/en/category-index/speech-by-minister-frances-fitzgerald-publication-of-cloyne-report-13th-july-2011.40043.shortcut.html>.

17 For a detailed account of the offences covered by this Act and the reporting obligations arising, see Chapter 20.

18 The provisions of the 2015 Act are discussed in detail in Chapter 20.

17. It seems that the impetus for the introduction of mandatory reporting was the findings of previous inquiries. Walsh has identified that parliamentary debates in the Oireachtas on both items of legislation were motivated by the findings of previous inquiries into institutional abuse.¹⁹ Dr Buckley's view is that the Cloyne report was the final catalyst to the introduction of mandatory reporting, together with years of advocacy for its introduction by NGOs, in particular the Children's Rights Alliance.

(ii) Sharing of 'Soft' Information on Child Sexual Abuse Allegations

18. Soft information is information consisting of suspicions or allegations of misconduct. A number of inquiries have recommended the sharing of such information between relevant agencies and bodies, in view of the commonly cited position that a large number of persons often had concerns or suspicions regarding certain individuals prior to any specific finding of child sexual abuse.

19. In this regard, the Ferns Report recommended the holding of inter-agency meetings between the HSE, the Gardaí and the relevant Diocese, in the case of clerical child sex abuse. The Ferns Report further recommended that the authorities at this meeting should raise and share suspicions, rumour or innuendo in relation to misconduct of any member of the clergy.²⁰ It was further recommended that all documents in relation to allegations, rumours or suspicions of child sexual abuse created or maintained by these authorities should attract by law the same right of disclosure on an Order for Discovery as that conferred on State documents under the title 'Executive Privilege'.²¹

20. The Murphy Report noted that in October 2005, a committee was established by the HSE to implement the formation of inter-agency review groups of the kind described in the Ferns Report, but that the HSE had indicated that it was not in a position to proceed with the proposed committees due to the difficulties that arose surrounding the legality of the discussion and the use of information that amounts to rumour, suspicion, innuendo or allegations of abuse.²² However, Dr Buckley notes that Tusla²³ is of the view that such inter agency groups are no longer necessary, due to changes in the child safeguarding landscape.²⁴

19 K. Walsh, *The Development of Child Protection Law and Policy: Children, Risk and Modernities* (Routledge, 2020), Chapter 8.

20 Murphy et al, *Ferns Report* (2005), p. 265.

21 Ibid.

22 Murphy et al, *Commission of Investigation: Report into the Catholic Archdiocese of Dublin* (2009), p. 86.

23 Tusla was established in 2014 and took over responsibility for child care from the HSE.

24 See Dr Helen Buckley, *Report on child protection for the Scoping Inquiry into Historical Sexual Abuse in Schools run by Religious Orders*, pp. 16, and elsewhere in this chapter.

21. Relatedly, the Murphy Report indicated that it considered that the law should be clarified in order to confer on the HSE a duty to communicate to relevant parties, such as schools and sports clubs, concerns about a possible child abuser.²⁵ The Murphy Report further recommended that the recording of alleged abuse by health boards²⁶ ought to be recorded by the name of the alleged abuser and by any organisation with which they are associated, rather than according to the name of the child, as was the practice at the time.²⁷
22. The Cloyne Report similarly observed that in circumstances where people had great concern about a priest's behaviour before any allegation of child sexual abuse was made, it might be of considerable assistance to centrally record any 'soft information' such as suspicions or rumours, in identifying situations which could give rise to concern.²⁸
23. These recommendations, while not given effect to via interagency meetings, appear to have been broadly implemented by way of the National Vetting Bureau (Children and Vulnerable Persons) Act 2012, which requires scheduled organisations to provide 'specified information' to the National Vetting Bureau.²⁹
24. It does not appear that the recommendation of the Ferns Report, that all documents in relation to allegations, rumours or suspicions of child sexual abuse created or maintained by authorities such as Tusla or the Gardaí should attract a form of privilege akin to executive privilege has been implemented. The procedure concerning the disclosure of 'soft information' concerning an individual under the 2012 Act, is governed by the provisions of that Act and are discussed elsewhere in this Report.³⁰

(iii) Creation of New Criminal Offences

25. Several criminal offences have been introduced as a result of the recommendations of inquiries. The Ferns Report recommended that consideration be given to the introduction of a new criminal offence which would apply where any person 'wantonly or recklessly engages in conduct that creates a substantial risk of bodily injury or sexual abuse to a child or wantonly or recklessly fails to take reasonable steps to alleviate such risk where there is a duty to act'.³¹ This recommendation was

25 Murphy et al, Commission of Investigation: Report into the Catholic Archdiocese of Dublin (2009) p. 107.

26 The Health Service Executive was established in 2005 took over the functions of the Health Boards.

27 Ibid, p. 106.

28 Murphy et al, *Commission of Investigation Report into the Diocese of Cloyne* (2010), p. 19.

29 See Chapter 20 for a discussion of these provisions.

30 Ibid.

31 Murphy et al, *Ferns Report* (2005), p. 266.

given effect by the Criminal Justice Act 2006, which provides for the indictable offence of reckless endangerment of a child.³²

26. As discussed above, the Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Act 2012 has also been implemented as part of a suite of measures taken in respect of mandatory reporting.

(iv) Powers of Tusla

27. A number of recommendations have been made by inquiries in respect of the statutory powers of Tusla, and its precursors,³³ to intervene in situations of non-familial abuse.
28. The Ferns Report first drew attention to the fact that the Child Care Act 1991 does not address the issue of protection of children from danger in the community, but is focused on the risk of harm to children in the home. The Report refers to case law that interpreted the 1991 Act³⁴ as imposing a wide duty on the Health Board (as it then was) to take appropriate measures to protect unidentified children who might be at risk in the future,³⁵ but did not provide a statutory or regulatory framework to clearly delimit the Health Board's functions in this regard.³⁶
29. The Murphy Report agreed with the analysis of the Ferns Report into the limited powers of health boards in respect of its intervention in circumstances of non-familial abuse.³⁷ Similarly, the Cloyne Report highlighted the absence of a specific statutory basis for the HSE's power to investigate non-familial abuse. The Cloyne Report recommended that statutory provisions in relation to child sexual abuse should be clear and unambiguous and should not be dependent on a purposive interpretation of the 1991 Act.³⁸

32 Section 176 of that Act. See Chapter 20 for further discussion of the 2006 Act. Oireachtas debates on this legislation indicate that this offence was introduced on foot of the recommendation of the Ferns Report: Seanad Éireann debate, 30 June 2006, Criminal Justice Bill 2004 <https://www.oireachtas.ie/en/debates/debate/seanad/2006-06-30/4>; Parliamentary Questions to Minister for Justice and Equality No. 397, 31 March 2015, <http://ipo.gov.ie/en/JELR/Pages/PQ-31-03-2015-397>.

33 Prior to Tusla's establishment in 2014, such recommendations were made as regards the HSE and, prior to that, the various Health Boards.

34 *MQ v Gleeson and Ors* [1997] IEHC 26.

35 Murphy et al, *Ferns Report* (2005), pp. 50-52.

36 *Ibid*, p. 52. The Report recommended that an in-depth study be conducted on the full remit of the HSE's powers in relation to this issue and that express statutory recognition be given to those powers.

37 Murphy et al, *Commission of Investigation: Report into the Catholic Archdiocese of Dublin* (2009), pp. 105-106.

38 Murphy et al, *Commission of Investigation Report into the Diocese of Cloyne* (2010), pp. 89-91.

30. These recommendations were not addressed for a number of years, and indeed currently remain to be implemented. As highlighted by the reports of the Special Rapporteur on Child Protection, Tusla considers that there is a lack of clarity as to its express powers under the 1991 Act to protect unidentified children from the potential risk associated with on-going contact with a person who is alleged to have abused a child in the past.³⁹
31. Following a review of the Child Care Act 1991 undertaken by the Department of Children, Equality, Disability, Integration and Youth ('DCEDIY') the Heads and General Scheme of the Child Care (Amendment) Bill 2023 were published in April 2023. These envisage that the Children First Act 2015 will be amended to provide clear statutory authority to Tusla to assess reports received from non-mandated persons and members of the public in relation to harm to a child.⁴⁰ The General Scheme has now been referred to the Office of the Attorney General for drafting.⁴¹
32. In addition, the Ferns Report identified that the Health Board, as was then responsible for the provision of child protection services, had no express statutory power to obtain or seek a court order prohibiting a person suspected of child abuse from having contact with the child otherwise than in the context of the family home. Further, the Health Board did not have statutory powers to prevent a suspected abuser from acting in a capacity such as a teacher or sports coach or a priest, occupations that would bring them into close contact with children.⁴²
33. In addition, the Ferns Report recommended that the Minister for Health and Children should review the desirability of introducing legislation empowering the High Court, on the application of the HSE or another suitable body, to bar or otherwise restrain any person from having unsupervised access to children where reasonable grounds exist for the belief that the person has abused or has a propensity to abuse children. It does not appear that that recommendation has been implemented to date.
34. Tusla introduced the Child Abuse Substantiation Procedure ('CASAP') (Tusla, 2022) guidelines to assist their staff. Dr Buckley's report observes that whilst considered to have limitations⁴³ the guidelines provide a framework for Tusla staff to investigate whether any risk is posed by persons subject to abuse allegations to known and unknown children.⁴⁴

39 Geoffrey Shannon, *Eleventh Report of the Special Rapporteur on Child Protection* (2018); O'Mahony, *Thirteenth Annual Report of the Special Rapporteur on Child Protection* (2020).

40 Department of Children, Equality, Disability, Integration and Youth, *Heads and General Scheme of the Child Care (Amendment) Bill 2023*, (April 2023).

41 See further discussion of 2023 Bill in Chapter 20.

42 Murphy et al, *Ferns Report* (2005), p. 56.

43 See Conor O'Mahony, *Annual Report of the Special Rapporteur for Child Protection 2021*; Statement by IASW July 2022.

44 Dr Helen Buckley, *Report on child protection for the Scoping Inquiry into Historical Sexual Abuse in Schools run by Religious Orders*, p. 17.

C. Reforms of childcare policy and services arising from inquiries

(i) Structural Reform

35. Although not a specific recommendation of the Ryan Report, the publication of the Report undoubtedly prompted certain structural reforms in the public sector in respect of the provision of child welfare and protection services in the State. As noted above, the Department of Children and Youth Affairs was established in June 2011, which had the effect of consolidating a range of functions that were previously the responsibilities of the Departments of Health, Education and Skills, Justice and Law Reform, and Community, Rural and Gaeltacht Affairs. This was done in an effort to improve the effectiveness of supports and services.⁴⁵
36. In addition, Tusla was established in January 2014 upon the commencement of the Child and Family Agency Act 2013, which transferred responsibility for the delivery of such support services from the HSE to a dedicated statutory agency.⁴⁶
37. It is apparent that alongside these structural reforms, the Ryan Report yielded additional resource allocation by the Government to certain child protection services. Notably, the recruitment of social workers was formally exempted from the public service moratorium on recruitment and replacement of staff, which was in place in 2010, and as a result an additional 270 social work posts were filled by 2014.⁴⁷

(ii) Standard and Reviews

38. Arising from the Ryan Report, it is evident that there were some reforms to national childcare policy beyond the legislative changes referred to above. The Report recommended first that the lessons of the past in respect of failures of systems and policy, of management and administration and of senior personnel, should be learned by the State, requiring internal departmental analysis.⁴⁸ The Ryan Report Implementation Group noted that in this regard, the Department of Education and Science completed an analysis of how the failings outlined by the Ryan Report through its senior management forum, business planning and risk register

45 Ryan Report Monitoring Group, *Ryan Report Implementation Plan: Fourth Progress Report* (December 2014), p. 2.

46 This brought together staff from the HSE, the Family Support Agency and the National Educational Welfare Board. See *ibid*, pp. 2-4.

47 Ryan Report Monitoring Group, *Report of the Commission to Inquire into Child Abuse 2009 Monitoring Group, Ryan Report Implementation Plan: First Progress Report* (July 2010), p. 13, Action 58; Ryan Report Monitoring Group, *Ryan Report Implementation Plan: Fourth Progress Report* (December 2014), p. 10.

48 Ryan et al, *Report of the Commission to Inquire into Child Abuse* (2009), p. 461.

processes. Further, it was stated that in 2010 Mr. Justice Ryan made a presentation to the Senior Management Forum on this topic following the publication of the Ryan Report.⁴⁹

39. In addition, the Ryan Report recommended that childcare policy should be child-centred, with the needs of the child being paramount, and advised that national childcare policy should be clearly articulated and reviewed on a regular basis.⁵⁰ Further, it was recommended the provision of childcare services should be reviewed on a regular basis; including reviews of out-of-home care services and of legislation, policies and programmes relating to children in care.⁵¹
40. It appears that these recommendations were implemented in large part; the Ryan Report Implementation Group identified that the Office of the Minister for Children and Youth Affairs would develop a new National Children's Strategy to cover the period 2011-2010; and as a result *Better Outcomes, Brighter Futures: the National Policy Framework for Children and Young People 2014-2020*, was published in 2014, the first children's policy framework in the State.⁵²
41. A mid-term review of this policy framework was issued in 2018 and the final report in respect of progress-tracking was published in 2022. A new policy framework for children and young people for the period 2023-2028 is in the process of development. The DCEDIY published its blueprint for this policy framework in September 2022.
42. The Ryan Report Implementation Group further notes that the HSE/Tusla adopted a suite of performance indicators targeted at providing information on how their services are performing, which were reviewed each year.⁵³ In 2016, Tusla and the Department for Children and Youth Affairs established the Outcomes for Children National Data and Information Hub, which seeks to centralise mapping outcomes, indicators and services for children and young people to inform planning and delivery of services.

49 Ryan Report Monitoring Group, *Ryan Report Implementation Plan: Fourth Progress Report* (December 2014), p. 25 (Part 2, p. 2), Action 2.

50 Ryan et al, *Report of the Commission to Inquire into Child Abuse* (2009), p. 462.

51 Ibid.

52 Ryan Report Monitoring Group, *Report of the Commission to Inquire into Child Abuse 2009 Monitoring Group, Ryan Report Implementation Plan: First Progress Report* (July 2010), p. 6, Action 22.

53 Ryan Report Monitoring Group, *Ryan Report Implementation Plan: Fourth Progress Report* (December 2014), p. 39 (Part 2, p. 17), Action 25.

43. Data and information on Tusla's child protection and welfare services is published annually in the Agency's annual *Review of Adequacy Reports*, on the adequacy of childcare and family support services available, which are issued pursuant to s 8 of the Child Care Act 1991. Monthly data is also available on Tusla's website.
44. Finally, s 9 of the Child and Family Agency Act 2013 also provides that Tusla shall in performing its functions in respect of an individual child under the Child Care Act 1991, regard the best interests of the child as the paramount consideration and shall, when planning and reviewing the provision of services ensure that consideration is given to the views of children.

(iii) Inspections

45. In respect of the inspection of services for children, the Ryan Report was prescriptive; it was stated that independent inspections were essential and that all services for children should be subject to regular inspections in respect of all aspects of their care. The Ryan Report further highlighted a number of requirements of a system of inspection, including:
 - that there be a sufficient number of inspectors;
 - that the inspectors be independent;
 - that the inspectors should talk with and listen to the children;
 - that there are objective national standards for inspection of all settings where children are placed;
 - that unannounced inspections should take place;
 - that complaints to an inspector should be recorded and followed up; and
 - that inspectors should have power to ensure that inadequate standards are addressed without delay.⁵⁴

54 Ryan et al, *Report of the Commission to Inquire into Child Abuse* (2009), p. 463.

46. The Health Information and Quality Authority (HIQA) was established by legislation in 2007 under the Health Act 2007. This Act had been passed, but was not in force, prior to the publication of the Ryan Report. The Department of Health and Children issued Standards for Children’s Residential Centres (1999) and Standards for Foster Care (2003) and these services were inspected by the Social Services Inspectorate (established in 1999), with the reports published on their website. HSE inspectors inspected residential centres run in the voluntary and private sector. The functions of the Social Services Inspectorate were incorporated into HIQA on its establishment. HIQA developed two sets of standards for approval by the relevant Minister the National Standards for the Protection and Welfare of Children, launched in 2012, and the National Standards for Residential Services for Children and Adults with Disabilities in 2013. HIQA has subsequently published National Standards for Special Care Units in 2015 and National Standards for Children’s Residential Centres in 2018.
47. The Ryan Report Implementation Group notes that a Government decision was taken in 2010 to prioritise the inspection by HIQA of all child protection services and children’s residential services, in advance of commencing the relevant sections of the Health Act 2007.⁵⁵ The inspection of child protection and welfare services commenced in October 2012.⁵⁶ Beginning in November 2013, HIQA also assumed responsibility for the regulation of residential and residential respite services for children and adults with disabilities provided by the HSE, private organisations or voluntary bodies.⁵⁷ It was noted by the Ryan Report Implementation Group that HIQA consults with children as part of inspections and during the development of standards and that it performs announced and unannounced inspections.⁵⁸
48. HIQA now inspects and monitors Tusla-run children’s residential centres, Tusla and private foster care services, special care units, Oberstown Children Detention Campus (the only children’s detention centre in the State) and Tusla’s Child Protection and Welfare Services. It does not have legal authority to inspect voluntary and private children’s residential centres, which remains under the remit of Tusla’s regulation team. Inspection reports of both agencies are made publicly available online. HIQA is currently in the process of developing National Standards for Children’s Social Services, which are intended to replace national standards for individual services, referenced above.⁵⁹

55 Ryan Report Monitoring Group, *Ryan Report Implementation Plan: Second Progress Report* (July 2011), p. 28.

56 Ryan Report Monitoring Group, *Ryan Report Implementation Plan: Fourth Progress Report* (December 2014), p. 48 (Part 2, p. 26), Action 39.

57 *Ibid*, p. 27 (Part 2, p. 5), Action 6.

58 *Ibid*, pp. 12 and 42.

59 HIQA, *Evidence review to inform the development of National Standards for Children’s Social Services* (July 2020).

(iv) Data Collection and Record-Keeping

49. There were a number of recommendations made by the Ryan Report in relation to the collation of data with respect to child protection services. It was recommended that the Department of Health and Children should maintain a central database containing information relevant to childcare in the State. It was suggested that this database include, while protecting their anonymity, the social and demographic profile of children in care, their health and educational needs, the range of preventative services available and interventions used.⁶⁰
50. The Ryan Report further recommended that there should be a record of what happens to children when they leave care in order to inform future policy and planning of services.
51. Finally, the Ryan Report recommended that the full personal records of children in care be maintained, kept secure and up to date, including reports, files and records essential to validate the child's identity, and their social, family and educational history.⁶¹
52. These recommendations seem to have had a mixed impact on policy and practice. The Outcomes for Children National Data and Information Hub, referenced above, does not disaggregate publicly available data on child protection service users based on their demographics. The National Child Care Information System ('NCCIS') is a system launched by Tusla in 2018, which centralises the recording of critical data on children who are the subject of a child protection or welfare referral. Tusla state that this case management system allows for accuracy and up-to-date activity recording facilitating better service planning and delivery,⁶² and has indicated that the NCCIS has facilitated other reporting developments, such as the compilation of Child in Care in Education Reports, recording the number of children in care who are in full-time or part-time education, including the education type.⁶³ The Ryan Report Implementation Group also indicated prospectively that information with respect to ethnicity of children receiving Tusla services will form part of the dataset of the NCCIS.⁶⁴ However, it is not clear whether this system provides other data disaggregated on the basis of demographics, health needs, or the other criteria recommended by Ryan Report.

60 Ryan et al, *Report of the Commission to Inquire into Child Abuse* (2009), p. 462.

61 Ibid, p. 464.

62 Child and Family Agency, *Annual Report 2018*, p. 27.

63 Child and Family Agency, *Annual Report 2020*, p. 24.

64 Ryan Report Monitoring Group, *Ryan Report Implementation Plan: Fourth Progress Report* (December 2014), p. 47 (Part 2, p. 25), Action 38.

53. In relation to consulting with persons leaving care at age 18 in respect of their experiences of the childcare system, the Ryan Report Implementation Group noted in 2014 that a working group had devised a 'leaving care exit interview procedure' for young people turning 18 years of age who are due to leave statutory care and have a minimum of 3 months care experience. This procedure had been piloted but it is unclear whether it was implemented in practice.⁶⁵
54. Further, one action specified in the Ryan Report Implementation Plan was the holding of a longitudinal study to follow young people who leave care for 10 years, to map their transition to adulthood. This was not implemented by 2014 due to what Tusla described as resource constraints.⁶⁶ In January 2022, the Minister for Children, Equality, Disability, Integration and Youth launched the research and data project, which was referenced in the Ryan Report Implementation Plan, to include a study of those who left care ten years ago and a longitudinal cohort study of young people leaving care.⁶⁷
55. In relation to the maintenance of the personal records of children in care, the Ryan Report Implementation Plan proposed that the HSE would facilitate the development of a national archive, to be managed professionally, for the records of all children in care, and that the HSE would ensure that records created in non-statutory agencies are secured in its national archive. These recommendations were not implemented by 2014, again due to resource constraints.⁶⁸ It is apparent that the records of children in care are currently maintained by Tusla and that the NCCIS is the central repository/archive for current children in care records.⁶⁹

65 Ibid, p. 69 (Part 2, p. 47).

66 Ibid, p. 6.

67 Department of Children, Equality, Disability, Integration and Youth, 'Press release: Minister O'Gorman launches largest ever examination of the lives of children in care and adults who were in care as children' (26 January 2022).

68 Ryan Report Monitoring Group, *Ryan Report Implementation Plan: Fourth Progress Report* (December 2014), p. 6 and Part 2, p. 45.

69 Dáil Éireann Debate, National Archives, Parliamentary Question No. 153 and Answer of the Minister for Children, Equality, Disability, Integration and Youth (25 November 2020) <https://www.oireachtas.ie/en/debates/question/2020-11-25/153/>.

(v) Provision of Care

56. Following the publication of the Ferns Report, it appears that a number of working groups were established to implement its recommendations. As stated in Dr Buckley's Report, the Office of the Minister for Children and Youth Affairs set up a monitoring group to agree on actions following the Ferns recommendations and it is understood that regular interagency updating meetings took place between the Department and the HSE, which may have included the Gardaí. However, as Dr Buckley points out, neither the timeline nor the records of the meetings are available so that it is not possible to ascertain the final outcome of the working groups.⁷⁰
57. The Ferns 4 (Children) Working Group was tasked with examining the needs of children and young persons and their families who had been affected by sexual abuse. A progress report in 2009 identified a number of findings and recommendations in, amongst other things, the need for a standardised approach to assessment services, the provision of therapy services outside Dublin and the need for a framework of services spanning the entire country.⁷¹
58. A multi-agency National Steering Committee for Ferns 4 was established in October 2011, to implement certain key actions including the provision of an out-of-hours service for initial assessments, the creation of a multi-agency referral team, joint specialist interviews between social work services and the Gardai, and the provision of medical forensic examination centres.⁷² Dr Buckley notes that the final report of the steering committee for Ferns 4 gave a detailed outline of a proposed national assessment and therapy service for children who had been sexually abused, recommending that centres be set up in Dublin, Cork and Galway.
59. In response, a multi-agency referral team, known as Barnahus West, was piloted and established in Galway in 2019, to provide integrated services from Tusla, the HSE and the Gardai to children who have experienced sexual abuse. It was announced by the Minister for Children, Equality, Disability, Integration and Youth in 2023 that two further centres providing the same model of service will be rolled out in the east and south of the country.⁷³

70 Dr Helen Buckley, *Report on child protection for the Scoping Inquiry into Historical Sexual Abuse in Schools run by Religious Orders*, p. 18.

71 HSE, *Review of Adequacy for HSE Children and Family Services* (2009), p. 30.

72 HSE, *Review of Adequacy for HSE Children and Family Services* (2011), pp. 40-42.

73 Department of Children, Equality, Disability, Integration and Youth, Press Release: Minister O'Gorman launches European Union/Council of Europe Joint Project "Support the implementation of the Barnahus project in Ireland", 31 January 2023.

60. Ferns 5 was to advise on the needs and strategic direction of the HSE in the treatment of adults, teenagers and children who displayed sexually harmful behaviour. The 2014 final draft report of Ferns 5 proposed the setting up of a Juvenile Sexual Behaviour Service under a national steering committee. Dr Buckley notes that the latest information from Tusla is that the national steering group was replaced by a National Inter Agency Prevention Programme for children who display sexually harmful behaviour. This programme has some full-time staff but is reliant on the release of other staff from social work departments and the probation service and is subject to operational pressures. It is developing, but not available in all regions at this point.⁷⁴
61. As observed by Dr Buckley, it seems that the actions to be implemented by the HSE/Tusla following the Ferns Inquiry have been broadly implemented, although some are still in process. There is no other information available from the DCEDIY on the outcomes from the other Ferns Project groups.
62. Separate to the above, there were also a number of recommendations made by the Ryan Report in relation to the provision of care. It was outlined that children in care need a consistent care figure, and it was recommended that continuity of care, with a consistent professional figure with overall responsibility, should be an objective wherever possible. Further, it was recommended that the supervising social worker should have a detailed care plan, the implementation of which should be regularly reviewed, and that where possible the family should be involved in developing and reviewing the care plan.⁷⁵
63. The Ryan Report recommended that children who have been in State care should have access to aftercare services and that childcare services should continue contact with young people once they have left care as minors.⁷⁶
64. The Ryan Report further recommended that children in care should not, save in exceptional circumstances, be cut off from their families and that priority should be given to supporting ongoing contact with family members for the benefit of the child. Finally, the Ryan Report recommended that children in care should be able to communicate concerns without fear and that the Department of Health and Children must examine international best practice to establish the most appropriate method of giving effect to this recommendation.⁷⁷

74 Dr Helen Buckley, *Report on child protection for the Scoping Inquiry into Historical Sexual Abuse in Schools run by Religious Orders*, p. 19.

75 Ryan et al, *Report of the Commission to Inquire into Child Abuse* (2009), p. 464.

76 Ibid.

77 Ibid, p. 463.

65. There were a number of actions set out in the Ryan Report Implementation Plan which sought to give effect to these recommendations. It was identified that the HSE would ensure that all children in care have an allocated social worker and a care plan.⁷⁸ In response, funding was made available by the HSE for the recruitment of an additional 270 social workers. By the publication of the Implementation Group's final Progress Report in 2014, 94% of children in care were reported to have an allocated social worker and 91% had a written care plan.⁷⁹ According to the data made available most recently by the Child and Family Agency, at the end of 2021, 88% of children in care had an allocated social worker, and 97% had a written care plan.⁸⁰
66. In relation to the provision of aftercare services, the Ryan Report Implementation Plan provided that the HSE will ensure the provision of aftercare services for children leaving care in all instances where the professional judgement of the allocated social worker determines it is required and further that the HSE will ensure that care plans include aftercare planning for all young people of 16 years and older.⁸¹ In response, the HSE published the *National Policy and Procedures Document for Aftercare Service Provision* in 2011, which was updated by Tusla in 2017 via the publication of the *National Aftercare Policy for Alternative Care*. These provide that all eligible young people should have an aftercare plan.⁸²
67. This recommendation also yielded a legislative change with respect to the provision of aftercare services. Section 45 of the Child Care Act 1991 originally provided that Tusla may assist a young person between the age of 18 and 21 (or up to 23 years where the person is engaged in a course of education), where it is satisfied that they have a 'need for assistance'. The Child Care (Amendment) Act 2015 substituted this provision and imposed a statutory duty on Tusla to undertake an assessment of need for an eligible child or eligible young person. According to the most recent data published by Tusla at the end of 2021, 82% of all young people in receipt of an aftercare service had an aftercare plan.⁸³

78 Ryan Report Monitoring Group, *Report of the Commission to Inquire into Child Abuse 2009 Monitoring Group, Ryan Report Implementation Plan: First Progress Report* (July 2010), p. 8, Action 33.

79 Ryan Report Monitoring Group, *Ryan Report Implementation Plan: Fourth Progress Report* (December 2014), p. 44 (Part 2, p. 22).

80 Child and Family Agency, *Annual Review on the Adequacy of Child Care and Family Support Services Available* (2021), p. 81.

81 Ryan Report Monitoring Group, *Report of the Commission to Inquire into Child Abuse 2009 Monitoring Group, Ryan Report Implementation Plan: First Progress Report* (July 2010), pp. 14 and 15.

82 Ryan Report Monitoring Group, *Ryan Report Implementation Plan: Fourth Progress Report* (December 2014), pp. 61 and 63 (Part 2, pp. 39 and 41).

83 Child and Family Agency, *Annual Review on the Adequacy of Child Care and Family Support Services Available* (2021), p. 95.

68. The Ryan Report Implementation Plan set out a number of actions in relation to the maintenance of ongoing contact between children in care and families. It was provided that Tusla should ensure that each child's care plan should reflect the plan for contact with family members, and it was reported in 2014 that this was implemented as part of an updated standardised care planning process.⁸⁴ Further, it was reported that a protocol was developed and would be implemented by Tusla in relation to contact between siblings who live apart in separate placements, and that Tusla will provide practical support to family members and friends to facilitate contact with the child in care, such as adequate assistance with transport arrangements or costs.⁸⁵
69. Finally, it does not appear that the Ryan Report Implementation Plan addressed the Ryan Report's recommendation in relation to international best practice on the communication of children's concerns without fear. However, it appears that Tusla have recently sought to embed the participation of children and young people in consultation and decision-making processes via the Child and Youth Participation Strategy 2019-2023.

D. Reforms in relation to inter-agency cooperation

70. A number of recommendations were made by previous public inquiries in relation to inter-agency co-operation in the field of child protection and welfare services, which appear to have been quite recently incorporated into proposed legislation. As previously referred to, the Ferns Report made a number of recommendations in relation to the holding of inter-agency meetings between the relevant diocese, the HSE, and An Garda Síochána, in circumstances where continuing problems or a series of problems arise in relation to child sexual abuse.⁸⁶ At these meetings, it was recommended that suspicions, rumour or innuendo in relation to misconduct of any member of the clergy could be raised. It was recommended that the convening of meetings of the Inter Agency Review Group ('IARG') and the recording and maintenance of its records should be the responsibility of the HSE. As noted above, Dr Buckley has noted that Tusla are of the view that such inter agency groups are no longer necessary, due to changes in the child safeguarding landscape and the decline in allegations of sexual abuse against clerics.

84 Ryan Report Monitoring Group, *Ryan Report Implementation Plan: Fourth Progress Report* (December 2014), p. 65 (Part 2, p. 43).

85 *Ibid*, p. 66 (Part 2, p. 44).

86 Murphy et al, *Ferns Report* (2005) p. 265.

71. In broader terms, the Ryan Report made recommendations in relation to communication between childcare services in all relevant public bodies, including communicating concerns and suspicions. It was recommended that overall responsibility for this process should rest with a designated official. In line with this recommendation the Ryan Report Implementation Group proposed draft legislation to provide that all staff employed by the State have a duty to share relevant information in the best interests of the child and a duty to co-operate with other relevant services in the best interests of the child.⁸⁷ It appears that this proposal is contemplated within the Heads of Bill and General Scheme of the Child Care (Amendment) Bill 2023, which provides for a duty of relevant bodies to cooperate with Tusla and with each other for the purpose of promoting the development, welfare and protection of children. This proposed provision also covers the sharing of information, voluntarily or on request.

E. Reforms in relation to An Garda Síochána

72. Several recommendations issued by the Ferns Report addressed the role of the Gardai in the investigation of child sexual abuse complaints. First, it was recommended that in order to enhance public confidence, investigating Garda officers should be trained in how to interview children appropriately and be able to provide a child-friendly and secure environment.⁸⁸
73. Further, it was recommended that all Gardaí should notify their superior officers in writing in relation to any decision taken by them not to investigate or proceed with a referral for prosecution to the Director of Public Prosecutions ('DPP') any offence concerning a complaint of child sexual abuse. It was also recommended that a local Superintendent should consult with the Domestic Violence and Sexual Assault Investigation Unit in Dublin to seek their advice where issues in relation to the desirability of maintaining surveillance on an alleged or suspected perpetrator of an offence of child sexual abuse.⁸⁹
74. Finally, the Ferns Inquiry stated that it believed that arrangements for joint investigation of suspected child abuse cases between An Garda Síochána and the HSE should be more firmly established in order to ensure efficiency in outcome.⁹⁰

87 Ryan Report Monitoring Group Ryan, *Report Implementation Plan: Fourth Progress Report* (December 2014), p. 75 (Part 2, p. 53).

88 Murphy et al, *Ferns Report* (2005) p. 264.

89 Ibid, p. 267.

90 Ibid, p. 259.

75. Reports of the Garda Inspectorate are instructive in identifying progress in relation to some of the above recommendations. In its review of policies and practices of the Garda Síochána relating to the investigation of child sexual abuse carried out in 2012, it was recommended by the Inspectorate *inter alia* that the An Garda Síochána specially trains a cadre of front-line Gardaí in each Garda district to take reports alleging child sexual abuse and that only specially trained Gardaí take statements from child and adult victims of child sexual abuse.⁹¹ It was also recommended that the Gardaí publish information for complainants on how, where and when they can make a complaint about child sexual abuse, and that victim-friendly options of making a complaint are devised to encourage reporting.
76. In 2017, a follow up review was carried out by the Garda Inspectorate on the same topic, which assessed that many of the recommendations in relation to training and interviewing were not implemented.⁹² The Inspectorate noted that in 2010, the Garda Síochána published a policy entitled '*Investigation of Sexual Crime, Crimes Against Children and Child Welfare*', which was revised in 2013. In conducting its 2017 review, the Inspectorate found that many aspects of the policy were not in place or are not consistently applied in the investigation of offences.⁹³ It was identified that while Child Protection Units were established in some garda districts, there was no training course and most members in units had not received any specialist child protection training.⁹⁴
77. The Inspectorate found in 2017 that the use of specially trained interviewers was by then embedded as standard practice in the Gardaí, but that the process of joint interviewing of children by Gardaí and social workers had ceased, raising the potential for two separate interviews by the Gardaí and Tusla, potentially causing unnecessary trauma for the child.⁹⁵ In the 2017 report, the Inspectorate recommended that the Gardaí ensure there is sufficient suitably trained members to conduct interviews with suspects and take statements from adult victims of child sexual abuse, and that the Garda Síochána, in conjunction with Tusla, move to a standard operating procedure for conducting joint interviewing of child victims.⁹⁶

91 Garda Inspectorate, *Report of the Garda Inspectorate: Responding to Child Sexual Abuse* (2012), p. 57.

92 Garda Inspectorate, *Responding to Child Sexual Abuse, A follow up Review from the Garda Inspectorate* (2017), pp. 45-46.

93 *Ibid*, pp. 18-19.

94 *Ibid*, p. 19.

95 The absence of joint interviewing was also acknowledged by HIQA in its investigation report published in 2018. Health Information and Quality Authority, *Report of the investigation into the management of allegations of child sexual abuse against adults of concern by the Child and Family Agency (Tusla) upon the direction of the Minister for Children and Youth Affairs* (2018), p. 12.

96 Garda Inspectorate, *Responding to Child Sexual Abuse: A follow up Review from the Garda Inspectorate* (2017), p. 34.

78. In respect of inter-agency co-operation and joint investigation of child sexual abuse between the Gardai and the agency responsible for the provision of child protection services, there appears to have been progress of a limited nature. In 2012, the Inspectorate identified inter-agency co-operation as a difficulty in the investigation of child protection cases and recommended that the Gardaí should include the promotion of inter-agency working with the HSE as a priority in the organisation's business plans.⁹⁷
79. In the Inspectorate's 2017 follow-up report, it was assessed that these recommendations were partially implemented, However it was found that action was still required to ensure the use of shared electronic systems, agreed records and data, and that electronic sharing of child protection notifications was not in place.⁹⁸ Similarly, a HIQA investigation identified in 2018 that there was no electronic data transfer interface between the ICT systems in both agencies and that notifications of suspected child sexual abuse cases had to be sent by fax or posted, which was not efficient, appropriate or secure.⁹⁹ In 2022 Tusla and An Garda Síochána commenced an ICT system for digital transfer of child protection notifications.
80. The Joint Working Protocol for An Garda Síochána/Tusla in respect of the Children First Guidelines was agreed between the agencies in December 2017. An Inter-Agency Implementation Group was established in 2018 in response to the Garda Inspectorate's 2017 follow-up review, and appears to have published one progress report, in October 2018. This indicated that a memorandum of understanding on sharing information between An Garda Síochána and Tusla was nearing completion.¹⁰⁰ However, news reports issued as recently as 2023 indicate that any data-sharing agreement between the two agencies has not yet been finalised.¹⁰¹

97 Garda Inspectorate, *Report of the Garda Inspectorate: Responding to Child Sexual Abuse* (2012), p. 57.

98 Garda Inspectorate, *Responding to Child Sexual Abuse: A follow up Review from the Garda Inspectorate* (2017), p. 42.

99 Health Information and Quality Authority, *Report of the investigation into the management of allegations of child sexual abuse against adults of concern by the Child and Family Agency (Tusla) upon the direction of the Minister for Children and Youth Affairs* (2018), p. 11.

100 Inter-Agency Implementation Group in Respect of Garda Inspectorate Report "Responding to Child Sexual Abuse, A follow up Review December 2017", *First Progress Report of the Inter-Agency Implementation Group*, 11 October 2018, p. 17.

101 O'Keefe, 'Gardaí working on plan to share child abuse information', *Irish Examiner*, 22 May 2023; O'Keefe 'Action needed to improve co-operation among child sex abuse services', *Irish Examiner*, 8 May 2023; O'Keefe, 'Budget further delays Tusla and Gardaí electronically sharing child sex abuse disclosures' *Irish Examiner*, 27 December 2021.

81. Dr Buckley states that it was intended that investigation teams would be multi-agency and include Tusla staff, who were included in training for several years. However, joint training has declined considerably. Dr Buckley states that specialist interviewing is currently under review with An Garda Síochána, and there is a plan for the development of joint training.¹⁰²
82. In respect of notification by a Garda to his or her superior of a decision not to investigate a complaint of sexual abuse or to refer a file to the DPP it appears that the provisions of the Garda Síochána Act 2005 deal broadly with this recommendation. That Act provides that the DPP is entitled to give directions to members of the Gardaí in relation to the institution and conduct of prosecutions, which directions are binding.¹⁰³ The DPP issued a direction in 2011¹⁰⁴ that a decision as to whether a prosecution in respect of an offence of a sexual nature should or should not be instituted is to be taken by the DPP.
83. In respect of the other recommendations made by the Ferns Inquiry such as consultation with the Domestic Violence and Sexual Assault Investigation Unit in Dublin in respect of surveillance of alleged abusers; and publicization of Garda complaints procedures, it is unclear to what extent these have been implemented and what effect these may have had on policy and practice. Following on from the Garda Inspectorate Report in 2017, Protective Services Units were established in every Garda division. There are now 27 such units specialising in the investigation of sexual crimes, including child protection and domestic abuse.¹⁰⁵

102 Dr Helen Buckley, *Report on child protection for the Scoping Inquiry into Historical Sexual Abuse in Schools run by Religious Orders*, p. 17. The recommendation for specialist joint training was made more recently by the Expert Assurance Group, which was set up following HIQA's report into Tusla's handling of the historical sexual abuse allegations against Sergeant Maurice McCabe, in its 2019 Final Report.

103 Garda Síochána Act 2005, s. 8(4).

104 General Direction No. 3, paragraph 2(d), available at <https://www.dppireland.ie/app/uploads/2022/01/General-Direction-No.-3-21.11.08.pdf>.

105 See discussion in Chapter 16.

F. Recommendations issued to the Catholic Church/private bodies responsible for child protection

(i) Reforms in relation to child safeguarding policies

84. In relation to private actors with responsibility for child protection, the Ferns Report made the recommendation that the Diocese of Ferns and every other organisation that employs, qualifies or appoints persons to positions where they have unsupervised access to children should prepare, publish and revise from time to time a code of conduct dealing with the manner in which the employee interacts with young people.¹⁰⁶
85. The Ryan Report recommended, without distinguishing between public and privately-run institutions, that management at all levels should be accountable for the quality of services and care. It was further recommended that the manager of an institution should be responsible for inter alia;
- ensuring that staff are well trained;
 - ensuring on-going supervision, support and advice for all staff;
 - ensuring rules and regulations are adhered to;
 - establishing whether system failures caused or contributed to instances of abuse; and
 - putting procedures in place to enable staff and others to make complaints and raise matters of concern without fear of adverse consequences.¹⁰⁷
86. These recommendations have been largely implemented by the provisions of the Children First Act 2015 which require risk assessments and child safeguarding statements to be prepared by each provider of a relevant service.¹⁰⁸

106 Murphy et al, *Ferns Report* (2005) p. 264.

107 Ryan et al, *Report of the Commission to Inquire into Child Abuse* (2009), p. 463.

108 See discussion on the requirements of the Risk Assessment and Child Safeguarding Statement in Chapter 20.

(ii) Reforms in relation to the Catholic Church

87. Previous inquiries made a number of recommendations in relation to the management processes of the Catholic Church. The Ferns Inquiry endorsed the mandatory system of reporting as adopted by the Catholic Church in its Framework Document of 1996, and recommended that, in light of the key role of the Bishop in the Diocese as the manager and leader of priests, Bishops should be supported by management training.¹⁰⁹ The Ryan Report made the broader recommendation that the Congregations examine how such abuse was allowed to take place within their communities.¹¹⁰
88. The Murphy Report identified that the functioning of child protection procedures was heavily dependent on the current Archbishop and the Director of the Child Protection Service and stated that institutional structures need to be sufficiently embedded to ensure that the structures and procedures can survive uncommitted or ineffective personnel.¹¹¹
89. Further, the Murphy Report identified that clear and precise rules were required to ensure that priests suspected of abusing children are removed from ministry and that there needed to be a clear power available to bishops to require priests to stand aside.¹¹²
90. Dr Buckley's report comments that the recommendation for management training for bishops has only been partially covered. Bishops now receive safeguarding training from the National Board for Safeguarding Children in the Catholic Church in Ireland ('NBSCCCI')¹¹³ and the Vatican issued an apostolic letter which sets out the accountability of a bishop in terms of safeguarding. However, she points out that there are some limitations as priests are still regarded as self-employed, so the normal organisational management systems do not apply to their work. Rather than performance reviews or disciplinary procedures, priests are subject to a process called 'fraternal correction'. Dr Buckley's report points to the church's current safeguarding structure comprised of various officers, trainers and volunteers as playing a key monitoring role as does the NBSCCCI but dioceses are still under the stewardship of the bishop, with the limitations as she describes.¹¹⁴

109 Murphy et al, *Ferns Report* (2005) p. 264.

110 Ryan et al, *Report of the Commission to Inquire into Child Abuse* (2009), p. 461.

111 Murphy et al, *Dublin Archdiocese Commission of Investigation Report into the Diocese of Cloyne* (2010), p. 4.

112 Ibid, pp. 79-80.

113 See Chapter 20 for a discussion of the Catholic Church Standards for Child Protection issued by the NSBCCCI.

114 Dr Helen Buckley, *Report on child protection for the Scoping Inquiry into Historical Sexual Abuse in Schools run by Religious Orders*, p. 16.

91. In response to the publication of the Ferns Report in 2005, the Minister for Children and the HSE requested that the Irish Bishops' Conference commence an audit of child protection practices. An audit questionnaire was finalised by the HSE in October 2006 and circulated, however the Cloyne Report states that this was 'not an audit in the usual sense of that word'.¹¹⁵ This questionnaire, the Commission noted, was more accurately described as a survey or an information collection exercise, as there was no independent examination of the evidence in order to determine the accuracy of the responses received. The majority of bishops answering the audit refused to answer one section of the questionnaire which sought statistical details about the numbers of complaints received, numbers reported and related details. Dr Buckley notes that the HSE revised the Questionnaire in response to legal challenges from the dioceses and whilst some of the diocese declined to answer the questions initially, all of the dioceses ultimately did so.¹¹⁶
92. A report entitled *Audit of Catholic Church's current Child Protection Policy, Practices and Procedures & compliance with Ferns Report* was sent to the Minister for Children in January 2008. The report stated that the 'audit has provided a substantial information base on the Church's child protection policies, practices and procedures' and that there was no prima facie case of 'serious non-compliance with the Ferns report recommendations'. As observed by the Cloyne Report, no information was provided on how child protection policies in place in each Diocese were operating in practice and found that it was difficult to see how such a statement could be made.¹¹⁷
93. This audit was revisited in 2009, with additional requests for information made of dioceses and with cross-referencing of information on allegations with the records of Gardai and the HSE. Volume I of the revised results, published in 2012, considered the 24 dioceses in the country and found that there had been substantial improvements made to the ability of a dioceses to enhance the safeguarding of children over the course of the audit. Some dioceses, it was found, did not perform satisfactorily which was identified as being due to poor data collection, poor standards of record keeping and inconsistent application of reporting procedures.¹¹⁸

115 Murphy et al, *Dublin Archdiocese Commission of Investigation Report into the Diocese of Cloyne* (2010), p. 97.

116 Dr Helen Buckley, *Report on child protection for the Scoping Inquiry into Historical Sexual Abuse in Schools run by Religious Orders*, p. 19.

117 Cloyne Report p. 99.

118 HSE, *Audit of Safeguarding Arrangements in the Catholic Church in Ireland, Volume 1 Dioceses Report* (2012), pp. 45-49.

94. The second volume of the audit was published in 2017 and considered the compliance of the 135 congregations in ministry in Ireland with the Church guidance documents in place since 1996 in relation to child protection. The Audit found that there were some delays in reporting allegations to the statutory authorities on the part of some religious orders, but that the majority of religious orders were implementing other risk management mechanisms such as removing individuals from ministry upon receipt of notifications of abuse and devising forms of safety plans aimed at curtailing potential risks to children.¹¹⁹ Further, the audit identified that while there were delays by many in developing appropriate safeguarding documents, there had been more recent significant developments in adopting and implementing safeguarding processes. Dr Buckley observes that on reviewing the conclusions and recommendations of the audits at the current time, it is evident that the NSBCCCI has been able to address the majority of the matters raised. She is concerned to note however, that some of the Orders have declined to take part in NSBCCCI Reviews because of concerns about data protection.¹²⁰

G. Other recommendations and impacts

(i) Supports for survivors

95. In relation to survivors of institutional abuse, the Ryan Report recommended that counselling services should be available to ex-residents and their families to alleviate the effects of childhood abuse and its legacy on following generations. In addition, the Ryan Report recommended that family tracing services be continued to assist those who were deprived of their family identities in the process of being placed in care.¹²¹ It was also recommended by CICA that a memorial should be erected to victims of abuse in institutions as a permanent public acknowledgement of their experiences.¹²²

119 Child and Family Agency, *Audit of Religious Orders, Congregations and Missionary Societies' Safeguarding Arrangements and Management of Allegations of Child Sexual Abuse Volume II* (2017), pp. 992 and 993.

120 Dr Helen Buckley, *Report on child protection for the Scoping Inquiry into Historical Sexual Abuse in Schools run by Religious Orders*, p. 20.

121 Ryan et al, *Report of the Commission to Inquire into Child Abuse* (2009), p. 462.

122 Ryan et al, *Report of the Commission to Inquire into Child Abuse* (2009), p. 461.

96. In relation to counselling services, the Ryan Report Implementation Plan provided that a once-off investment of €2 million was provided to the National Counselling Service to purchase therapy services in 2010 and 2011. Further, the National Counselling Service was exempted from the public service moratorium on recruitment and replacement of staff which was in place at the time.¹²³ In relation to family tracing services, the Ryan Implementation Group reported in 2014 that funding was provided by the Department of Education and Skills to Barnardos' Origins Tracing Service for this purpose.¹²⁴
97. The Education Finance Board provided grants to former residents and their families for the purposes of assisting them to access educational programmes. This Board did not process any applications received after November 2011, as its funds were fully allocated, and was dissolved in March 2013, when its functions were taken over by the Residential Institutions Statutory Fund Board (also known as Caranua).¹²⁵ Caranua was responsible for the management of contributions of €110m (€111.38m including interest) provided by the religious congregations following the publication of the Ryan Report in 2009, by funding approved services to support the needs of former residents who, as children, suffered abuse in relevant institutions.
98. While ex-residents and their family members were eligible to apply to the Education Finance Board, only survivors of abuse who received awards through the Residential Institutions Redress Board, the courts, or settlements with religious congregations, were eligible to apply for funding supports from Caranua.¹²⁶ Criticisms have been made of Caranua by survivors and advocates.¹²⁷ As the Statutory Fund administered by the Board was finite in nature under the provisions of the Residential Institutions Statutory Fund Act 2012, Caranua ceased to accept applications from 1 August 2018. After that date, it mainly focused on processing applications already in hand and finalised this work by March 2021. In 2023, following an independently facilitated process of consultation with survivors and survivor groups, the Government approved proposals for the preparation of legislation to provide for a package of ongoing health, education, and other supports to survivors and for the dissolution of Caranua. The Support for Survivors of Residential Institutional Abuse Bill was published in April 2024 and is before the Oireachtas.

123 Ryan Report Monitoring Group Ryan, *Ryan Report Implementation Plan: Fourth Progress Report* (December 2014), p. 28 (Part 2, p. 6).

124 *Ibid*, p. 34 (Part 2, p. 12).

125 *Ibid*, p. 29 (Part 2, p. 7).

126 Residential Institutions Statutory Fund Act 2012, s. 3.

127 Clifford, "'They feel badly let down': Institutional abuse survivors grow old waiting for the State to act', *Irish Examiner* (8 March 2023); Byrne, 'Caranua: "The abuse has never stopped"', *Sunday Business Post* (26 March 2017).

99. Finally, plans for a memorial were progressed, but have stalled since 2013, when planning permission for the original proposal was refused.¹²⁸ In 2021, the Department of Education reported that consultations with a survivor forum on the memorial were ongoing and that a €500,000 capital allocation had been set aside for the project.¹²⁹ In March 2022, the Government approved proposals for a National Centre for Research and Remembrance ('**NCR**R') to be located on the site of the former Magdalen Laundry on Sean McDermott Street in Dublin 1. The Centre will stand as a site of conscience to honour all those who were resident in Industrial Schools, Reformatories, Magdalen Laundries, Mother and Baby and County Home Institutions, and related institutions, and will include a museum and exhibition space and repository of records. It is anticipated that a planning permission application for the National Centre campus will be submitted in 2024.

(ii) Constitutional reform

100. Support for constitutional reform was expressed in the Kilkenny Incest Investigation Report in 1993, where it was observed that the 'very high emphasis on the rights of the family in the Constitution may consciously or unconsciously be interpreted as giving a higher value to the rights of parents than to the rights of children'.¹³⁰ It was recommended that the Constitution be amended so as to include a specific and overt declaration of the rights of children.
101. While it was not within the remit of the Roscommon Inquiry to recommend legislative changes, the Report noted that the Government had committed to holding a referendum on inserting children's rights into the Constitution. This was significant in the context of the relevant investigation, as it was noted that the failure to consult with and to hear the voice of the six children involved was a notable feature in the case.¹³¹
102. Kilkelly notes that while it was perhaps surprising that the other inquiries did not make a recommendation for constitutional reform, it may be explained by the fact that the Kilkenny and Roscommon Inquiries concerned State intervention in the family, to which the Constitution grants particular status and protection.¹³²

128 Ryan Report Monitoring Group, *Ryan Report Implementation Plan: Fourth Progress Report* (December 2014), p. 24 (Part 2, p. 2).

129 Casey, 'No decision on memorial for victims of childhood abuse, 12 years after report's publication', *Irish Examiner* (15 January 2021).

130 McGuinness et al, *Kilkenny Incest Investigation Report* (1993), p. 96.

131 Gibbons et al, *Roscommon Child Care Case: Report of the Inquiry Team to the Health Service Executive* (2010), p. 84.

132 Kilkelly, 'Learning Lessons from the Past: Legal Issues Arising from Ireland's Child Abuse Reports' (2012) 2(1) *Irish Journal of Applied Social Studies* 20.

103. The referendum on children’s rights and the insertion of Article 42A into the Irish Constitution was passed in November 2012, but as a result of legal challenges to the outcome of the referendum, the amendment did not come into effect until 28 April 2015. It is clear that the amendment was motivated to a considerable extent by the revelations concerning historical child sexual abuse in the State which emerged in the early 2000s, and, indirectly, by the findings of public inquiries.¹³³

(iii) Miscellaneous impacts

104. The Ferns Inquiry recommended that the Department of Health and Children should launch and repeat from time to time a nationwide publicity campaign in relation to child sexual abuse, which would assist parents in safeguarding their children. It was recommended that such a campaign focus on several matters including that children should never regard themselves as responsible for acts of sexual abuse perpetrated on them by adults; that abuse is perpetrated by persons in every walk of life; that abuse may cause serious and lasting psychological damage; that child sexual abuse of any kind is a serious criminal offence; and that children should be assured of support and care by State authorities when they make a complaint.¹³⁴
105. Kilkelly observes that the *Parents Who Listen, Protect* campaign was launched by the HSE in 2007 in response to this recommendation, however five years following the publication of the Ferns Report,¹³⁵ children’s charities complained that there was no explicit anti-abuse campaign launched which implemented the recommendation thoroughly and engaged with both children and adults in relation to abuse.¹³⁶ The first Children First Awareness Week was launched by the Department of Children, Equality, Disability, Integration and Youth in November 2021, which sought to raise awareness of Children First and remind wider society, including organisations working with children and young people, of our collective responsibility to keep children safe in our communities.

133 The then-Taoiseach Bertie Ahern’s speech introducing the Bill to amend the Constitution in the Oireachtas in 2007 makes several references to the history of child abuse in the State Children’s Rights Alliance, “Speech, An Taoiseach, Bertie Ahern, TD, on the publication of 28th Amendment of the Constitution Bill 2008” (19 February 2007). In addition, Walsh notes that repeated references were made to a number of child protection scandals, including the Kilkenny Incest Investigation during the debates of the Joint Committee on the Constitutional Amendment on Children. K. Walsh. *The Development of Child Protection Law and Policy: Children, Risk and Modernities* (Routledge, 2020), Chapter 8.

134 Murphy et al, *Ferns Report* (2005) p. 262.

135 Kilkelly, *Barriers to the Realisation of Children’s Rights in Ireland* (August 2007), p. 56

136 O’Sullivan, ‘Still no anti-abuse campaign after Ferns’, *Irish Examiner*, 19 April 2010.

106. In a separate recommendation, the Ferns Report recognised that every effort must be made to avoid unnecessary damage to the reputation of a priest accused of sexual abuse and to afford him an opportunity to establish his innocence at the earliest practical date. It was recommended that any priest who disputes an allegation of child sexual abuse made against him should be entitled to legal aid under the Civil Legal Aid Act 1995 to contest the issue irrespective of his financial resources; and that further the complainant should also have civil legal aid irrespective of his or her means in order to establish the claim against the alleged abuser. It does not appear that this recommendation has been implemented.¹³⁷
107. Going beyond the recommendations included in the public inquiries considered, the Ryan Implementation Group Reports indicate that the Ryan Report has prompted other reforms in relation to childcare and child protection. For instance, the Department of Education and Skills updated its child protection procedures and guidelines in respect of child abuse complaints;¹³⁸ there were improvements in inspection procedures regarding the protection of vulnerable adults with disabilities in institutional care;¹³⁹ the practice of placing separated children who were seeking asylum in hostels was ended and those children were instead accommodated in mainstream care;¹⁴⁰ the National Review Panel was established in 2010 for the investigation of serious incidents including the deaths of children in care and known to the child protection system;¹⁴¹ and a joint protocol was agreed between the Irish Youth Justice Service and the HSE regarding children and young people in detention.¹⁴²

137 Dr Buckley in her Report observes that different arrangements exist within the different dioceses, but that once a criminal charge has been made, a priest may be granted criminal legal aid to defend himself against such charges. Dr Helen Buckley, *Report on child protection for the Scoping Inquiry into Historical Sexual Abuse in Schools run by Religious Orders*, p. 17.

138 Ryan Report Monitoring Group, *Ryan Report Implementation Plan: Fourth Progress Report* (December 2014), p. 26 (Part 2, p. 4).

139 *Ibid.*, p. 27 (Part 2, p. 5).

140 *Ibid.*, p. 43 (Part 2, p. 21).

141 *Ibid.*, p. 46 (Part 2, p. 24).

142 *Ibid.*, p. 59 (Part 2, p. 37).

H. Conclusions

108. Dr Buckley in her report notes that the implementation of the Ryan Report recommendations shows mixed outcomes. Dr Buckley finds that the Children First Act 2015 addressed the majority of recommendations pertaining to child protection. She also finds that the majority of child welfare and youth justice services now operate more transparently, with consistent publication of data and inspections, and strengthened governance arrangements.¹⁴³ Dr Buckley finds, however, that desired outcomes in relation to all the actions that were deemed both ‘complete’ and ‘ongoing’ by the Ryan Report Review Group have not been achieved based on the evidence from Tusla’s Review of Adequacy Reports, HIQA reports, National Review Panel reports and a recent review of Child and Adolescent Mental Health Services (‘CAMHS’), which are not under the remit of Tusla.¹⁴⁴
109. Dr Buckley is of the view that the underachievement of these outcomes partially stems from a shortage of qualified staff and variables that are out of the control of Tusla or would have required interagency and cross departmental agreement to be fully implemented. She gives many examples of these outcomes, such as noncompliance with Child in Care Regulations and Child Protection Standards, waiting lists and poor governance in CAMHS, and the failure of Tusla to achieve the target of 100% allocation of social workers to children in care.¹⁴⁵
110. Dr Buckley also comments that some of the recommendations made had unintended consequences, such as increased reporting under the Children First Act 2015, causing frontline services to struggle to meet their requirements. The expansion of services in all areas, which she finds a positive move, has been impacted by a shortage of social workers in frontline child protection and welfare services. Dr Buckley observes that it has been suggested in other jurisdictions that the proliferation of administrative responsibilities arising from inquiry recommendations detracts from reflective consideration of practice issues, and states that there is no doubt that the current focus on compliance within child protection and welfare services is occupying an increasing proportion of Tusla’s day to day operations.¹⁴⁶

143 Dr Helen Buckley, *Report on child protection for the Scoping Inquiry into Historical Sexual Abuse in Schools run by Religious Orders*, p. 23.

144 Ibid.

145 Dr Helen Buckley, *Report on child protection for the Scoping Inquiry into Historical Sexual Abuse in Schools run by Religious Orders*, Ibid. Dr Buckley further points to the National Review Panel annual reports that have highlighted a lack of continuity in mental health services, lack of coordination between youth justice and Tusla’s alternative care services, lack of suitable placements for children with challenging behaviour, lack of coordination between HSE disability services, limited therapeutic and assessment services and Tusla’s alternative care services.

146 Ibid p. 24.

112. Dr Buckley concludes:

With the passing of time, it has been difficult to establish how precisely the recommendations were implemented and it is evident that some have been washed out in light of further and more recent policy and service developments. The Ferns report made some specific recommendations for the government, the Church, the Gardai and the child protection services and these have by large been addressed though maybe not in the precise manner intended. The Ryan report recommendations were interpreted in the form of a comprehensive and ambitious action plan, the implementation of which depended on several factors. Although there has been major development in child protection policies and services in the interim, and once off actions were mostly completed, it can be seen from several compliance and quality assurance reports and reviews that the aspirations underpinning the action plan have not uniformly come to fruition or have been subject to variables outside the control of individual departments or agencies. This indicates that if the impact of an inquiry is judged by the successful implementation of actions arising from recommendations, it may be wiser to temper them to take account of the many external factors that are likely to impact on their achievement¹⁴⁷

112. As has been set out by Dr Buckley, the impact of the Ferns and Ryan Reports on policy and practice in child protection has had somewhat mixed outcomes. Nonetheless, it seems fair to say that the recommendations of the inquiries under consideration here have had a considerable impact on policy and practice, and considerable progress has been made in many areas. However, implementation of some recommendations was only achieved after a long period of time, and in some instances has not yet been achieved, decades after the recommendations were made. The fact that some of the recommendations yet unimplemented are the subject of recent draft legislation and renewed efforts at implementation points to their continuing relevance, notwithstanding the lapse of time. The former Special Rapporteur for Child Protection, while acknowledging the deep commitment of many working in Government and the Oireachtas to protecting children, commented that a system which can take anything from 5 to 20 years to deliver legislative reforms, is not responsive enough.¹⁴⁸ His suggestion that there should be a timeframe of no more than five years from initiating to implementing reform seems a reasonable one.¹⁴⁹

147 Dr Helen Buckley, *Report on child protection for the Scoping Inquiry into Historical Sexual Abuse in Schools run by Religious Orders*, pp. 28 – 29.

148 Conor O'Mahony, *Annual Report Special Rapporteur for Child Protection 2022*, pp. 33 to 34.

149 Ibid p. 34.

113. What also emerges is that the provision of services on foot of recommendations made is proving a challenge. This appears to be in large part because of shortages of qualified staff within Tusla and the HSE. HIQA have commented in a number of reports that staff vacancies within Tusla were impacting on service provision in some areas.¹⁵⁰ Dr Buckley notes Tusla's comments to her that the disestablishment of the National Social Work Qualification Board in order to provide a base for CORU, resulted in a lack of integrated training or workforce planning for social workers in the past 20 years. The problem of staff recruitment and retention is acknowledged within Tusla. The Final EAG report¹⁵¹ noted that Tusla had approved a workforce strategy aimed at managing the shortage of social workers, identified by HIQA as a barrier to improving standards.¹⁵² The Irish Association of Social Workers ('IASW') issued a scoping report in 2022 suggesting solutions to the problem, including increased training places and education grants, and calling for the establishment of a dedicated government department to deal with the issue.¹⁵³ It is however clear that this an issue which is likely to take some time to resolve, so it is necessary to address it expeditiously.
114. While clearly there are important reforms that have not yet been implemented, it must be acknowledged that overall, much has been achieved in the area of child protection and safeguarding, and that the recommendations of previous inquiries have played their part in bringing about those improvements.

150 HIQA, *Report of An Inspection of a Child Protection and Welfare Service: Midwest* (7 – 9 September 2021); HIQA, *Overview Report: Monitoring and Regulation of Children Services* (June 2022).

151 *Final Report of the Expert Assurance Group to the Minister for Children and Youth Affairs* (September 2019).

152 Ibid pp. 40 – 41. The EAG report also notes that substantive work had been done in establishing a Social Work Education Group comprising all relevant stakeholders to address the shortfall in the graduate pool. However, EAG found that it was unlikely progress would be made in 2020 because of absence of funding for bursaries and the development of a national placement framework to address the supply and capacity of third level institutions to expand the number of social work places.

153 IASW Press Release, 'Social Workers Call for Radical Change to Address Crisis in Services' (9 December 2022).

Chapter 20:

A Critical Analysis of Child Protection within the Primary and Post Primary Sector

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- (i) Curriculum changes: The Development of Sex Education in Schools.
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- I. Strengths of Child Protection Regime in Schools
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- K. Conclusions

A. Introduction

1. The Terms of Reference direct that this Inquiry ‘outline findings of best practice that emerge from workstreams as relevant and appropriate to future practice in the area of child protection’. In furtherance of that objective, the Terms of Reference further directed that the Inquiry commission an expert report providing:

A critical analysis of current child protection systems and frameworks within the primary and post primary school sector, including identifying any potential impediments to reporting, investigation and response to allegations and incidents of sexual abuse. A historical context, covering the decades during which these allegations were made, will also be provided.
2. The Inquiry commissioned Dr Helen Buckley, Fellow Emeritus of the School of Social Work and Social Policy at Trinity College, Dublin, to provide an expert report in the terms directed by the Terms of Reference, and her report is available at Appendix 4 to this report
3. This chapter looks at the procedures and guidelines as well as legislation dealing with various aspects of child safeguarding and protection, some of which are specific to schools, and some of which have a more general application. Drawing on the detailed analysis of Dr Buckley, this chapter concludes by making a number of recommendations for further improvement of the existing framework of child protection in schools.
4. It is important to bear in mind that child protection and safeguarding encompasses all aspects of child welfare and abuse and is not confined solely to safeguarding against sexual abuse, as will be seen in the discussions that follow.

(i) Child Protection: The Views of Survivors

5. Child protection and safeguarding in schools is an important issue for survivors. A number of survivors wanted actions about child safeguarding when asked what the Government should do in response to revelations of sexual abuse in schools.
6. Broadly speaking, survivors wanted action to ensure that child protection was effective, and that increased resources and oversight be dedicated to safeguarding. Survivors also wanted research on developing knowledge of risks for safeguarding purposes, increased vetting measures, awareness raising about safeguarding, and adequate sex education in schools so that children were better able to distinguish between problematic and healthy behaviour.

7. The Scoping Inquiry received a number of submissions on child protection and safeguarding. Briefly summarised, they made the following points:
- That child safeguarding had made progress in Ireland over the decades, and that progress was set out, and the improvements acknowledged. Remaining gaps were identified as: (a) religious rituals, particularly confession as a ritual which can give rise to situational opportunities for coercion of children; and (b) the absence of sex education and open conversations about sexuality.
 - It was necessary that schools were “psychologically safe” for children, requiring children to have voice and agency, and not to fear speaking up about abuse happening in any area of their lives, in school or otherwise.
 - That the religious institutions in the context of a judicial inquiry have an opportunity to move beyond the narratives of denial, to restore their credibility. This required acknowledgement of harm and relinquishing of power and is the challenge an Inquiry can put to the Church today.

B. Sex Education in Schools

8. We commence our consideration of child protection measures in schools with a discussion of the development of sex education in Irish schools, before moving to consider the development of the legislative framework in relation to child protection, and how this is being applied on the ground in schools.

(i) Curriculum changes: The Development of Sex Education in Schools

9. The Stay Safe programme, introduced to primary schools in 1991, offers professional development for teachers, training for boards of management and information sessions for parents. A revised Stay Safe programme was introduced in 2016. The programme is described as a personal safety skills programme for primary schools to reduce vulnerability to child abuse and bullying through provision of a personal safety education for children.¹

1 See PDST website, <https://www.pdst.ie/staysafe>.

10. Sometimes referred to as the Child Abuse Prevention Programme ('CAPP'), the programme, taught from junior infants to sixth class, provides the following:
 - Lessons on safe and unsafe situations, bullying, inappropriate touch, secrets, telling, and stranger danger.
 - Empowering children with self-protective skills.
 - Encouraging children to recognise and resist abuse or victimisation.
 - Teaching children to always seek help from a trusted adult when faced with unsafe, threatening, or abusive situations.
11. With the introduction in 2011 of revised guidelines,² primary schools were obliged to implement the Stay Safe programme.³ The teaching of Social, Personal & Health Education ('SPHE') is compulsory in primary and junior cycle classes. Similarly, all post-primary schools were required to have a Relationship and Sexuality Education programme ('RSE') at senior cycle.⁴

(ii) National Council for Curriculum Assessment 2019 Review of SPHE and RSE

12. The National Council for Curriculum Assessment ('NCCA') at the request of the Minister for Education carried out a major review of sex education in Irish schools, which commenced in 2018. Following this Review, a new SPHE curriculum (which includes RSE) is being introduced. The new SPHE curriculum for junior cycle was rolled out in September 2023, with the senior cycle curriculum due this year (2024) and primary school curriculum due to commence in 2025. The new junior cycle curriculum in SPHE is a 100-hour course divided into four areas:
 - Understanding myself and others;
 - Making healthy choices;
 - Relationships and sexuality; and,
 - Emotional wellbeing.
13. The NCCA Review consulted widely with all stakeholders, including teachers, students, school principals, parents, patrons, and other relevant organisations. A report was published in 2019 setting out the results of the consultation process and recommendations.⁵

2 Department of Education, *Guidelines and Procedures for Child Protection* (2011).

3 Dr Helen Buckley, *Report on child protection for the Scoping Inquiry into Historical Sexual Abuse in Schools run by Religious Orders*, p. 37.

4 Ibid, p. 40. Department of Education, *Child Protection Procedures for Primary and Post-Primary Schools* (revised 2023), p.58.

5 National Council for Curriculum Assessment, *Report on the Review of Relationships and Sexuality Education (RSE) in primary and post-primary schools* (December 2019).

14. The Report explains that RSE began to be developed in 1995. In 1996, the RSE interim curriculum and Guidelines from the NCCA were introduced into primary and post primary schools. In 1999, RSE became a mandatory part of the primary school curriculum and in 2000 a mandatory part of Junior cycle SPHE framework. The Minister for Education in requesting the review asked that it encompass the curriculum for RSE, and that the following aspects be considered:⁶
- Consent, and what it means and its importance;
 - Developments in contraception;
 - Healthy, positive sexual expression and relationships;
 - Safe use of the internet;
 - Social media and its effects on relationships and self-esteem; and,
 - LGBTQ+ matters.
15. The above topics are now included as part of the new curriculum.
16. Teacher training and confidence was identified as a critical factor in supporting the improvement of the quality of RSE education. In particular, the Review recommended greater development of specialist training and professional development in the area.⁷ The Review further highlighted a need for further consideration of specialist qualifications in the area, noting it is the only subject at post primary level that can be taught without any qualification or accreditation from the Teaching Council and this impacts on its status, and on teacher confidence.⁸ The Review also noted that a research project was being undertaken by the TEACH-RSE, research team in Dublin City University, to examine the experience and needs of student teachers in relation to their professional development in SPHE/RSE.⁹
17. The findings of the TEACH-RSE project were published in 2021, making wide ranging recommendations, including that RSE be a mandatory/core component in primary and post-primary initial teacher training, with elective/subject specialism options in RSE to be offered to students in addition.¹⁰ It also recommended that accredited SPHE/RSE post graduate qualifications be developed, as well as providing for continuing professional learning and development in SPHE/RSE for teachers.¹¹

6 Ibid, p. 5.

7 Ibid pp. 83, 84.

8 Ibid, p. 75.

9 Ibid, p. 80.

10 Maunsell et al, *TEACH-RSE: Research Report: Teacher Professional Development and Relationships and Sexuality Education*, (DCU, 2021).

11 Ibid. Currently, the HSE offers online resources to teachers to support the revised SPHE curriculum for junior cycle. It also offers a two-day training course for post-primary teachers, aimed at developing the necessary skills, competencies, and attitudes for effective teaching and learning in junior cycle SPHE (Skills for Facilitating SPHE – HSE.ie).

18. In consultations with students during the NCCA Review there were indications that schools were effectively implementing the Stay Safe programme. Messages around keeping safe, friendship and bullying taught in the Stay Safe programme were mentioned by 5th class students in discussions with them about SPHE.¹² Whilst the review was not examining the efficacy of the Stay Safe programme, these observations are reassuring about the teaching of the Stay Safe programme.
19. In addition, a number of participants noted that (the newly introduced) child protection and safeguarding inspections would potentially improve RSE within schools as the inspectors would be asking students about their experience of same as part of such an inspection.¹³ The Review in commenting on this said that increased inspection and monitoring of SPHE/RSE in primary and post primary schools would be welcome.¹⁴
20. One of the issues discussed with stakeholders in the Review was the extent to which the ethos of a school may influence the delivery of the RSE curriculum. Those representing denominational school trusts and management bodies highlighted the importance of RSE to the holistic development of young people, and that ethos could never be a barrier to this.¹⁵
21. Those who had concerns felt that some faith-based schools prohibit teaching about certain topics and overlay the curriculum with a particular set of beliefs. The Professional Development Service of Teachers¹⁶ ('PDST') expressed the hope that the new review would supply answers to the dilemma teachers face regarding the ethos of their schools and what resources they wish to use. The Association of Secondary Teachers stated that the ethos of the school should not determine the manner in which RSE is provided to students, who have a right to objective and factual RSE regardless of the type of school they attend.¹⁷

12 National Council for Curriculum Assessment, *Report on the Review of Relationships and Sexuality Education (RSE) in primary and post-primary schools* (December 2019), p.16.

13 Ibid p. 40.

14 Ibid p. 78.

15 Ibid p. 58.

16 Now a new service called Oide.

17 Ibid p. 59.

22. The review found a degree of ambiguity as to how people perceive school ethos, and how it affects the school's approach to RSE. The Review acknowledged that ethos can be a source of tension and uncertainty for some schools and teachers in relation to some aspects of the SPHE/RSE, but concluded that at this point school ethos can be separated out from other factors that influence the teaching of RSE. The Review found that the key enabler of more confident and comprehensive teaching of RSE is the development of teacher competence and confidence. Teachers also need to be supported by a clearly articulated curriculum and a clear RSE school policy that is enabling and supportive. Enhanced support materials and opportunities for teachers within and across schools to share practice are also required.¹⁸

(iii) 'Flourish'

23. In April 2021, the Irish Catholic Bishops Conference published the 'Flourish' programme. This is described by the Catholic Education Partnership ('CEP')¹⁹ as an RSE resource for use in Catholic primary schools. CEP state that it aims to view RSE through a Catholic lens and is designed for use in conjunction with the Department of Education's RSE programme and does not replace the RSE component of SPHE. The programme intends to foster moral development based on the Church's teachings. There is also a Relationship and Sexuality Education Guidance document for Catholic post primary schools, prepared by the Council for Education of the Irish Episcopal Conference.

(iv) Conclusions on development of sex education in schools

24. To some extent the content of the RSE curriculum, or how it is taught, is likely to be a controversial subject for some parents and schools. What is evident, however, is that RSE, as currently taught, is intended to convey to children information about puberty, the changes to their bodies, and human sexuality. If taught through the lens of the Flourish programme, the same basic information will be conveyed, albeit from the perspective of Catholic teaching.

18 Ibid p. 77. See also the discussion on Ethos and Curriculum implementation at p.58-60.

19 <https://catholiceducation.ie/rse-primary/>.

25. The general sense from those in the survivor engagement process was that survivors wished children to be armed with the kind of knowledge and information they did not themselves have during their childhood and adolescence. Survivors spoke about their naivety, their ignorance and complete lack of understanding of sexual matters. It seems that sex education at a minimum provides basic knowledge and information to students, and the new RSE curriculum aims to extend the subject to ensure it covers issues which students have identified as relevant to them in their lives.
26. The new SPHE curriculum is intended to provide comprehensive sex education for children across the entire school cycle. There are likely to be remaining issues concerning teacher training pre and post qualification, which the NCCA have highlighted. Systemic issues of this kind will likely take some years to resolve. It remains to be seen to whether school ethos is a major factor in how RSE is taught in some schools, and whether the elements mentioned by the Review as necessary for a consistent delivery of the RSE curriculum across all schools will be put in place.
27. It is also not yet fully clear what will be the impact of the Flourish programme on the delivery of the new SPHE curriculum in Catholic schools. This is likely, at least to some extent, to depend on the views of parents in relation to the new curriculum. There have been some objections from parents to the new SPHE programme and the Minister for Education has said that parents may withdraw their children from SPHE classes if they object to the content.²⁰
28. It is far too early to assess the efficacy of the new SPHE curriculum, which has yet to be rolled out to senior cycle students and the primary school sector. Much will depend on the ability of the educational sector to improve teacher training in the subject so that sufficient numbers of teachers can teach the curriculum confidently.

C. Legislative reform of child protection

(i) The position prior to legislation: Guidelines and procedures in child protection

29. Prior to the relatively recent introduction of various pieces of primary legislation, child protection was dealt with by means of guidelines and procedures.²¹ In 1991, the Department of Education issued 'Procedures for dealing with allegations or suspicions of child abuse' to assist school management and teachers to handle disclosures of abuse from children.²²

20 Carl O'Brien, 'Parents will have right to withdraw children from new sex education classes' *The Irish Times* (22 February 2023).

21 See Dr Helen Buckley, *Report on child protection for the Scoping Inquiry into Historical Sexual Abuse in Schools run by Religious Orders*, p. 1 and p. 5, for a discussion of the early development of child protection guidelines.

22 *Ibid*, pp. 33-34.

30. In 1999, the Department of Health & Children (now the Department of Children, Equality, Disability, Integration and Youth ('DCEDIY')) The Department of Education and Science followed in 2001, with 'Child Protection Procedures and Guidelines' intended for primary schools, with guidelines for post primary schools issued in 2004.²³ In 2011, the Health Service Executive ('HSE') issued 'Children First: National Guidance for the Protection and Welfare of Children'.²⁴ The Department of Education followed with revised Child Protection Procedures for Primary and Post-Primary Schools.²⁵

(ii) The Children First Act 2015: The Act and Guidelines applicable to Recognised Schools

31. The Children First Act 2015 ('the 2015 Act') came fully into effect in December 2017. The Act prescribes child protection measures applicable to "relevant services" including all schools, recognised and unrecognised,²⁶ and introduces mandatory reporting for registered teachers²⁷ and others.

32. In 2017, the Department of Education published updated guidelines on the coming fully into force of the 2015 Act and further revised those guidelines in 2023, being the 'Child Protection Procedures for Primary and Post Primary Schools' ('the 2023 Procedures'). These guidelines incorporate the most recent DCEDIY guidelines, issued in 2017 and Tusla's guidelines.

(a) Mandatory Reporting under the 2015 Act

33. A registered teacher is required to report child protection concerns to Tusla when they know, believe, or have reasonable grounds to suspect that a child has been, is being, or is at risk of being harmed as a result of information the registered teacher received or became aware of in the course of their employment as a teacher.

34. Similarly, if a child discloses to a registered teacher their belief that they have been, are being or are at risk of harm, the registered teacher must report the disclosure to Tusla as soon as practicable. A registered teacher must also report disclosures of abuse made to them by a child, where made in the course of their employment as a teacher, and not a personal capacity.²⁸

23 Ibid, p. 35.

24 Ibid, p. 9.

25 Ibid, p. 37.

26 Unrecognised schools do not receive state funding and are independent of the Department of Education. See also paragraph 131 et seq.

27 Teachers registered with the Teaching Council under the Teaching Council Act 2001.

28 Children First Act 2015 s. 14 (1).

(b) What amounts to harm?

35. Harm is defined in the 2015 Act as assault, ill treatment, or neglect of the child in a manner that seriously affects, or is likely to seriously affect the child's health, development, or welfare, and includes sexual abuse of the child. Ill treatment is defined by the 2015 Act as abandoning or cruelly treating a child or procuring or allowing the child to be abandoned or cruelly treated.²⁹ Neglect is defined as depriving the child of adequate food, warmth, clothing, hygiene, supervision, safety or medical care.³⁰
36. Sexual abuse is defined as offences against the child specified in the Third Schedule to the Act, wilful exposure of the child to pornography and wilful sexual activity in the presence of the child.³¹ The Third Schedule, lists a wide variety of sexual offences against children.

(c) Mandatory Reporting: What the Procedures say³²

37. The threshold for reporting neglect, ill-treatment/emotional abuse, and physical abuse is where the registered teacher knows, believes, or has reasonable grounds to suspect that the child is suffering any of those circumstances to the point where the child's health, development or welfare have been or are being seriously affected, or are likely to be seriously affected.³³
38. The Procedures state that all sexual abuse falls within the category of seriously affecting a child's health, development, or welfare, so that all concerns about sexual abuse must be reported to Tusla. The only exception to this, is sexual activity between older teenagers as set out below.³⁴ Thus, once a teacher has concerns about the sexual abuse of a child, the threshold for reporting is reached.

29 Children First Act 2015, s. 2.

30 Ibid.

31 Ibid Section 2.

32 In this and the following sections a reference to procedures is a reference to the 2023 procedures, unless otherwise indicated, as they incorporate the DCEDIY and Tusla guidelines and are specifically directed to recognised schools.

33 Department of Education, *Child Protection Procedures for Primary and Post Primary Schools (2023)* paragraphs 4.3.1 to 4.3.4.

34 Ibid paragraph 4.3.5, p.28.

(d) *Non-statutory Best Practice Reporting*

39. The Procedures provide for non-statutory reporting obligations so that Tusla should be informed if school personnel have ‘reasonable grounds for concern’ that a child may have been, is being, or is at risk of being abused or neglected. Tusla is also to be informed of concerns that an adult poses a risk to children, even if no specific child is named in relation to the concerns. If unsure whether to report, the Designated Liaison Person (‘DLP’) may contact Tusla to informally discuss concerns.³⁵
40. The safety and wellbeing of a child must take priority over the concerns about an adult against whom allegations are made.³⁶ It is not necessary to prove that abuse has occurred to report a concern to Tusla. All that is required is that the person has reasonable grounds for concern. It is Tusla’s role to assess concerns that are reported.³⁷

(e) *Exceptions to Mandatory Reporting*

41. Sexual activity between a child aged between 15 to 17 years with another person who is not more than 2 years older than the child concerned is generally exempted from mandatory reporting obligations.³⁸

(f) *Bullying*

42. Bullying can give rise to an obligation to make a report to Tusla in serious cases where the behaviour is regarded as possibly abusive.³⁹ The DLP is to seek advice from Tusla if in doubt about whether an incident should be referred.⁴⁰ The principal of a recognised school must report such concerns to the Board of Management.⁴¹

35 Ibid paragraph 2.3.6, p.17.

36 Ibid paragraph 3.2.3 p.19.

37 Ibid paragraph 2.2 p.10.

38 This exemption is subject to the following conditions, as provided for in s. 14(3) of the 2015 Act:

1. The registered teacher believes there is no material difference in capacity or maturity between the parties; and
2. The relationship is not intimidatory or exploitative of either of them; and
3. The child concerned makes known to the registered teacher that he or she does not want the sexual activity to be reported; and
4. The registered teacher must also be of the view that the child concerned does not believe that he or she has been, is being, or is at risk of harm.

39 Bullying is defined at p. 16-17 of the Guidelines as ‘unwanted negative behaviour verbal, psychological or physical conducted by an individual or group against another person or persons which is repeated over time’ *and* includes cyberbullying.

40 Ibid, p.17.

41 Ibid, paragraph 5.5.1, p.37.

(g) Child Safeguarding Statements under the 2015 Act

43. All schools, recognised or unrecognised, must comply with s. 11 of the 2015 Act⁴² requiring that a written child safeguarding statement is drawn up, sometimes referred to as a Risk Assessment and Child Safeguarding Statement, (**‘the Safeguarding Statement’**). The Safeguarding Statement must be in accordance with any guidelines under s. 6 of the 2015 Act issued by the DCEDIY, and any guidelines issued by Tusla in respect of child protection.
44. The Safeguarding Statement requires an assessment and identification of potential harm to the child while availing of the school’s services, together with procedures to manage the risks arising as far as practicable. Risk assessment refers to harm defined by the 2015 Act and not general health and safety risks.⁴³ The Department of Education provides a mandatory template for the Safeguarding Statement.
45. The Safeguarding Statement must specify the school’s procedures in respect of:
- A member of staff who is the subject of any investigation in respect of a child in the school;⁴⁴
 - the recruitment of staff of the school with regard to their suitability to work with children;⁴⁵
 - the provision of information and, where necessary, instruction and training, to staff in relation to the identification of harm.⁴⁶
46. The child safeguarding statement must be displayed in a prominent place in the school, and it must be made available to staff⁴⁷ and, on request, to parents and guardians, Tusla and members of the public.⁴⁸
47. The Safeguarding Statement must specify procedures for reporting child safeguarding issues to Tusla, in accordance with the 2015 Act or the DCEDIY guidelines under s. 6 of the Act.⁴⁹ The Safeguarding Statement must also specify the procedures for maintaining a list of mandated persons in the school,⁵⁰ and for the appointment of a ‘relevant person’.⁵¹

42 All relevant services must comply with s. 11 of the 2015 Act, including recognised and unrecognised schools.

43 Department of Education, *Child Protection Procedures for Primary and Post Primary Schools (revised 2023)* paragraph 8.8.2, p. 59.

44 Section 11(b) of the 2015 Act.

45 Section 11(c) of the 2015 Act.

46 Section 11(d) of the 2015 Act.

47 Section 11 (5)(a) of the 2015 Act.

48 Section 11(5) (b) (i)(ii) & (iii) of the 2015 Act.

49 Section 11(e) of 2015 Act.

50 Section 11 (f) of 2015 Act.

51 Section 11(g) of 2015 Act.

(h) Boarding School Procedures

48. In 2023, for the first time, the Department of Education published ‘Child Protection and Safeguarding Procedures for Boarding Facilities associated with Recognised Schools’ to assist boards of management of boarding schools with their child protection and safeguarding, and to ensure that those arrangements are put in place across all boarding facilities.

(i) Designated Liaison Persons

49. The appointment of a DLP in each school was first recommended by the 2001 Department of Education’s ‘Child Protection Guidelines and Procedures’. DLPs, however, are not provided for in the 2015 Act. The DLP, prior to the introduction of mandatory reporting, was the person, normally the school principal, responsible for receiving reports of child protection concerns from school staff and passing them on to Tusla. Since mandatory reporting, as set out above, all registered teachers now have mandatory reporting obligations, and may report a concern individually, or jointly with the DLP.
50. The procedures discuss the duties of the DLP in recognised schools.⁵² The DLP is also the ‘relevant person’ who must be appointed under the 2015 Act by a ‘relevant service’, which includes all schools.⁵³ The relevant person must be named in the Safeguarding Statement and is described in the 2015 Act as the first point of contact in the school concerning the safeguarding statement.
51. The role of the DLP is to act as the resource person to any member of staff who has a child protection concern and should be knowledgeable about child protection and have sufficient training to fulfil the role.⁵⁴ The DLP is the person to liaise with outside agencies and is responsible for ensuring that reporting procedures are followed, recorded, and reported promptly to Tusla.⁵⁵
52. While the 2015 Act does not provide for the appointment of a DLP, the procedures require that the boards of management of recognised schools designate a DLP and a deputy DLP, and that it is expected that the DLP will normally be the principal and that where possible, the deputy DLP will be the deputy principal.⁵⁶

52 Ibid, paragraph 3.5.

53 Ibid, definition of ‘relevant person’ glossary of terms.

54 Ibid, p.22 paragraph 3.5.

55 Ibid, paragraph 3.5.10.

56 Ibid, paragraph 3.5.2 p.21.

53. The Deputy's role is defined as acting as a substitute when the DLP is absent, rather than acting as a support to the DLP.⁵⁷ In a one teacher school, the DLP will be the principal and there is no need to appoint a deputy DLP.⁵⁸ However, as explained in Dr Buckley's report, revised procedures intended to be introduced by the Department of Education in 2024 are likely to include an expanded role for the Deputy DLP.⁵⁹

(iii) The Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Act 2012

54. The Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Act 2012 ('the 2012 Act') provides that it is a criminal offence to withhold information about a serious offence, including sexual offences, against a child (a person under 18 years) or a vulnerable person. For the purposes of this chapter, we are concerned only with offences against children.

55. The offence created by the 2012 Act requires that:

- A person knows or believes that an offence specified in Schedule 1 of the Act has been committed by another person against a child; and
- has information which he or she knows or believes might be of material assistance securing the apprehension, prosecution, or conviction of that person for that offence; and,
- fails, without reasonable excuse, to disclose the information as soon as practicable to An Garda Síochána.⁶⁰

57 Ibid, paragraph 3.5.3 p. 22.

58 Ibid, paragraph 3.5.11 p. 22.

59 Dr Helen Buckley, *Report on child protection for the Scoping Inquiry into Historical Sexual Abuse in Schools run by Religious Orders*, p. 40.

60 Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Act 2012, s. 2(1).

56. The obligation to disclose information is in addition to, and not in substitution for, any other obligation to disclose information to An Garda Síochána or any other person, but the person does not have to disclose information to An Garda Síochána more than once.⁶¹ A defence is provided for circumstances where a child requests that the information not be reported to An Garda Síochána.⁶² Similarly, if the child is under 14 years, it is a defence if the parent or guardian of the child made it known to the person charged with the offence, on behalf of the child, that the information should not be disclosed to An Garda Síochána, and the person charged relied on that view.⁶³
57. It is also a defence for a person or a parent or guardian to show that a member of a 'designated profession' who is providing or provided services to a child in relation to the injury suffered made known their view that the offence should not be disclosed to An Garda Síochána.⁶⁴
58. The parent or guardian and the designated professional should have regard to the wishes of the child when considering whether or not to report to An Garda Síochána.⁶⁵ An organisation or body that provides services to children harmed as a result of physical or sexual abuse, may apply to the Minister to be designated as a prescribed organisation.⁶⁶ Such organisations, or persons employed by such organisations, benefit from defences under the Act.⁶⁷

61 Ibid, s. 2(5).

62 Under s. 4 of the 2012 Act, it is a defence if the child concerned, who was capable of forming a view on the matter, made known that he or she did not wish the offence to be reported to An Garda Síochána, and the person accused of withholding information relied on that view. The child has to be over 14 years of age to be capable of forming a view on the matter.

63 Ibid, s. 4(4). The parent or guardian concerned must have had:

- (i) a reasonable basis for forming the view that the information should not be disclosed, and has acted, and continues to act, bona fide in the best interests of the child; and
- (ii) the parent or guardian cannot be a family member of the person known or believed to have committed the offence.

64 Ibid, s. 4(8). Members of a designated profession for the purposes of the Act are:

- (i) A medical practitioner,
- (ii) A registered nurse or midwife, or
- (iii) A registered psychologist.

65 Ibid, s. 4(9).

66 Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Act 2012, s. 5(1). The services provided by the organisation must relate to 1) the resolution of personal, psychological, or social problems through guidance counselling or otherwise, 2) the care of persons in need of protection, and the services require the exercise of skill or judgment. (s. 5(10)).

67 Section 4(12) and (13) provide for the parameters of this defence, and provide that it is a defence for such persons to show that they formed the view that the offence should not be disclosed, and they had reasonable grounds for forming the view that this was for the purpose of protecting the health and well-being of the child.

59. The Court of Appeal in the recent case of *McGrath v HSE* stated, *obiter*, that the obligation in the 2012 Act to report to An Garda Síochána is engaged by the knowledge that an offence has been committed against a child in the past, and this refers to any time in the past.⁶⁸
60. The Child Care (Amendment) Bill 2023 proposes to amend the Children First Act 2015 by the inclusion of a provision that where Tusla receive a report that an offence has been committed under the Act against a person when that person was a child, Tusla shall refer the report to the Garda Síochána as soon as practicable.⁶⁹ The Scoping Inquiry understands, however, that this proposal would put existing Tusla practice on a statutory footing.
61. The offences in Schedule 1 to the Act are wide ranging, and include murder, manslaughter, rape, sexual assault, reckless endangerment, cruelty to children, and other offences.

(iv) The National Vetting Bureau (Children and Vulnerable Persons) Act 2012

62. The National Vetting Bureau (Children and Vulnerable Persons) Act 2012 (as amended) provides that ‘relevant organisations’⁷⁰ must apply for Garda vetting in respect of anyone they employ or engage to carry out ‘relevant work or activities’,⁷¹ being work or activities relating to children that are specified in Schedule 1 of the 2012 Act.

68 *McGrath v HSE* [2023] IECA 298, at para. 97: The obligation in the 2012 Act on the other hand, is not framed around the moment in time when a person receives information, but rather is engaged by the knowledge that an offence has been committed against a child in the past, and it is clear in my view that this refers to any time in the past.

69 The Heads and General Scheme of the Child Care (Amendment) Bill 2023, Head 44 p. 79.

70 “A relevant organisation” means a person (including a body corporate or an unincorporated body of persons)—(a) who—(i) employs (whether under contract of employment or otherwise) any person to undertake relevant work or activities,(ii) enters into a contract for services with any person for the provision by that person of services that constitute relevant work or activities,(iii) permits any person (whether or not for commercial or any other consideration) to undertake relevant work or activities on the person’s behalf,(iv) is a provider of courses of education or training, including internship schemes, for persons and, as part of such education or training or scheme, places or makes arrangements for the placement of any person in work experience or activities where a necessary part of the placement involves participation in relevant work or activities, but does not include an individual who does any of the matters referred to in *subparagraphs (i) to (iv)* in the course of a private arrangement, (b) who carries on the business of an employment agency within the meaning of the Employment Agency Act 1971 for the employment of persons to undertake relevant work or activities, (c) established by or under an enactment (other than the Companies Acts) whose functions include the regulation, registration, licensing or other authorisation (howsoever described) of persons who undertake relevant work or activities, or (d) who represents for the purposes of the vetting procedures under this Act, another person, trade, profession or body, organisation or group or other body of persons that undertakes relevant work or activities.

71 Relevant work or activity is any work or activity which is carried out by a person, a necessary and regular part of which consists mainly of the person having access to, or contact with, children in respect of the work or activities set out in schedule 1 of the National Vetting Bureau Act 2012.

63. The Vetting Bureau's function is to establish whether the person being vetted has any criminal convictions or whether there is any 'specified information' in respect of the person. Specified information, or 'soft information', concerns a finding or allegation of harm to another person received by the National Vetting Bureau from An Garda Síochána or a 'scheduled organisation,' as defined by the 2012 Act.⁷²
64. A scheduled organisation includes the Health Service Executive, Tusla, the Teaching Council, Health Information Quality Authority ('HIQA') and other similar bodies.⁷³ If such bodies become aware, as a result of an investigation or disciplinary procedure carried out by them that a person may pose a risk to a child, then they must report that concern to the Bureau. Failure to make such a report is an offence.⁷⁴
65. In dealing with a vetting application the Bureau must notify the relevant organisation if the vetting subject has any previous convictions for abuse of children. In addition, if there is specified information in relation to that person that is considered to reasonably give rise to a bona fide concern that the person may pose a risk of harm to children, that information can be disclosed in accordance with the Act. This information can include allegations of wrongdoing, or findings of a disciplinary tribunal. The Bureau must evaluate whether that information requires to be disclosed. The vetting subject is to be informed of an intention to disclose specified information, may make submissions, and has a right of appeal in respect of a decision to disclose.

(a) Exemptions from Vetting

66. An exemption is made for certain private arrangements for the provision of work or activities.⁷⁵ Vetting obligations also do not apply in respect of individuals who volunteer on an occasional basis and for no commercial consideration at a school, sports or community event or activity, except where such assistance includes coaching, mentoring, counselling, teaching, or training of children.⁷⁶

72 Specified information is information from the Gardaí or a scheduled organisation that is considered to reasonably give rise to a bona fide concern that the vetting subject may harm any child or vulnerable person, cause any child or vulnerable person to be harmed, put any child or vulnerable person at risk of harm, attempt to harm any child or vulnerable person, or incite another person to harm any child or vulnerable person.

73 As set out in s. 19 of the National Vetting Bureau (Children and Vulnerable Persons) Act 2012.

74 Ibid, s. 27.

75 'Relevant organisation' is defined in s. 2 of the National Vetting Bureau (Children and Vulnerable Persons) Act 2012 as excluding work or activities provided as part of a 'private arrangement', which is further defined as: '... an arrangement made by an individual for the provision by any person of relevant work or activities—

(a) for, or for the benefit of, the individual, or

(b) for, or for the benefit of, a child or vulnerable person who is a member of the individual's family ...'

76 Ibid, s. 3(c).

(b) Review of the 2012 Act

67. A review of the 2012 Act is currently underway. In April 2021, the Minister for Justice announced the establishment of an Interdepartmental Group to review the 2012 Act (**‘the Review Group’**). The Review Group is to make recommendations on a range of issues for amending the legislation and strengthening the Garda vetting process and to engage in public consultation as part of its work. The Review group hoped to make its recommendations by the end of 2021. This date was subsequently extended to the second quarter of 2022.⁷⁷ The Review Group expect to finish their work in 2024.
68. In announcing the establishment of the Review Group, the Minister stated that a key focus would be on the introduction of a mandatory system of re-vetting every 3 years.⁷⁸ While the 2012 Act provides for the re-vetting of employees following the expiry of a specified period, this provision has not been commenced.⁷⁹ Currently there is no requirement for re-vetting unless the person moves job or position within the categories of relevant organisations.
69. The Review Group will also review the approach to the connected issue of vetting for specific employments, which will include consideration of moving to a system in which a person is vetted for particular work, rather than a particular employment. Under this proposal a person employed by the HSE or Tusla as a social worker, for example, would not need to be re-vetted (within 3 years) for a change of work location within the basic social worker grade, but would be re-vetted on promotion. Likewise in relation to volunteering, a person vetted to coach, for example, under 14’s in GAA could switch to a different sport without being re-vetted. Vetting certificates could also be withdrawn before the expiry of the 3-year period where new information comes to light that points to an immediate and substantive risk to children or vulnerable adults.⁸⁰
70. The Special Rapporteur for Child Protection proposed a similar reform, that is, that vetting certificates could be withdrawn when new information comes to light. He highlighted that that the National Vetting Bureau currently may only share information in the context of a vetting application and he proposed re-vetting where the Bureau it is notified by Tusla of specified information concerning an individual and it is indicated that the individual is working in a relevant organisation.⁸¹

77 Órla Ryan, ‘Recommendations for reform of garda vetting pushed back due to ‘complex’ nature of review’ *TheJournal.ie* (19 February 2022).

78 Department of Justice, ‘Press Release: Minister McEntee moves to reform vetting arrangements and legislation’ (26 April 2021), available at <https://www.gov.ie/en/press-release/c935f-minister-mcentee-moves-to-reform-vetting-arrangements-and-legislation/>.

79 Section 20 of the National Vetting Bureau (Children and Vulnerable Persons) Act 2012.

80 Department of Justice, ‘Press Release: Minister McEntee moves to reform vetting arrangements and legislation’ (26 April 2021), available at <https://www.gov.ie/en/press-release/c935f-minister-mcentee-moves-to-reform-vetting-arrangements-and-legislation/>.

81 Conor O’Mahony, ‘Annual Report of the Special Rapporteur on Child Protection’ (2020), p.58.

(v) The Criminal Law (Sexual Offences) Act 2017

71. The Criminal Law (Sexual Offences) Act 2017 creates offences relating to the sexual exploitation of children, which encompasses grooming, including by way of online contact with children in order to make arrangements for meeting with a child for the purpose of sexual exploitation. Underage consensual sexual relationships between peers, where sexual activity falls within strictly defined age limits, and where the relationship is not exploitative or intimidatory are exempted.

(vi) Criminal Justice Act 2006

72. Section 176 of the Criminal Justice Act 2006 creates the offence of reckless endangerment of children. A person having authority or control over a child or an abuser, commits an offence if she or she intentionally or recklessly endangers the child by causing or permitting the child to be left in a situation that creates a substantial risk of the child being harmed or sexually abused, or he or she fails to take steps to protect a child from such risks, while knowing the child was in such a situation.

D. The Catholic Church Guidelines

73. The Catholic Church, insofar as it is a 'relevant service', is bound by the provisions of the Children First Act 2015. Members of the clergy are also mandated reporters for the purposes of the 2015 Act. Thus, where children are involved in church ministries, whether educational or otherwise, a risk assessment and safeguarding statement must be completed, and the Church authorities must comply with the DCEDIY guidelines under the 2015 Act,⁸² as well as guidelines issued by Tusla and the mandatory reporting requirements of the 2015 Act. The requirements of the vetting legislation must also be complied with.
74. The National Board for Safeguarding Children in the Catholic Church in Ireland ('NBSCCCI') was established in 2006 by Catholic Church bodies and continues to date. The NBSCCCI's function is to provide advice and assistance in relation to child safeguarding in the Catholic Church, to monitor compliance with legislation, policy, and best practice in this area, and to report annually on these activities.

82 Department of Children and Youth Affairs, 'Children First: National Guidelines for the Protection and Welfare of Children' (2017).

75. The NBSCCCI in 2008 issued seven standards for child protection and safeguarding within the Catholic Church and updated the Standards in 2016. The 2008 Standards required mandatory reporting of suspicions of child abuse by Catholic Church bodies and personnel. Each Standard is the subject of a separate detailed guidance manual, together with relevant template documents.⁸³ The Standards incorporate the requirements of the 2015 Act and guidelines and are tailored specifically to the Church and its activities with children.
76. The Standards require that each Church authority establish a Child Safeguarding Committee, who appoint a Local Safeguarding Representative ('LSR'). In some areas, there are Local Child Safeguarding Councils or Parish Safeguarding Committees who assist parish priests or local superiors. Each of these has a role in ensuring that the safeguarding provisions set out in the Standards are adhered to.
77. The Standards give guidance on a wide range of issues, including:
- Visiting clergy or clergy taking up a ministry must provide declarations and confirmations of good standing, detailing their previous positions and outlining any concerns. There are standard forms provided for this purpose to be completed by the cleric and his superior in his former ministry;
 - Creating a code of behaviour with children is outlined together with dealing with breaches of that code;
 - One to one contact with children by clerics, trips away with children and the participation of children with specific needs are discussed;
 - Guidance on the use of emails, text messages, photography, CCTV & webcams;
 - Guidance as the safeguarding rules applicable for clerics in external organisations or Church bodies.⁸⁴

83 The seven standards are: Creating and Maintaining Safe Environments; Procedures for Responding to Child Protection Suspicions, Concerns, Knowledge, or Allegations; Care and Support for the Complainant; Care and Management of the Respondent; Training and Support for Keeping Children Safe; Communicating the Church's Safeguarding Message; Quality Assuring Compliance with Standards. There is also a separate appendices and Glossary to the Standards. They are available at <https://www.safeguarding.ie/policy-guidance/view-all-the-guidance>.

84 NBSCCCI, 'Standard 1: Creating and Maintaining Safe Environments'.

78. In relation to confession, the Standards include guidance on safeguarding specifying that sacramental confession for children should be in a place where both priest and child may be seen but not heard, preferably in a church or oratory and that when children attend confession all efforts should be made to provide a safe and open environment.⁸⁵ If children and young persons are using church property including where schools visit the church as part of sacramental preparation, those situations should be considered on a case by case basis by the Church Authority concerned.⁸⁶
79. One-to-one meeting with children and young people, should not generally occur and should be supervised by two adults, save for 2 circumstances:
- (i) reactive situations, where a child or young person unexpectedly requests a meeting or a young person has to be removed from a group as part of a code of behaviour; or
 - (ii) as part of a structured piece of work, (the example given is one-to-one music tuition).
80. If speaking to a young person alone, the cleric should try to do so in an open environment in view of others or, if that is not possible, meet in rooms with visual access, or with the door open, or in an area where others are nearby. Another adult should be informed that the meeting is taking place and the reason for it and a detailed record of the meeting should be kept. Meetings should take place at appropriate times and in appropriate venues.
81. In addition to the church authorities, where children attend churches as part of sacramental preparation, a school is required to consider this as part of its own risk analysis for safeguarding purposes and put in place procedures to manage the risk involved.⁸⁷

85 NBSCCCI, 'Standard 2: Procedures for Responding to Child Protection Suspicions, Concerns, Knowledge, or Allegations Guidance issued to Church Bodies'.

86 Ibid, p. 35.

87 The Department of Education's mandatory template for risk assessment and child safeguarding statement gives this circumstance as an example of a risk that if relevant, should be taken into account by a school.

82. The NBSCCCI must be informed by church bodies of allegations of abuse that they receive, and it carries out an audit of those allegations annually. In addition, the NBSCCCI carries out reviews of church bodies, to monitor compliance with the Standards. The National Board have now completed a review of all dioceses pursuant to the most recent 2016 Standards and have in addition reviewed 13 religious orders. Reviews are voluntary on the part of the Church body concerned. Dr Buckley expresses the view that notwithstanding that some religious orders have opted out of reviews because of advice on data protection laws, the NBSCCCI's reports give reasonable confidence about child protection and safeguarding in the Catholic Church.⁸⁸
83. According to the Standards, the NBSCCCI is invited by the Church authority to carry out an independent review of its safeguarding practice in relation to the applicable indicators of the safeguarding standards, at a frequency agreed with the NBSCCCI. Dr Buckley in her Report expresses the view that although NBSCCCI reviews are carried out relatively infrequently, and only at the request of the Order or dioceses concerned, there are a number of factors which may underpin confidence that the dioceses are compliant with safeguarding requirements; firstly, the reports are published, a fact that is likely to highlight those that have not come forward for review. Any reports that show deficiencies will attract scrutiny to see if improvements have been made. Secondly, the safeguarding structure, which involves a significant number of lay persons, can act as a type of quality assurance and thirdly, the Pope issued an apostolic letter in 2019 which sets out the safeguarding accountability of a bishop, stating that negligence will be considered a crime under canon law. Finally, she states, almost all the bishops in the 26 dioceses have been replaced since the audits commenced and it may be reasonably assumed that the new appointees are aware of the commitment that they must now show to safeguarding.⁸⁹
84. Dr Buckley also states that between 2009 and 2016, all Bishops and religious leaders invited the NBSCCCI to review their practices, and all reports can be viewed on the NBSCCCI's website. The 2016 Revised standards reflected changes in response to the Reviews.⁹⁰

88 Dr Helen Buckley, *Report on child protection for the Scoping Inquiry into Historical Sexual Abuse in Schools run by Religious Orders*, p. 53.

89 Dr Helen Buckley, *Report on child protection for the Scoping Inquiry into Historical Sexual Abuse in Schools run by Religious Orders*, p. 31.

90 *Ibid*, p. 30.

E. Tusla’s Role in Investigating Child Abuse Allegations

85. Tusla’s role in investigating child abuse allegations currently arises under s. 3 of the Child Care Act 1991, which provides that Tusla is to promote the welfare of children who are not receiving adequate care and protection, and in performing that function, Tusla may take such steps as it considers requisite to identify such children and co-ordinate information from all relevant sources relating to children in its area.
86. This provision has been interpreted by the courts as giving Tusla the power to investigate allegations of abuse, and to mitigate any risks identified, including sharing information arising from such investigations with relevant third parties. However, the section does not provide a framework for investigating allegations, or what steps may be taken by Tusla to mitigate risk. Successive inquiries have recommended the enactment of specific provisions to clarify Tusla’s role.⁹¹ Lack of clarity has led to a considerable number of High Court challenges about Tusla’s role, and the rights of alleged abusers in the context of such investigations.⁹²
87. The Heads and General Scheme of the Child Care (Amendment) Bill 2023 (**‘the 2023 Bill’**) proposes to address this issue. The 2023 Bill proposes to remove the issue of investigation of complaints and any sharing of information arising from such investigations from the Child Care Act 1991 and place them within the Children First Act 2015. The proposed amendments to the 2015 Act propose a specific power and duty on Tusla to receive and assess reports of abuse from persons who are not mandated reporters.
88. Tusla expressly retains the same powers as it had under the 1991 Act, or any other enactment.⁹³ Where Tusla reasonably believes that there is an immediate and serious risk of harm to a child on foot of a report it receives, it may take whatever steps it deems necessary to protect the child, including disclosure to another person of such information as is necessary and proportionate to protect the child.⁹⁴ Tusla’s Child Abuse Substantiation Procedure (**‘CASP’**), and any other or amending guidelines on dealing with allegations of abuse, are placed on a statutory footing under the provisions of the 2023 Bill.⁹⁵

91 See discussion in Chapter 19.

92 See the discussion in Conor O’Mahony, *Annual Report of the Special Rapporteur on Child Protection* (2020), at p. 51 to 60 for a detailed discussion of the issues engaged.

93 *Ibid*, Head 44(2).

94 *Ibid*, Head 44(3) .

95 *Ibid*, Head 44(5).

89. The 2023 Bill requires that if Tusla, following a preliminary enquiry of a report of harm, has a bona fide concern under s. 19(1) of the 2012 Act, it shall notify the Garda Vetting Bureau (**'the Bureau'**) as soon as practicable in writing of that belief, and the reasons for it.⁹⁶
90. These proposals are broadly in line with the proposals of the Special Rapporteur for Children. He suggested that by allowing Tusla to report their 'bona fide' concerns to the Bureau, the Bureau could utilise the provisions of the 2012 Act, which already provides for a balancing of the rights of the alleged abuser with the requirement to protect children from harm and has procedures to protect the alleged abusers rights. Subject to those procedures, the Chief Bureau Officer can determine whether the specified information should be disclosed to a relevant organisation under the Act. In this way, Tusla may avoid the necessity to investigate and make specific finding as to whether abuse took place on the balance of probabilities, in respect of complaints where a bona fide concern arises. As the Special Rapporteur's report points out, the threshold of 'bona fide concern' is a more flexible one than a requirement to find that abuse did or did not take place on a balance of probabilities.⁹⁷ In dealing with allegations of historical abuse, a key aim of Tusla's investigations is preventing future cases of abuse by sharing information concerning alleged abusers.⁹⁸ This may be achieved through the proposed amendments, so that the mechanisms of the Bureau under the Act can be invoked in determining whether specified information should be disclosed to a relevant organisation.
91. The Bill also provides for placing inter-agency co-operation on a statutory footing, setting out a list of state bodies, including government departments, An Garda Síochána and Tusla, referred to as 'relevant bodies', who may cooperate with each other for the purpose of promoting the development welfare and protection of children and eligible adults.

96 Ibid, Head 44(6) (b). There is a similar obligation under Head 44(6)(a) to report to An Garda Síochána where it is believed that that an offence under the Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012 has been committed.

97 Conor O'Mahony, *Annual Report of the Special Rapporteur on Child Protection* (2020), at p. 54.

98 Conor O'Mahony, *Annual Report of the Special Rapporteur on Child Protection* (2020), at p. 56.

F. How Are Child Protection Provisions in Schools Being Implemented?

92. Child protection provisions are extensive and complex. They require registered teachers and other school staff to have knowledge of the legislation and the procedures and processes laid out in the 2023 Procedures, and to make sometimes very difficult judgment calls. It is useful therefore to examine what is known about how child protection and safeguarding provisions are being applied on the ground in schools.
93. Dr Buckley in her report, considers the available research which examines the experiences of DLPs and teachers in schools both before and after mandatory reporting was introduced. She also looks at training for DLPs, teacher training, both pre and post qualification, and training in child protection for other school staff.

(i) Research on the Implementation of the Stay Safe Programme

94. A 1999 evaluation⁹⁹ of the Stay Safe programme indicated that both parents and children had shown significant improvements in knowledge and attitudes concerning child protection since the introduction of the programme in 1991
95. A survey conducted in 2005/6 by the Department of Education and the Child Abuse Prevention Programme on the implementation of the Stay Safe programme indicated a need for further training.¹⁰⁰ Dr Buckley states, referring to study by Shanahan, that a targeted training programme was delivered to 700 schools but undertaken only by schools that elected to avail of it.¹⁰¹

(ii) Research on the Implementation of the 1991 Procedures

96. As mentioned earlier in this chapter, the first procedures aimed at schools which provided guidelines for handling children reporting abuse to their teachers, were the 1991 'Procedures for dealing with allegations or suspicions of child abuse' guidelines issued by the Department of Education'.

99 D. McIntyre and A. Corr, 'Evaluation of the effectiveness of the Stay Safe Primary Prevention Programme for child sex abuse' (1999) 23(12) *Child Abuse & Neglect* 1307 – 25; Dr Helen Buckley, *Report on child protection for the Scoping Inquiry into Historical Sexual Abuse in Schools run by Religious Orders*, p. 34.

100 Cited by Dr Buckley at p. 35 of her report.

101 Ibid. P. Shanahan, 'An Exploration of the Child Protection Training Experience of newly Qualified Primary School Teachers in Ireland' (2011) Unpublished MSc thesis, School of Social Work and Social Policy, Trinity College, Dublin.

97. Dr Buckley refers to a small-scale study which examined the implementation of the 1991 Guidelines,¹⁰² conducted in ten primary schools in the northwest of Ireland found that during the period of the study the 1991 guidelines were neither disseminated widely nor considered useful and that teachers were uncomfortable with their duty to report suspected child abuse.

(iii) Research on the Implementation of the 2001 and 2004 Guidelines

98. A review carried out by the Irish National Teachers' Organisation ('INTO') in late 2007¹⁰³ (presented to Congress in 2008) concerning the implementation of updated child protection guidelines points to some continuing difficulties. Dr Buckley explains that the study raised several issues that impacted on schools' capacity to fulfil their child protection responsibilities, including communication difficulties with the statutory child protection system and the potential for disrupted relationships between DLPs and families as a consequence of reporting. The study points out that no recognition is given to these issues, nor support offered to DLPs to deal with them.¹⁰⁴
99. A study¹⁰⁵ in 2009 illustrated a major gap between DLPs and some other teaching staff when it surveyed newly qualified teachers from 103 different primary schools about knowledge of and familiarity with their school's child protection policies. The study found that compliance with the requirement to inform new staff about them was weak. Half of the respondents did not know if their school had a policy, and of those who were aware, only half had read it. Less than half knew if there was a DLP in their school, and nearly two thirds of respondents reported uncertainty or lack of confidence in being able to identify suspected child abuse.

102 J. Kelly, 'What do Teachers do with Child Protection and Child Welfare Concerns which they Encounter in the Classrooms?' (1997) Vol. 1 *Irish Journal of Social Work Research* 9-22.

103 INTO, *Review of the Role of INTO members Acting as Designated Liaison Persons under the Child Protection Guidelines 'Children First': Report to Congress* (2018).

104 Dr Helen Buckley, *Report on child protection for the Scoping Inquiry into Historical Sexual Abuse in Schools run by Religious Orders*, p. 36.

105 Buckley & McGarry, 'Child Protection in Primary Schools; a contradiction in terms or a potential opportunity' (2011) 30(1) *Irish Educational Studies* 113 – 128.

(iv) Research on the Experiences of DLPs in Schools Pre- and Post- the Introduction of Mandatory Reporting

100. The 2007 INTO study surveyed 330 DLPs about their experiences of training and their views on the child protection training needs of teachers generally. Some participants also took part in two focus groups which discussed their experiences of identifying and reporting suspected child abuse. Dr Buckley's report points out that the study found that fewer than half of the DLPs in the State who were charged with reporting child abuse had had any training at that point, and 70% of those who had undergone training found it to be inadequate.¹⁰⁶
101. Dr Buckley expresses concern that subsequent research reveals that some of the findings of the 2007 INTO study persisted, such as reported communication difficulties with the statutory child protection system and the potential for disrupted relationships between DLPs and families as a consequence of reporting.¹⁰⁷
102. Dr Buckley cites a 2018 study, examining child protection in primary schools from the perspective of DLPs¹⁰⁸ which again reports many of the same issues: DLPs reported a sense of isolation, challenges in dealing with 'newcomer' and culturally different families, difficulties dealing with families where child protection concerns were reported and the judgement calls that were required.

(v) Studies Following the Implementation of Mandatory Reporting

103. A further survey cited by Dr Buckley¹⁰⁹ looks at the experiences of 387 DLPs from different primary schools around the country following the introduction of mandatory reporting. The participating DLPs cited guidelines, other staff, professional networks, management bodies and Tusla as supports. However, a significant number of challenges were also reported by DLPs including:
- 'unending' paperwork;
 - A sense of being ill prepared and inadequately trained;
 - lack of response from Tusla;
 - the business of reporting families;
 - pressure involved in making judgement calls;
 - emotional toll; time constraints; isolation; and
 - a sense of responsibility for other staff's skills.

106 Dr Helen Buckley, *Report on child protection for the Scoping Inquiry into Historical Sexual Abuse in Schools run by Religious Orders*, p. 36.

107 Ibid.

108 M. Nohilly, 'Becoming and Being a DLP: Designated Liaison Persons' experience of the role in the Irish primary school' (2018) 37(1) *Irish Educational Studies* 19 – 32.

109 M. Nohilly and M. Tracey, 'Child Protection in Irish Primary Schools: Supports and Challenges in the role of Designated Liaison Person for child protection' (2022) 52 *British Journal of Social Work* 4914 – 1432.

104. The researchers for that study recommended additional training and a dedicated support network for DLPs, a framework for interagency working particularly with Tusla and a review of the administrative burden to make it workable.
105. A more recent, as yet unpublished, study by the same authors, referred to by Dr Buckley,¹¹⁰ indicates DLP's dissatisfaction with the quality of training. DLPs participating reported that training is repeated but is not refreshed or differentiated in line with their experiences. DLPs also criticised what they described as the excessive 'box ticking' and bureaucracy associated with inspections.¹¹¹

(vi) Research and training for teachers and other school personnel

(a) Training in Child Protection for DLPs

106. The 2001 guidelines were followed by a programme of training for DLPs designed and delivered by a collaborative team from the Department of Education and Science, the HSE and the INTO. Between 2001 and 2003, training was provided to 5000 designated DLPs. The INTO also responded to the 2001 procedures by signalling a commitment to providing direct advice to DLPs and individual teachers. It advocated that schools immediately appoint DLPs and facilitate their attendance at training seminars.
107. Teacher Professional Learning, including training in child protection was provided by the PDST, now Oide.¹¹² A one day in-person seminar is provided for newly appointed DLPs, although this training was disrupted during the pandemic. The service currently provides online training for DLPs and deputy DLPs. The DLP module covers the legal and policy context and guidance on how to implement child protection procedures. The third part of the training module covers record keeping and oversight. Tusla provides a Children First e-learning module, and a Mandated Person e-learning module, both of which provide certification. Dr Buckley comments that these are useful to school staff, although the Tusla module is intended for all mandated persons and does not specifically reference the child protection procedures for schools.¹¹³ There are a number of plans to expand training for DLPs and Deputy DLPs to provide for in person training in line with proposed new 2024 Procedures, and to provide refresher training.¹¹⁴

110 Dr Helen Buckley, *Report on child protection for the Scoping Inquiry into Historical Sexual Abuse in Schools run by Religious Orders*, p. 50.

111 Ibid.

112 Dr Helen Buckley, *Report on child protection for the Scoping Inquiry into Historical Sexual Abuse in Schools run by Religious Orders*, p. 44.

113 Ibid.

114 Ibid, p. 45.

(b) *Research on pre-qualification teacher training in Child Protection*

108. As pointed out by Dr Buckley,¹¹⁵ in 1991 there was no compulsory requirement for child protection input in teacher education in Ireland which was frequently taught as part of an elective module, determined at college level, and comprised an average of 3.5 hours child protection teaching out of 1,500 training hours.
109. The 2009 survey of recently qualified teachers referred to above,¹¹⁶ looked at the amount and quality of child protection training on pre-qualification courses. One third of the newly qualified teachers interviewed could not remember if they had any child protection input in their course. Of those that did remember it, three quarters said that the total input had been between 1 and 4 hours in a two-year course. Dr Buckley points out that it is unsurprising that two thirds of those who had received this level of input found it to be inadequate.¹¹⁷
110. A later empirical study, conducted in 2013,¹¹⁸ found that pre-service child protection training was inadequate to instil a sense of professional responsibility in teaching staff. The study also revealed teachers' frustration about the lack of post qualification child protection training for teachers other than DLPs.¹¹⁹
111. Dr Buckley cites a review of Irish and international research in 2015 by Bourke and Mounsell,¹²⁰ which noted that training in child protection tends to focus on procedures and guidelines, to the exclusion of more qualitative aspects of safeguarding. Dr Buckley states that:¹²¹

The review identified implicit obstacles to reporting including teachers' individual belief systems, interpretations of what constitutes abuse or neglect, a sense that the harm of reporting outweighs the benefits, poor interagency cooperation, perceptions that the child protection system is not helpful and fears that the teacher-parent and teacher-child relationship will be damaged by reporting.

115 Ibid, p. 34.

116 Buckley & McGarry, 'Child Protection in Primary Schools; a contradiction in terms or a potential opportunity?' (2011) 30(1) *Irish Educational Studies*, 113; Dr Helen Buckley, *Report on child protection for the Scoping Inquiry into Historical Sexual Abuse in Schools run by Religious Orders*, p. 50 - 51.

117 Dr Helen Buckley, *Report on child protection for the Scoping Inquiry into Historical Sexual Abuse in Schools run by Religious Orders*, p. 50.

118 R. Buckley, *Child Abuse Reporting In Ireland and the Socio Legal Implications of Introducing a Mandatory Reporting Law* (2013). PhD Thesis, Trinity College Dublin.

119 Dr Helen Buckley, *Report on child protection for the Scoping Inquiry into Historical Sexual Abuse in Schools run by Religious Orders*, p. 50.

120 A. Bourke, and C. Maunsell, 'Teachers Matter': The Impact of Mandatory Reporting on Teacher Education in Ireland' (2015) 25 *Child Abuse Review*, 314 – 324.

121 Dr Helen Buckley, *Report on child protection for the Scoping Inquiry into Historical Sexual Abuse in Schools run by Religious Orders*, p. 50.

(c) Current Pre- Qualification Teacher Training in Child Protection

112. Dr Buckley states that some academics involved in graduate and post graduate teacher training courses regard training in child protection as still at a very basic level. The standards set by Céim, the Irish Teaching Council,¹²² require qualified teachers to:
- ... show an understanding of and practise within the statutory framework pertaining to education, including child protection guidelines, and any other identified, relevant, national priorities.
113. Likewise, student teachers going on placement are expected to:
- Be familiar with the school's Code of Behaviour, Child Protection Policy, and other relevant policies.
114. However, as Dr Buckley points out, there is no requirement for a specific type of module or a substantial level of training in teacher education colleges. She states that while there will be a minimum, mainly information based, input to prepare students in child protection, her view is that it cannot be claimed that there has been or is currently a greatly increased focus on child protection in teacher education courses.¹²³
115. Dr Buckley's discussions with key informants indicated that all students complete the Tusla or Department of Education online child protection training session and are Garda vetted prior to placement. However, other child protection inputs in the colleges are left to the discretion of individual course directors and vary between institutions. She notes that there are some very impressive examples of child protection modules currently being delivered by very knowledgeable and committed staff, but that they are not a standard requirement.¹²⁴

(d) Training in Child Protection for Other School Personnel

116. The Department of Education has provided online training for all school staff in child protection.¹²⁵ Dr Buckley points out, however, that there is currently no provision for whole school in-person training. She observes that while boards of management and inspectors need to be satisfied that all of school staff avail of training, 'it is difficult to see how this can be established'.¹²⁶

122 The Teaching Council, *Ceim: Standards for Initial Teacher Education* (2020), p. 21.

123 Dr Helen Buckley, *Report on child protection for the Scoping Inquiry into Historical Sexual Abuse in Schools run by Religious Orders*, p. 51.

124 Ibid.

125 An online module for all school personnel to assist them in understanding their statutory requirements under the Children First Act 2015 is also provided. TUSLA provides the Children First e-learning module and a Mandated Person e-learning module, referred to above, both of which provide certification.

126 Dr Helen Buckley, *Report on child protection for the Scoping Inquiry into Historical Sexual Abuse in Schools run by Religious Orders*, p. 51.

(e) *Child Protection Resources made available to schools*

117. In addition to training materials, the Department of Education has developed mandatory templates to assist schools to implement the procedures.¹²⁷ Dr Buckley observes that the template for the Child Safeguarding Statement and Risk Assessment is comprehensive.¹²⁸

(vii) **Role of the Department of Education in safeguarding**

118. Dr Buckley's Report comprehensively examines the role of the Department of Education in child protection and safeguarding in schools. She sets out that amongst other matters, the Department produces and regularly reviews child safeguarding procedures and has an overview role and some specific functions to strengthen safeguarding in schools, including training and inspection. The Department has developed procedures for responding to child protection concerns that are made directly to its staff which make it clear that the Department's responsibility is not to investigate but to refer concerns to Tusla and if relevant, to a school or to An Garda Síochána.
119. Dr Buckley explains that the Department of Education has a Child Protection Oversight Group that oversees implementation of internal departmental procedures and coordinates the Department's activities in cases where there are serious concerns regarding the compliance of school with child protection obligations. It receives regular updates concerning compliance of schools and number and types of allegations received in the Department and it reports to the Management Board on a quarterly basis. The Department furnishes the reports to the Minister.¹²⁹
120. In addition, the Department of Education participates in the Children First Interdepartmental Implementation Group whose role is to promote consistent compliance by Government Departments with the Children First Act 2015.¹³⁰

127 Including the child safeguarding and risk assessment template, the checklist for review of the child safeguarding statement and the notification regarding the board of management's review of the safeguarding statement.

128 Dr Helen Buckley, *Report on child protection for the Scoping Inquiry into Historical Sexual Abuse in Schools run by Religious Orders*, p. 44. Dr Buckley also notes that other non-mandatory templates and documents to assist DLPs are available, as well as FAQs and guidance notes.

129 Dr Helen Buckley, *Report on child protection for the Scoping Inquiry into Historical Sexual Abuse in Schools run by Religious Orders*, p. 42.

130 Ibid.

(a) Safeguarding in Boarding Schools

121. In 2023 the Department of Education, for the first time, developed child protection procedures for boarding schools. There are relatively few boarding facilities associated with recognised schools that operate in the State.¹³¹ Dr Buckley set out the main procedures for boarding schools, which are based on those for primary and post-primary schools but allow for different factors such as the possibility of separate DLPs and boards of management for day and boarding schools.¹³²
122. Dr Buckley points out that safeguarding risk assessments in boarding schools are of critical importance, as children are away from their parents and families. The mandatory template for the Safeguarding Statement for boarding schools highlights the potential risks of use of technology, collective bullying, use of substances, children being in the unsupervised company of older students, interpersonal relationships, inappropriate attachments and emotional vulnerability, the fact that some children may need to stay in school over weekends, and that some may be international students with different languages and cultural backgrounds.¹³³

(b) Child Protection and Safeguarding Inspections

123. Dr Buckley states that one of the most important safeguarding functions in the Department of Education is the inspectorate.¹³⁴ A 'Level 3' inspection focuses only on child protection and safeguarding and is comprised of an initial inspection followed by a final inspection, several weeks apart.¹³⁵ The inspections conclude with a meeting between the inspector and the school principal and DLP. Interviews are held with DLPs, board of management chairs and a sample of personnel. Parental consent is obtained to allow 'focused discussions' with pupils. The inspector meets with the parents' associations as well as conducting an online survey of parents.
124. Ten checks are made during the inspection, which are further divided into a number of sub-checks. They cover the requirements of the Department of Education's guidelines and require inspectors to check the minutes of board meetings, the school's record keeping, actual records and implementation of the SPHE curriculum and the RSE programme (post-primary) and the Stay Safe programme (primary) by the school.¹³⁶

131 Ibid, p. 41.

132 Ibid.

133 Ibid.

134 Ibid p. 43.

135 Level 1 inspections may relate to subject or programme specific evaluations, and Level 2 inspections may relate to 'whole school' evaluation. See Department of Education, *A Guide to Inspection in Post-Primary Schools* (Updated January 2024), p. 16.

136 Ibid.

125. When a school is less than fully compliant, the report provides evaluative comment and advises actions that may be required. If non-compliance with safeguarding requirements is noted at the final inspection, the inspectorate will continue to engage with the school until full compliance is achieved. Reports are published on the gov.ie website.¹³⁷
126. Dr Buckley reports that plans are underway within the Department of Education to rebalance the Level 3 safeguarding inspections to focus both on compliance related issues and more qualitative components relating to aspects of school culture.¹³⁸

(c) *Child Protection and Safeguarding Inspections of Boarding Schools*

127. The Department of Education has recently developed a framework for safeguarding inspections of boarding facilities which is very similar to the framework for safeguarding inspections in schools. The inspection process is committed to including the views of boarders (through focus groups) and their parents about the boarding experience, atmosphere and climate and their understanding of whom to approach with any concerns. Like the framework for school inspections, the boarding facility framework requires the facility to show how identified risks are mitigated.¹³⁹

(d) *Frequency of Safeguarding Inspections*

128. Dr Buckley view is that currently child safeguarding inspections are not frequent enough to really illustrate how well the safeguarding system is working. She observes that 170 inspections have been carried out from a total of 3,800 schools since safeguarding inspections were introduced in 2019. In contrast, Level 1 and Level 2 inspections take place in most post-primary schools annually, less frequently in primary schools. However, any child protection concerns are likely to elicit a full Level 3 safeguarding inspection. Dr Buckley states that the Department of Education's view is that the awareness of a potential inspection acts as a strong incentive for schools to address child protection in schools.¹⁴⁰ However, Dr Buckley reports that the Department is currently considering various options to increase the number child safeguarding inspections.¹⁴¹

137 Ibid.

138 Dr Helen Buckley, Report on Child Protection for the Scoping Inquiry into Historical sexual Abuse in Schools run by Religious Orders, p. 45.

139 Ibid p. 43.

140 Ibid p. 44.

141 Ibid p. 45.

G. Child Protection in Unrecognised Schools¹⁴²

129. Tusla confirmed to the Scoping Inquiry that there are 59 unrecognised schools in the State, listed at Appendix 11. Unrecognised schools run by religious orders, or their respective education trusts, are within the remit of the Scoping Inquiry. Unrecognised schools range from schools that are indistinguishable from recognised schools in terms of curriculum and approach to education, to schools offering alternatives to mainstream education.
130. When Tusla was established in 2014,¹⁴³ it replaced the National Educational Welfare Board ('NEWB') as the body with oversight of non-recognised schools under the Education (Welfare) Act 2000 ('the 2000 Act').¹⁴⁴ The relevant directorate within Tusla for unrecognised schools is Children Services Regulation. Within that directorate, the Alternative Education Assessment and Registration Service ('AEARS') is responsible for registration of children not attending recognised schools.¹⁴⁵

(i) Unrecognised Schools are subject to the 2015 Act and Other Legislation

131. Unrecognised schools are, in common with recognised schools, all 'relevant services' within the meaning of the 2015 Act. They are also subject to the DCEDIY's Children First: National Guidance for the Protection and Welfare of Children ('the 2017 Guidance') and Tusla's guidelines¹⁴⁶ on child protection pursuant to the 2015 Act.
132. Therefore, unrecognised schools must comply with the requirements for risk assessments and a child safeguarding statement containing the information set out earlier in this chapter. The DCEDIY and Tusla guidelines do not include the mandatory template for risk assessment and child safeguarding statement included in the Department of Education's 2023 Guidelines, but provide guidance on compiling the Safeguarding Statement.¹⁴⁷

142 See Chapter 12 on the Irish Education System. Unrecognised schools do not receive state funding and are independent of the Department of Education. The Education Act 1998 s. 10 provides that the minister must be satisfied that: the school will be viable in terms of numbers attending; the needs of the students could not reasonably be met by existing schools; the curriculum in accordance with the 1998 Act will be taught; school inspections by Inspectorate will be permitted; health safety and building standards will be complied with and the school will operate in accordance with the regulations made by the Minister.

143 Tusla was established by the Child and Family Agency Act 2014.

144 Section 10(1) of the Education (Welfare) Act 2000.

145 Dr Helen Buckley, *Report on child protection for the Scoping Inquiry into Historical Sexual Abuse in Schools run by Religious Orders*, p. 46.

146 Tusla, *Child Safeguarding: A Guide for Policy, Procedure and Practice*, (2nd edn., 2019) available at https://www.tusla.ie/uploads/content/Tusla_-_Child_Safeguarding_-_A_Guide_for_Policy,_Procedure_and_Practice.pdf.

147 Tusla, *Guidance on Developing a Child Safeguarding Statement* (2017), available at https://www.tusla.ie/uploads/content/4214-TUSLA_Guidance_on_Developing_a_CSS_LR.PDF.

133. In relation to reporting obligations, the Safeguarding Statement must specify the procedure in place for reporting child safeguarding issues to Tusla, and those reporting procedures must be in accordance with the 2015 Act or the 2017 guidelines.¹⁴⁸ The Safeguarding Statement must also specify the procedures that are in place for maintaining a list of mandated persons (if any) in the school,¹⁴⁹ and for the appointment of a relevant person.¹⁵⁰ These are also the requirements for recognised schools.

(a) Mandated Reporters in Unrecognised Schools

134. The Teaching Council Act 2001, which provides for the registration of teachers, does not appear to require mandatory registration. However, unregistered teachers cannot be paid from State funds.¹⁵¹ As teachers in unrecognised schools are not paid out of State funds, there is no registration requirement to teach in unrecognised schools. Indeed, there is no legal requirement to employ teachers, registered or otherwise, in unrecognised schools, as the parents of the children attending the schools may choose how their children are taught, and by whom, the only requirement being that the child concerned receives the requisite minimum level of education as assessed by Tusla in accordance with Department of Education guidelines issued in 2003.

135. Only registered teachers are mandated reporters for the purposes of the 2015 Act. There are other categories of mandated reporters specified in the 2015 Act, including: medical personnel and members of the clergy or pastoral care workers or a safeguarding officer or a child protection officer. If such persons are not employed or engaged by an unrecognised school, there may not be a mandated reporter in the school. There is no obligation on a school, unrecognised or recognised, to appoint a child safeguarding officer.

148 Section 11(e) of the 2015 Act.

149 Section 11(f) of the 2015 Act.

150 Section 11(g) of the 2015 Act.

151 Teaching Council Act 2001, s. 30.

(b) *Non-Statutory Best Practice Reporting in Unrecognised Schools*

136. If there is no mandated person in the school, the school staff are nonetheless required by the DCEDIY 2017 and Tusla's Guidelines to inform Tusla if they have 'reasonable grounds for concern' that a child may have been, is being, or is at risk of being abused or neglected. Tusla should also be informed of concerns that an adult poses a risk to children, even if no specific child is named in relation to the concerns. The Guidelines advise that Tusla can be contacted informally to discuss any concerns¹⁵² and the type of information that should be provided to Tusla is set out.

(c) *Appointing a 'Relevant Person' or a DLP*

137. Section 11 of the 2015 Act requires both recognised and unrecognised schools to appoint a relevant person. A 'relevant person' is defined in the 2015 Act as a person who is appointed to be the first point of contact in respect of the school's child safeguarding statement, and their name and contact details must be stated in the safeguarding statement.¹⁵³
138. In a recognised school, the relevant person is always the DLP, and the 2023 guidelines specify that the DLP is to be designated by the board of management and to be a senior full-time member of the registered teaching staff.¹⁵⁴ The precise role of the relevant person is not set out in the 2015 Act or the relevant guidelines.
139. There is no obligation on non-recognised schools to appoint a DLP. However, Tusla confirmed to Dr Buckley that the majority of unrecognised schools appoint DLPs and Deputy DLPs although not required to do so. It may also be the case that the relevant person in an unrecognised school is a registered teacher, and thus subject to mandatory reporting obligations.
140. Dr Buckley notes that Tusla report that the relevant person conveys child welfare and protection reports to Tusla and that that all schools are compliant with this or are linked with Tusla's Child Safeguarding Statement Compliance Unit ('CSSCU') working towards compliance.¹⁵⁵ This suggests that in practice, the relevant person conveys child protection reports to Tusla, where no DLP has been designated.

152 Department of Children and Youth Affairs, *Children First: National Guidelines for the Protection and Welfare of Children* (2017), p. 16.

153 Tusla, *Child Safeguarding: A Guide for Policy, Procedure and Practice*, (2nd edn., 2019) available at https://www.tusla.ie/uploads/content/Tusla_-_Child_Safeguarding_-_A_Guide_for_Policy,_Procedure_and_Practice.pdf.

154 Department of Education, *Child Protection Procedures for Primary and Post Primary Schools (revised 2023)*, paragraph 3.5.1, p. 21.

155 Dr Helen Buckley, *Report on child protection for the Scoping Inquiry into Historical Sexual Abuse in Schools run by Religious Orders*, p. 47.

(d) Compliance with the 2015 Act

141. Tusla also confirmed to Dr Buckley that the CSSCU works with AEARS to ensure the compliance of unregistered schools with the requirement to develop and display a child safeguarding statement, to have staff and volunteers Garda vetted, and to ensure that they have minimum child protection training.¹⁵⁶
142. Dr Buckley states that the CSSCU works with AEARS to ensure that the safeguarding statements produced by schools are compliant with the requirements of s. 11 of the Children First Act 2015. All child safeguarding statements have been provided to the CSSCU following a formal request from the unit as part of an overall audit of CSSCU. When a school is applying to be assessed, child safeguarding statements are provided to AEARS in the first instance and annually thereafter. AEARS refers to the CSSCU for guidance or a formal referral as required.¹⁵⁷

(e) Safeguarding Inspections

143. The Children Services Regulation unit within Tusla can ensure that the provisions of the 2015 Act concerning child safeguarding are put in place and maintained in unrecognised schools. Dr Buckley is of the view that unrecognised schools are well managed by Tusla, which ensures that they meet the requirements of the 2015 Act. Tusla, however, does not appear to have the power to inspect how the requirements of the 2015 Act are working in practice, as it does not have the equivalent of the Department of Education's child safeguarding inspection function in respect of recognised schools. Tusla may in practice, carry out a process that bears similarity to safeguarding inspections, through their 3 yearly assessments of unrecognised schools, but this is unclear.
144. HIQA carries out inspections of various facilities and service for children with regard to child safeguarding procedures. However, HIQA's mandate does not extend to unrecognised schools.

156 Ibid. The DCEDIY guidelines state that it is the responsibility of the relevant provider (the unrecognised school) to ensure that staff have the requisite level of training to carry out their obligations under the 2015 Act.

157 Ibid.

(f) *Vetting of staff in unrecognised schools*

145. Unrecognised schools have the same obligations under The National Vetting Bureau (Children and Vulnerable Persons) Act 2012 as recognised schools and must receive a vetting disclosure in respect of all staff which have access to or contact with children. Unrecognised schools are not obliged in addition to provide of a child protection related statutory declaration and associated form of undertaking by all persons being appointed to teaching and non-teaching positions in the school, as is required by the Department of Education, although in practice some schools may do so.¹⁵⁸

(g) *Conclusions in relation to unrecognised schools*

146. Unrecognised schools are governed by the same legislation as recognised schools. However, there remain some differences in safeguarding between recognised and unrecognised schools. The principal differences are as follows:
- (i) There will always be mandated reporters in a recognised school, which may not be the case in an unrecognised school. However, all staff whether mandatory reporters or not, are subject to the non-statutory best practice guidelines in respect of reporting concerns.
 - (ii) Recognised schools will always have a DLP, who will also be a mandated reporter and a 'relevant person'. Unrecognised school often appoint DLPs but are not required to do so. 'Relevant persons', unless they are mandated reporters, do not have specific statutory obligations beyond being the first point of contact in the school for the purpose of the safeguarding statement. It seems, however, that in practice, relevant persons carry out the function of reporting to Tusla.
 - (iii) It is compulsory in recognised schools to have the Stay Safe programme, SPHE and relationship and sex education programmes on the curriculum. This is not a requirement in unrecognised schools. However, many unrecognised schools may include those subjects on the curriculum. Given the constitutional entitlement of parents to educate their children as they see fit, subject only to providing a certain level of education, where those subjects are not already taught in the school it is unlikely that the teaching of such subjects could be made compulsory in unrecognised schools.

158 Department of Education, *Child Protection Procedures for Primary and Post Primary Schools (revised 2023)*, paragraph 8.6.4, p.59.

H. The Buick Report Recommendations

147. The Department of Education commissioned an independent High Level Review into its child protection procedures, which reviewed the current procedures, and made some 31 recommendations and sub-recommendations with a view to strengthening and improving those procedures.
148. The recommendations include that the Department of Education consider the following:
- (i) That in larger schools a member of the board of management would be designated as having a child protection and safeguarding role, without diminishing the role of the board of management or the Designated Liaison Person;
 - (ii) That the DLP can be a member of the senior leadership team in the school rather than the Principal;
 - (iii) That the deputy DLP's role be widened to support the DLP, including sharing of information and data;
 - (iv) That student safeguarding support teams be set up to promote wellbeing, safety, and protection in schools;
 - (v) A method of reporting to the board of management and enabling them to carry out their oversight role, without identifying the member of staff accused to each member of the board.;
 - (vi) That the accessibility of the child safeguarding statement to the children in the school is checked during inspections of schools, as children should know who to go to when they have a concern;
 - (vii) The importance of teachers feeling confident to deliver RSE and SPHE and students having a voice in contents of the SPHE lessons to ensure they are meeting their needs;
 - (viii) A stronger focus in child safeguarding inspections on the culture and climate of schools; that there be greater clarity in procedures as to when a bullying incident needs to be reported to Tusla; and,
 - (ix) That investigations into alleged abuse against school staff be expedited while maintaining the safety of the child and the integrity of the process and rights of the accused; that teachers, principals and special needs assistants cannot be re-deployed while still subject to investigation of an abuse allegation.

149. Dr Buckley notes that the Department of Education are implementing many of the recommendations made by the Buick Report, some of which are complete and some of which due for action in the near future. A substantially revised Procedures document will issue in 2024.¹⁵⁹ It is intended that many of the recommendations of the Buick Report will be implemented through the proposed 2024 Revised Procedures for schools.
150. The Department of Education informed Dr Buckley that it intends to develop stronger links between the inspectorate and Oide, the new training body for teachers and school leaders. There are plans to expand training for DLPs and deputy DLPs, discussions are taking place with Tusla for bespoke training for mandated persons and staff with a special role;¹⁶⁰ Training of all schools personnel is being addressed, and all schools are to be encouraged to set up a Student Safeguarding support team.¹⁶¹
151. Anomalies relating to the possibility of the re-employment of school staff who are currently on leave of absence due to allegations will be considered and efforts will be made to engage with Tusla and An Garda Síochána towards more expeditious assessments of risks and investigations where school personnel are involved.¹⁶²

I. Strengths of Child Protection Regime in Schools

152. There is much that is encouraging about the overall strengths identified in the current child protection system. Dr Buckley finds:
- Child protection and safeguarding structures are robust.
 - The NSBCCCI's review reports give reasonable confidence about child protection in the Catholic Church.
153. Tusla have stated that meetings of the Interagency Review Group ('IARG'), consisting of the Gardaí, Tusla and the Church to discuss the exchange of soft information are no longer required because of the child protection measures in place and the decline in allegations against the clergy.

159 Dr Helen Buckley, *Report on child protection for the Scoping Inquiry into Historical Sexual Abuse in Schools run by Religious Orders*, p. 40.

160 Dr Helen Buckley, *Report on child protection for the Scoping Inquiry into Historical Sexual Abuse in Schools run by Religious Orders*, p. 45.

161 Ibid.

162 Ibid p. 46.

154. In so far as there are statistics in respect of child sexual abuse currently available, they do not address the extent of allegations of child sexual abuse in schools. Tusla provides annual figures as to the overall number of reports that it receives concerning sexual abuse allegations and complaints. Since 2018, its reports also give the figures for how many of those reports are made by all mandated reporters, including teachers. As Dr Buckley's report points out, teachers are the third highest category of mandated reporters to Tusla.¹⁶³ However, the Tusla figures are not analysed on the basis of how many sexual abuse reports emanate from teachers alone. It would be necessary in addition, to understand whether the reports emanating from teachers concern suspected sexual abuse in the context of an alleged abuser within the school rather than in other contexts, such as suspected familial sexual abuse.
155. Importantly, as can be seen from the statistics compiled by the Scoping Inquiry in respect of historical sexual abuse, members of the laity and student peers are also alleged to have perpetrated acts of sexual abuse. Vigilance is thus always necessary to ensure that the present and future generations of children are not subject to sexual abuse, whatever its source, and its often devastating consequences.

J. Potential Weaknesses of Child Protection Regime in Schools

156. Dr Buckley identifies the following issues as potentially leading to a difficulty in reporting:
- That taking the step of reporting a school employee or colleague presents a significant challenge. Dr Buckley comments that this factor is not specifically mentioned in the research but seems likely to be the case.
 - Key informants identified the difficulty for DLPs and teachers in distinguishing between bullying and abuse when trying to determine what reaches the threshold for reporting.
 - Dr Buckley observes that reliance on the commitment and motivation of individuals within the school system is a matter which was identified in the Murphy Inquiry Report as a vulnerability.

163 Dr Helen Buckley, *Report on child protection for the Scoping Inquiry into Historical Sexual Abuse in Schools run by Religious Orders*, p. 11.

157. In addition, Dr Buckley refers to the research identifying factors which discourage reporting, likely to have endured, despite legal and policy changes. They are:

- Lack of confidence of DLPs.
- DLPs regular engagement with the family they are required to report.
- Reported poor communication between some schools and Tusla.
- Finally, Dr Buckley points to the nature of child sexual abuse itself, the manipulation and control exerted by perpetrators and the established reluctance of children to disclose abuse as factors which are made more challenging by the uncontrolled nature of online communication and social media.¹⁶⁴

158. Dr Buckley also identifies a number of other issues may cause future problems as follows.¹⁶⁵

- That data protection concerns may be impacting on areas not considered by her Report.¹⁶⁶
- The paucity of child protection training, including in person training for teachers at pre and post qualifying levels. This may have a limiting effect on a schools' capacity to act protectively.¹⁶⁷
- Relationships between schools and their local Tusla offices were highlighted in the research as supportive to good safeguarding practice when they worked and problematic when they did not.¹⁶⁸

159. Dr Buckley concludes that there can be reasonable confidence about safeguarding in the Catholic Church. In relation to Tusla, Dr Buckley observes that HIQA and National Review Panel reports indicate that its child protection services struggle at times to comply with all standards, protocols and policies that regulate its practice.¹⁶⁹ In relation to the education sector, the formal structures of child protection now in place in schools are robust, but that the operationalisation of safeguarding is subject to many variables. Effective implementation of child protection provisions is dependent on the ability of schools to resource compliance with those provisions and on the Department of Education to monitor that compliance. While level 3 safeguarding inspections in the education sector fulfil a useful role, Dr Buckley's view is that they are not sufficiently frequent to really

164 Dr Helen Buckley's *Report on Child Protection for the Scoping Inquiry in Historical sexual Abuse in Schools run by Religious Orders* p. 53.

165 Ibid, p. 52.

166 Ibid.

167 Ibid.

168 Ibid.

169 Ibid 53.

illustrate how well the safeguarding system is working.¹⁷⁰ However, the Department of Education are currently examining how these inspections might be increased in frequency.

160. Dr Buckley concludes that rather than any weaknesses in the system itself, it is inconsistency in the application of child protection provisions that may render children vulnerable in certain situations.¹⁷¹

K. Conclusions

161. Dr Buckley's report is of great assistance and focuses on those areas of child protection that survivors wish to see strengthened to ensure the efficacy of the child protection system. She reports that the Department of Education is planning to implement many of the Buick report's recommendations concerning child protection. There are also plans to improve and increase training for DLPs and deputy DLPs and mandatory reporters, and clearer guidance on whether an incident of bullying reaches the threshold for reporting. Better training may address the problems DLPs identified in the studies cited by Dr Buckley, namely, that they require a more qualitative aspect to their training, and training that is more grounded in their practical experience. It is in everyone's interest, and particularly the interests of children, that schools and teachers are given as much support and training as possible in carrying out what can be a difficult role in ensuring child protection and safeguarding.
162. Other issues identified by Dr Buckley include the relationship between schools and their local Tusla offices. The surveys outlined in Dr Buckley's report suggest that when this relationship works well it is a great support to schools, but is problematic when it does not. Consideration should be given to liaison between the Department of Education and Tusla to assess the current situation, to see what steps can be taken to strengthen the relationship between schools and their local Tusla offices, so as to ensure as much as possible that schools receive the support they require in implementing child protection measures.
163. Another area highlighted by Dr Buckley is the generally limited nature of pre-qualification teacher training in child protection, with no requirement for a specific module or a substantial level of training in teacher education colleges, so that child protection inputs in the colleges are left to the discretion of individual course directors and vary between institutions. Training also tends to focus on basic information. A more holistic and comprehensive teacher education programme in child protection might be considered.

170 Ibid.

171 Ibid.

164. Sex education for children is also an area highlighted by survivors as essential to assist children in understanding and dealing with risks of sexual abuse. Dr Buckley in her report states that one of the major safeguarding strengths is the inclusion of SPHE as a compulsory subject and the efforts that are made to keep the different strands relevant and appropriate to the various age groups. This, she states, is not only to provide information but to give children and young people confidence to identify and report situations that they are not comfortable with. Key informants endorsed the benefits of SPHE but also emphasised the importance of prioritising this module, and ensuring that the persons delivering it are confident in their role¹⁷²
165. The NCCA review is aimed at improving sex education in Irish schools, across the entire sector. This is being done by updating the curriculum to deal with issues identified by young people as relevant to them, improving the status of RSE/SPHE as a subject and providing professional training for teachers. Undoubtedly it will take some years before all of the proposed improvements can be fully realised. The new sexual education programmes are at a developmental stage, and it will take time to understand if they are proving effective.
166. Survivors have also cited increased Garda Vetting and awareness raising as areas they would like to see developed. There is currently a review of the vetting legislation underway, including public consultation on the current legislation and its efficacy. It seems highly unlikely that there is failure of compliance by schools with vetting processes, and there is no evidence to suggest that there is. It may be that there are gaps in the current legislation, which may now be addressed through a combination of progressing the Child Care (Amendment Bill) 2023, and the Review Group's recommendations in respect of the 2012 Act. The Bill (which is currently under consideration by the Attorney General's office) should be progressed expeditiously. It would also be very helpful if the Review Group issued its recommendations in early course, so that same might be considered and adopted as soon as practicable.

172 Dr Helen Buckley, *Report on child protection for the Scoping Inquiry into Historical Sexual Abuse in Schools run by Religious Orders*, p. 49.

167. Awareness of sexual abuse, and general awareness raising is also something survivors wish to see. There have been awareness raising campaigns in the past, but these had lapsed for a considerable period. However, in November 2021, the first Children First Awareness Week was launched by the Minister for Children Equality Disability Integration and Youth, on behalf of the statutory Children First Inter-Departmental Implementation Group ('CFIDIG'). The week ran from 1 to 7 November 2021. The aim of the week is to raise awareness of Children First and remind wider society, including organisations working with children and young people, of the collective responsibility to keep children safe in the community. In 2023, the Children First Awareness Week ran from 25 September to 1 October and focused on the responsibilities of organisations under Children First. It seems therefore that the concerns of survivors about awareness raising were well grounded, and steps have been taken to remedy the situation.
168. Taking Dr Buckley's findings and the wishes of survivors into account, we recommend that the following initiatives should be considered to promote best practice in the area of child protection:
- (i) The Department of Education should establish a group to be called 'The Child Protection in Schools Group' ('**the Group**') to progress the matters outlined below concerning the Department's plans for child protection in schools and other matters with a view to implementing same as expeditiously as practicable.
 - (ii) The Group is to be established as soon as practicable and to have any necessary authority required to carry out its functions. The Group shall endeavour to complete its work as soon as possible. It shall provide a report detailing the progress made in implementing the relevant measures so that the Commission may consider same for the purpose of any recommendations it may wish to make.
 - (iii) The Group should be required do the following:
 - (a) Progress the Department of Education's plans to implement the recommendations of the Buick report generally and, in particular, in respect of a stronger focus in child safeguarding inspections on the culture and climate of schools.
 - (b) Progress the Department of Education's plans to improve and increase training for DLPs, deputy DLPs, teachers, and school staff, including any bespoke training in child protection and safeguarding, and provide for regular consultation with stakeholders to ensure that the training provided is meeting their needs and update same as required.

- (c) Consult with DLPs, deputy DLPs and other relevant persons, to identify aspects of the current child safeguarding provisions that may be strengthened to support and assist DLPs and Deputy DLPs in the carrying out of their functions.
- (d) Discuss with Tusla how communication between schools and Tusla concerning child protection matters might be strengthened and improved.
- (e) Consult with the standards body for teacher qualifications, and any other relevant body, to examine the adequacy of pre-qualification teacher education in child protection, and the implementation of any necessary reforms to the teacher training curriculum.
- (f) Consult with the relevant bodies to strengthen SPHE in pre-qualification and post- qualification teacher education.

169. In addition, we recommend that there be a review of child safeguarding measures in unrecognised schools to consider the current measures and make any recommendations for the improvement or strengthening of same.

Chapter 21:

The Role of Restorative Justice in Responding to Historical Child Sexual Abuse

- A. Introduction
- B. Background
 - (i) Defining Restorative Justice
- C. Restorative Justice and Child Sexual Abuse
 - (i) Concerns in Relation to Use of Restorative Justice in Context of Child Sexual Abuse
 - (ii) Benefits of Restorative Justice in Relation to Child Sexual Abuse
 - (iii) Views of Survivors on Suitability of Restorative Justice in Responding to Child Sexual Abuse
 - (a) Views of Survivors who Engaged with this Inquiry on Restorative Justice
 - (iv) Australian Royal Commission Research Report on Restorative Justice Responses to Child Sexual Abuse
- D. Restorative Inquiries
 - (i) Nova Scotia Home for Colored Children Restorative Inquiry
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- E. Centre for Effective Services Audit of Religious Orders Responses to Abuse Allegations
- F. Conclusions
 - (i) Conclusions on Restorative Justice Initiatives Operated by the Religious Orders
 - (ii) Conclusions on Role of Restorative Justice in a Future Inquiry

A. Introduction

1. Restorative Justice has gained significant currency in recent years as an alternative to the adversarial model of retributive justice that characterises the traditional justice system. In particular, the traditional justice system can be especially forbidding for survivors of sexual violence, including survivors of child sexual abuse.¹ In that context, consideration is increasingly being given to restorative justice as an alternative or a complement to the traditional justice system.
2. In recent years, a number of religious orders have responded to allegations of child sexual abuse by their members or in institutions that they ran with schemes providing for engagement between the survivor and the order. In light of this, the Terms of Reference of this Scoping Inquiry required that this Report:²

... outline findings of best practice that emerge from workstreams as relevant and appropriate to future practice in the area of child protection and potential restorative justice initiatives by religious orders.
3. Furthermore, the Scoping Inquiry was required to commission an expert report providing:³

A critical analysis and audit of the response of religious orders to historical sexual abuse allegations by way of Restorative Justice Schemes and other initiatives / supports, to include recommendations for appropriate standards for such responses.
4. The Scoping Inquiry commissioned the Centre for Effective Services ('CES') to undertake this analysis and audit,⁴ the central results of which are outlined in this chapter.⁵ In addition to outlining the findings of the commissioned expert report in relation to the ongoing restorative justice, this chapter discusses the role of restorative justice in the context of child sexual abuse more broadly, and what role it might play within a Government response to historical child sexual abuse in schools run by religious orders.

1 For a detailed study on the experience of survivors of sexual violence in the Irish criminal justice system, and the potential for restorative justice schemes to address its shortcomings, see Marie Keenan, *Sexual Trauma and Abuse: Restorative and Transformative Possibilities?* (UCD School of Applied Social Science, 2014). See also K. McGrath, 'An examination of the adversarial legal system and its implications for Irish Child Protection Services' M.Soc.Sc dissertation, University College Dublin; D. O'Shea and A. Bousfield, 'The voice of the child: children's experiences of criminal proceedings' (1999) 2(1) *Irish Journal of Social Work Research* 33; K. McGrath, 'Protecting Irish Children Better – The Case for an Inquisitorial Approach in Child Care Proceedings' (2005) 5(1) *Irish Judicial Studies Journal* 136.

2 Department of Education, *Terms of Reference for the Scoping Inquiry into Historical Child Sexual Abuse in Schools run by religious orders* (7 March 2023).

3 *ibid.*

4 Centre for Effective Services, *Research Report on Restorative Justice and Other Initiatives Implemented by Religious Orders in Response to Reports of Historical Sexual Abuse* (February 2024).

5 The full report is available at Appendix 5 to this report.

B. Background

5. As traditionally understood, restorative justice aims to provide a process through which the victim and the offender can engage, directly or indirectly, and participate together in responding to the harm caused. This is known as a 'process conception' of restorative justice. In addition, there is what is sometimes referred to as a 'values conception' of restorative justice, whereby the values that underpin the traditional process conception of restorative justice can be used in other processes.⁶ Such values include voluntariness, accountability, equity, respect, inclusion and a focus on repair and healing.
6. Restorative justice is utilised primarily as an adjunct to the traditional criminal process, and to seek restoration of the harm done to the individual victim, rather than the restoration of the public good that is the focus of the criminal process. In particular, the restorative process seeks to repair the damage done to human relationships by criminal acts, and offers the 'reunion of the two individuals and of the individual with the community'.⁷

(i) Defining restorative justice

7. There is no single authoritative definition of restorative justice, and the term can have a flexible quality, finding itself adapted to use in a variety of different contexts. However, the available definitions all emphasise voluntary engagement between persons affected by a crime, particularly the offender and the victim, with a view to responding to the effects of the crime.
8. Restorative justice benefits from a statutory definition in Ireland, as provided for in s. 2(1) of the Criminal Justice (Victims of Crime) Act 2017, which defines a 'restorative justice scheme' as:

... any scheme administered for the time being under which, with the consent of each of them, a victim and an offender or alleged offender engage with each other to resolve, with the assistance of an impartial third party, matters arising from the offence or alleged offence.

6 Braithwaite, 'Setting standards for restorative justice' (2002) 42 *British Journal of Criminology*, 563–577.

7 Theo Gavrielides, 'Clergy Child Sexual Abuse and the Restorative Justice Dialogue' (2012) 55 *Journal of Church and State* 617.

9. The Council of Europe defines ‘restorative justice’ as:⁸

Restorative justice refers to any process which enables those harmed by crime, and those responsible for that harm, if they freely consent, to participate actively in the resolution of matters arising from the offence, through the help of a trained and impartial third party.

10. Similarly, the UN Basic Principles on the Use of Restorative Justice in Criminal Matters defines ‘restorative process’ as follows:⁹

“restorative process” means any process in which the victim and the offender, and, where appropriate, any other individuals or community members affected by a crime participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator. Restorative processes may include mediation, conciliation, conference and sentencing circles.

11. The aims of restorative justice are multiple, but broadly speaking the motivating concern is to give survivors agency and an active role in responding to the harm done to them. As the Centre for Effective Services outlined in its report to this Inquiry:¹⁰

The focus on the process of restorative justice is to enable those who have been directly or indirectly affected by the harm caused to participate actively in the response to the harm. As such, restorative justice is a collaborative process where communication between those impacted is fundamental to resolving the conflict and achieving a resolution. It also addresses the damage caused by the harm and then seeks to reach a point of reparation for the harmed person.

8 Council of Europe, Recommendation CM/Rec(2018)8 of the Committee of Ministers to member States concerning restorative justice in criminal matters (2018).

9 UN Basic Principles on the Use of Restorative Justice in Criminal Matters, ESC Res 2002/12, UN ESCOR, 37 th plen mtg, UN Doc E/Res/2002/12 (24 July 2002).

10 Centre for Effective Services, *Research Report on Restorative Justice and Other Initiatives Implemented by Religious Orders in Response to Reports of Historical Sexual Abuse* (February 2024), p. 7.

12. The CES report further outlined a number of core principles of restorative justice, including the process is a voluntary one, involving respectful dialogue and equal concern for the needs of those involved:¹¹

The core principles of restorative justice are positioned around enabling active participation in the resolution and addressing of any harm caused. The key principles include stakeholder participation, repairing harm, voluntarism, respectful dialogue, equal concern for the needs of those involved, procedural fairness, collective agreement, focus on reparation and reintegration, achieving mutual understanding, and avoiding domination. These principles aim to create a safe and respectful space for all participants, regardless of their background, and to empower individuals to make informed choices and find solutions that best meet their needs.

13. It has also been emphasised, particularly in the context of sexual violence, that accountability is key feature of restorative justice, and an offender must be genuinely willing to accept responsibility for the harm caused.¹²

C. Restorative justice and child sexual abuse

14. There is considerable debate as to the suitability of restorative justice processes as a response to child sexual abuse, and this debate is a sub-set of a broader debate as to the suitability of restorative justice in the context of sexual violence.¹³ As Annie Cossins writes:¹⁴

In assessing the appropriateness of restorative justice for child sexual assault cases, it is necessary to recognize that sexual assault is one of the 'hard cases' ..., because it is unclear whether it is possible to achieve the philosophical ideals of restoration when bringing together an offender and a victim in an informal meeting to deal with one person's exploitation of another.

11 *ibid*, p. 8.

12 Marie Keenan, *Sexual Trauma and Abuse: Restorative and Transformative Possibilities?* (UCD School of Applied Social Science, 2014), p. 162 – 163.

13 See generally Zinsstag and Keenan, *Restorative Responses to Sexual Violence: Legal, Social and Therapeutic Dimensions* (Routledge, 2017); Marie Keenan, *Sexual Trauma and Abuse: Restorative and Transformative Possibilities?* (UCD School of Applied Social Science, 2014).

14 Annie Cossins, 'Restorative justice and Child Sex Offences: The Theory and Practice' (2008) 48 *British Journal of Criminology* 359, 360.

(i) Concerns in relation to use of restorative justice in context of child sexual abuse

15. There are a number of concerns in relation to the use of restorative justice in the context of sexual violence, and in the case of child sexual abuse in particular. One concern is that a restorative response may act to minimise what is extremely serious criminal offending, and may reduce the deterrent effect of criminal sanctions for such offending.¹⁵ Similarly, the concern has been expressed that a restorative justice process places an implicit expectation on the survivor to empathise with the person who has harmed them,¹⁶ which may be particularly inappropriate in the context of child sexual abuse. In particular, it has been argued that the implicit emphasis on forgiveness as an important factor in effective restorative justice schemes is problematic in the case of child sexual abuse.¹⁷ A further central concern is that the power relationship between the victim and offender makes it very difficult for a successful restorative process to take place.¹⁸ Significantly, there is an overarching concern that the process risks retraumatising survivors.¹⁹ It has also been observed that there may be particular obstacles to the use of restorative justice in the context of clerical child sexual abuse, including the potential for legal concerns on the part of diocesan and religious order bodies.²⁰

15 Cossins summarises this concern as follows: There is also a tendency towards constructions of offenders 'which fail to acknowledge men's complex motives, men's intentionality or their tactics of minimisation and blame' (Lewis et al. 2001: 119). For example, McAlinden (2005: 384) considers that if sex offenders know that restorative justice offers a way of avoiding a custodial sentence, 'then more ... may be willing to come out in the open, admit to their crimes and seek treatment'. This view that offenders might want to be 'rescued' from their criminal activities does not accord with the literature on sex offender motivations or behaviours (Salter 1995; 2003; Cossins 2000). (Annie Cossins, 'Restorative justice and Child Sex Offences: The Theory and Practice' (2008) 48 *British Journal of Criminology* 359, 362).

16 Annalise Acorn, *Compulsory Compassion: A Critique of Restorative Justice* (University of British Columbia Press, 2004), cited in Daly and Stubbs, 'Feminist engagement with restorative justice' (2006) Vol. 10(1) *Theoretical Criminology* 9-28.

17 Natalie Hadar and Tali Gal, 'Survivors' Paths Toward Forgiveness in Restorative Justice Following Sexual Violence.' (2023) 50 *Criminal Justice & Behavior* 911. It should be noted that other scholars refute the suggestion that forgiveness is a prerequisite of a restorative justice process, see e.g. John Braithwaite, 'Setting standards for restorative justice' (2002) 42 *British Journal of Criminology*, 563–577, 570 where he says it is 'cruel and wrong' to expect forgiveness; Hadeel Al Alosi, 'Righting Unrightable Wrongs: Exploring the Potential of Restorative Justice in Dealing with Historical Institutional Child Sexual Abuse' (2021) 40(1) *University of Tasmania Law Review* 1, 19.

18 Hadeel Al Alosi, 'Righting Unrightable Wrongs: Exploring the Potential of Restorative Justice in Dealing with Historical Institutional Child Sexual Abuse' (2021) 40(1) *University of Tasmania Law Review* 1, 26.

19 *ibid.*

20 Douglas E. Noll & Linda Harvey, 'Restorative Mediation: The Application of Restorative Justice Practice and Philosophy to Clergy Sexual Abuse Cases' (2008) 17 *Journal of Child Sexual Abuse* 377, 394.

(ii) Benefits of restorative justice in relation to child sexual abuse

16. On the other hand, a number of scholars have sought to emphasise that restorative justice can have important benefits in responding to crimes of sexual violence, including child sexual abuse, notwithstanding these concerns. It is argued that the sense of agency offered by restorative justice can be particularly beneficial for survivors of child sexual abuse, given the abuse of power inherent in such abuse:²¹

Giving victims a voice and an active role in the justice process helps to challenge the abuse of power which lies at the heart of abusive relationships. Affording a wider range of victims of institutional child abuse the opportunity to 'tell their story', has important cathartic benefits and is perhaps the single most important value of a victim-focused public inquiry process that aims to incorporate a restorative response to such offences.

17. The benefits of restorative justice in the context of sexual violence are often illustrated by contrast to the traditional criminal process.²² In particular, it is argued that restorative justice allows for the victim's voice and story to be central to the process, and for their account of what happened to them to be validated,²³ which is in contrast to the marginalisation of the victim in the criminal process.²⁴ In the context of criminal prosecutions for sexual violence, survivors can report feeling as though they are on trial as much as the accused, and that the process marginalises and revictimizes them.²⁵ By contrast, a restorative justice process centres the survivor and gives them greater ownership over the process. Restorative justice in this context requires genuine remorse and a meaningful apology.²⁶

21 McAlinden, A-M., & Naylor, B, 'Reframing Public Inquiries as 'Procedural Justice' for Victims of Institutional Child Abuse- Towards a Hybrid Model of Justice' (2016) 38(3) *Sydney Law Review*, 277, 284.

22 See e.g. Courtney Julia Burns and Laura Sinko, 'Restorative Justice for Survivors of Sexual Violence Experienced in Adulthood: A Scoping Review' (2023) 24 *Trauma, Violence, & Abuse* 340.

23 Kathleen Daly, 'Restorative justice and sexual assault: an archival study of court and conference cases' (2006) 46(2) *British Journal of Criminology* 434-56.

24 See Shane Kilcommins, Susan Leahy, Kathleen Moore-Walsh & Eimear Spain, *The Victim in the Irish Criminal Process* (Manchester University Press, 2018).

25 Raitt describes the experience of a complainant of sexual assault in a criminal trial thus: The features of the adversarial process that complainants experience as especially problematic include their lack of 'standing', the emphasis on orality, the rejection of narrative testimony, the focus on cross-examination as the apex of 'truth-seeking', the sense of detachment from the prosecutor and the non-interventionist role of the judge ... Complainants describe the marginalization they experience – they are bit players in the drama of the trial while their private life and trauma are on public display. (F. Raitt, 'Independent Legal Representation for Complainants in Rape Trials' in C. McGlynn and V.E. Munro (eds), *Rethinking Rape Law: International and Comparative Perspectives* (London: Routledge, 2010), pp.267-268, cited in Amy Walsh, 'Reform of Victim Testimony in Sexual Offence Trials' (2022) 32(1) *Irish Criminal Law Journal* 74).

See also Courtney Julia Burns and Laura Sinko, 'Restorative Justice for Survivors of Sexual Violence Experienced in Adulthood: A Scoping Review' (2023) 24 *Trauma, Violence, & Abuse* 340.

(iii) Views of survivors on suitability of restorative justice in responding to child sexual abuse

18. It should be noted that there is some academic research to the effect that some survivors of child sexual abuse may be sceptical of restorative justice processes as a response to the harm caused to them. In a 2006 study of survivors of child sexual abuse in New Zealand, survivors reported significant reluctance to engage in restorative justice processes:²⁷

Participating survivors, particularly those who had not reported to the police, were reluctant to endorse restorative justice as a paradigm within which they could pursue justice.

19. In that study, survivors gave a number of reasons why they considered restorative justice inappropriate, often related to the power dynamics of their interactions with the offender:²⁸

As survivors talked about their reluctance to engage with restorative justice, issues related to power permeated their discussion. Rosalind said that abuse 'is a control thing, he has the power, he has to be number one'. She believed her father would act the same in a restorative justice conference. Sarah said that as she thought about any confrontation with her father, she could feel herself reverting to 'a child without voice or power'.

20. Survivors were also sceptical of the contention that restorative justice was a more victim-centred approach:²⁹

Participating survivors found it difficult to believe that restorative justice was victim centred. Belinda said, 'the offender can control the process by refusing to participate in restorative justice'. Many commented that restorative justice was merely replicating what they perceived as the offender centred model of the traditional criminal justice system.

26 One lawyer representing survivors of child sexual abuse has said of the role of apologies in this context: 'Apologies don't count from the pulpit. They don't count from a spokesperson. They don't count from a press release. They only count in person. I learned that in first grade ...' (Stephen Rubino, quoted in J.L. Herman, *Truth and Repair – How Trauma Survivors Envision Justice* (London: Basic Books, 2023))

See further Anne-Marie McAlinden, *Apologies and Institutional Child Abuse* (ESRI: Apologies, Abuse and Dealing with the Past Project, 2018) for discussion of the necessary elements of apologies in this context.

27 Shirley Julich, 'Views of Justice among Survivors of Historical Child Sexual Abuse: Implications for Restorative Justice in New Zealand' (2006) 10 *Theoretical Criminology* 125, 133.

28 *ibid*, 134.

29 *ibid*.

21. Similarly, a study of the justice needs of 22 victims of sexual violence, of whom 11 had been victims of child sexual abuse, found that justice, from their perspective, was neither restorative nor retributive in the conventional sense:³⁰

Justice, from the perspective of these informants, was neither restorative nor retributive in the conventional sense. Their vision of justice combined retributive and restorative elements in the service of healing a damaged relationship, not between the victim and the offender but between the victim and his or her community. The retributive element of the survivors' vision was most apparent in their virtually unanimous wish to see the offenders exposed and disgraced. Their aims, however, were not primarily punitive. The main purpose of exposure was not to get even by inflicting pain. Rather, they sought vindication from the community as a rebuke to the offenders' display of contempt for their rights and dignity.

22. McAlinden and Naylor state that survivors of child sexual abuse have a relatively diverse range of justice needs, which may require a range of justice responses:³¹

Victims of such crimes seek, among other things, full disclosure; face-to-face encounters with church authorities to hear them take responsibility for wrongdoing; offender remorse and accountability; offender appreciation of the impact of the abuse on their lives; victim empowerment and a role in the justice process; rebalancing of power; an independent investigation of the facts; validation of their suffering, and support by the State and the Church; and stopping the abuse by the individual and by the institution for current and future victims. Given the diversity in what victims want in terms of justice, there is arguably a need for greater flexibility within justice responses.

23. Notwithstanding the reluctance expressed by some survivors, more recent research has suggested that restorative justice can in particular circumstances have a role to play in responding to child sexual abuse. A recent study conducted by Marie Keenan and Olive Lyons suggests that there may be a useful role for restorative justice in addressing non-recent child sexual abuse.³² In a study based on 29 survivors of non-recent child sexual abuse, the authors conclude that, while criminal justice processes can meet some of the justice needs of survivors, there are other justice needs of survivors that can be better achieved by restorative justice processes and/or values.

30 Judith Lewis Herman, 'Justice from the Victim's Perspective' (2005) 11(5) *Violence Against Women* 571, 597.

31 McAlinden, A-M., & Naylor, B, 'Reframing Public Inquiries as 'Procedural Justice' for Victims of Institutional Child Abuse- Towards a Hybrid Model of Justice' (2016) 38(3) *Sydney Law Review*, 277, 284.

32 Marie Keenan and Olive M. Lyons, 'Adult disclosure of non-recent child sexual abuse: is there a role for restorative justice?' (2023) Vol. 1(3) *European Social Work Research* 295.

24. They therefore conclude that restorative justice responses should be available, where both the offender and the survivor are willing to participate, and where facilitated by suitably trained professionals:³³

While there is almost no argument for denying victims of sexual crime an opportunity for restorative justice post-conviction, if they desire it and the offender is willing, offering restorative justice at other points in the criminal process are more contested, mainly by a lack of understanding of what restorative justice has to offer survivors of sexual abuse or for fear that they would be revictimised by the power imbalance. However, these concerns are addressed by the practice of restorative justice with adequately trained facilitators (see Keenan and Zinsstag, 2022). There is no reason why restorative justice could not be initiated for victims who do not wish to be involved in protracted court proceedings but require a justice response.

(a) Views of survivors who engaged with this Inquiry on Restorative Justice

25. A small number of survivors who engaged with this Inquiry expressed support for restorative justice as a future intervention.³⁴ A number of participants had direct experience of restorative justice, and for some it was reported it as a positive experience.³⁵ Those who spoke positively of their experience emphasised the agency the process gave them, and the sense of being heard:³⁶

The participant would like to see engagement in more restorative justice for victims. His experience is that in telling his story: 'I got my power back'.
(Participant)

'Sitting with the perpetrators' representatives and acknowledging the failures of the perpetrator and providing a personal apology has been helpful. [But] all of us need further therapeutic counselling.' (Participant)

33 *ibid*, 307.

34 See Chapter 7 of this Report.

35 *ibid*.

36 *ibid*.

26. Another survivor spoke of their desire to engage in restorative mediation with their abuser, but were unable to do so due to the alleged abuser refusing to engage:³⁷

The participant reported a strong desire for mediation or restorative justice processes. He explained that real healing could happen in restorative conversations with the parties involved, where they would acknowledge their responsibility for the abuse that took place. The participant noted that he would like mediation both with the abuser and with the institutions. He explained that he sought mediation or a restorative meeting with the abuser throughout the legal process, but that the abuser refused to engage in a meeting of this sort. The participant expressed his disappointment, as this would have had a greater impact on him in seeking justice. (Participant)

27. For those with a negative experience of restorative justice processes they had engaged with in the past, some reported that this was due to the impression that the process lacked real care or concern from the religious orders.³⁸

28. A number of those who had not engaged in restorative justice processes in the past stated that restorative justice was unappealing to them, with some expressing a moral repugnance to engaging with the orders in this way:³⁹

The participant believes that the option of restorative justice would be a waste of time for him. He does not wish to have anything to do with the [order] no meetings, apologies or other processes dealing directly with them would be helpful to him as a survivor. (Participant)

The participant is not in favour of restorative justice: *'That's all rubbish. It'd be like sitting down with Putin.'* (Participant)

(iv) Australian Royal Commission Research Report on Restorative Justice Responses to Child Sexual Abuse

29. In the course of its work, the Australian Royal Commission into Institutional Responses to Child Sexual Abuse commissioned an expert report on the role of restorative justice in responding to institutional child sexual abuse. This report found 'no examples of programs attached to criminal justice systems, domestically or internationally that have reported using restorative justice to address institutional child sexual abuse.'⁴⁰

37 See Chapter 7 of this Report.

38 *ibid.*

39 *ibid.*

40 Jane Bolitho and Karen Freeman, *Report for the Royal Commission into Institutional Responses to Child Sexual Abuse: The Use and Effectiveness of Restorative Justice in Criminal Justice Systems Following Child Sexual Abuse or Comparable Harms* (March 2016), p. 31.

30. However, the report nonetheless undertook an extremely thorough review of the available literature in respect of the restorative justice responses to child sexual abuse more broadly. The study identified that, while restorative justice can play a beneficial role in the context of child sexual abuse, there are a number of essential pre-conditions to the success of such a programme, including the involvement of trained specialist facilitators, the screening of suitable participants, and the availability of specialist sex offender treatment:⁴¹

This review finds that, though a range of beneficial outcomes was reported, they were consistently seen to be contingent on particular conditions. That is, for the practices that reported positive impacts, the research authors identified some notable features that made these outcomes possible. There were seven studies (all concerning programs that had completed sexual abuse cases) that explicitly linked program outcomes to conditions for success.

31. The report found that the availability of specialist facilitators experienced in dealing with sexual abuse was ‘the most distinctive feature’ of successful programmes in this area:⁴²

The most distinctive feature of the well-established and evaluated practices identified in the research is a specialised approach to working with crimes that have complex power dynamics. Facilitators are both more experienced and knowledgeable than standard restorative justice facilitators and are specifically aware of the complex dynamics of sexual abuse.

32. The report also found that screening out non-suitable participants (both survivors and offenders) was crucial to the success of restorative justice initiatives in this area. In particular, it noted that it is to be expected that a majority of potential participants will be screened out due to unsuitability:⁴³

Program staff members must also have an integral role in assessing suitable participants. The screening phase of restorative programs was identified as a condition for success. Indeed, the majority of potential participants are screened out of participation (whether through lack of interest or suitability). In regard to the Community Justice Initiatives Association VOMP model practised in Canada, Roberts (1995) reported that 65 per cent of cases were screened out. ... Making good decisions about who is suitable for participation may be a crucial component of ensuring safety for participants, and this is tantamount [sic] to success.

41 Ibid, p. 43

42 Ibid, p. 44.

43 Ibid.

33. The report also noted that the availability of specialist sex offender treatment programmes as central to the success of such programmes:⁴⁴

The final common condition for success authors identified was the completion of specialist sex offender treatment programs. In all of the specialised and many of the most well-established programs, sex offender treatment is completed either as a precursor to participation in restorative justice (to meet eligibility requirements) or as part of the restorative approach.

34. Finally, the authors noted that it was a given that participation in such processes must be voluntary:⁴⁵

One notable feature that authors did not explicitly identify, perhaps because it is taken for granted in restorative approaches, is voluntary participation. The only program identified that has mandatory participation (for offenders) is Circles of Peace in the US, where the program is the core 'sentence' for offenders. Perhaps related, this program reported a high attrition rate for offenders with only 51 per cent completing the 'treatment' plan.

35. The Australian Royal Commission ultimately decided against recommending that restorative justice form part of the criminal justice response to institutional child sexual abuse, on the basis of some of the concerns in relation to its use outlined in this chapter.⁴⁶ The Royal Commission stated that:⁴⁷

... based on current evidence, we are not satisfied that formal restorative justice approaches should be included as part of the criminal justice response to institutional child sexual abuse, at least in relation to adult offenders. It appears that restorative justice may not be available for or of assistance to many survivors of institutional child sexual abuse, including:

- because of the power dynamics and seriousness of institutional child sexual abuse offending, restorative justice approaches may only be suitable in a small number of these cases
- many survivors do not wish to seek a restorative justice outcome with the perpetrator of the abuse
- given the frequent delay before reporting, many offenders will be unavailable or unwilling to participate in restorative justice approaches.

44 Ibid, p. 44-45.

45 Jane Bolitho and Karen Freeman, *Report for the Royal Commission into Institutional Responses to Child Sexual Abuse: The Use and Effectiveness of Restorative Justice in Criminal Justice Systems Following Child Sexual Abuse or Comparable Harms* (March 2016), p. 45.

46 For criticism of the Royal Commission's decision in this regard see Hadeel Al Alosi, 'Righting Unrightable Wrongs: Exploring the Potential of Restorative Justice in Dealing with Historical Institutional Child Sexual Abuse' (2021) 40(1) *University of Tasmania Law Review* 1

47 Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report: Executive Summary and Part I – II* (August 2017) p. 13.

D. Restorative Inquiries

36. In recent years, there have been a small number of examples of inquiries established to respond to allegations of child sexual abuse that have sought to incorporate a restorative justice process in one form or another. This section sets out the salient features of two such inquiries, the Nova Scotia Home for Colored Children Restorative Inquiry and the St. Joseph's Orphanage Restorative Inquiry, Vermont, USA.⁴⁸

(i) Nova Scotia Home for Colored Children Restorative Inquiry

37. The Nova Scotia Home for Colored Children Restorative Inquiry was established by the Nova Scotian Government in response to allegations of abuse and neglect at the Nova Scotia Home for Colored Children (NSHCC) in Halifax, Nova Scotia. The Inquiry was established following a public apology from the Government of Nova Scotia, and was focussed on understanding the experience of former residents of the Home, rather than on the apportioning of blame. The CES report outlined the aims and process of the Inquiry thus:⁴⁹

The inquiry process was not focused on apportioning blame in the sense of a retributive process, but as a journey of healing and learning where facts were established, and lessons taken from them. Therefore, the former residents had a key part in designing and deciding the approach that all aspects of the inquiry would take. A design team was established that comprised a broad range of stakeholders, and an acknowledged expert in the field of restorative justice was appointed to guide and facilitate the design process ... The design process lasted ten months and focused not only on the inquiry process and structure but also on trust, relationship building, honesty and openness. Following the design phase, the team produced a mandate and Terms of Reference for the Inquiry that detailed the scope and focus of the inquiry.

48 Greater detail of the operation of these inquiries can be found in the Centre for Effective Services Report, at chapter 3.

49 Centre for Effective Services, *Research Report on Restorative Justice and Other Initiatives Implemented by Religious Orders in Response to Reports of Historical Sexual Abuse* (February 2024), p. 27.

38. The process of the Nova Scotia Inquiry appears to have centred engagement between the survivors themselves, and allowing them to reflect together on their experience in the Home. It does not appear that any conferences between victims and principal offenders took place, and while it appears that some conferences between former residents and former members of the Board of the Home took place, this does not appear to have been the central focus of the Inquiry's work.⁵⁰ Rather, it appears to have adopted a process that was focussed on centring the experience of the victims and seeking to understand the context in which abuse took place, and to document the suffering within that institution, rather than to examine the culpability of individual persons, or indeed the culpability of a system or institution. This approach may have been influenced by the fact that the Inquiry took place after the resolution of a lengthy class-action lawsuit that secured considerable financial restitution for the Home's survivors.⁵¹

(ii) St. Joseph's Orphanage Restorative Inquiry (SJORI)

39. The St. Joseph's Orphanage Restorative Inquiry (SJORI) was launched in 2019 to examine allegations of abuse against Catholic clergy connected to the Orphanage.

40. Located in Burlington, Vermont, St. Joseph's Orphanage operated between 1884 and 1974. In September 2018 a task force was convened in light of allegations of abuse. As part of its work, the task force established a Restorative Inquiry. The goal of the Inquiry is 'to facilitate opportunities for accountability and healing through a restorative process'. As part of the restorative aspect of the task force, the Restorative Inquiry team worked with a core group of former Orphanage residents, formally recognised as Voices of St. Joseph's Orphanage (VSJO).

41. The Inquiry engaged in survivor outreach and held regular meetings in which survivors could share their experiences from the Orphanage. The Inquiry used a Circle process as their primary restorative structure for their internal group meetings; and 'listening sessions' with external stakeholders to the Inquiry process.

50 The report of the Inquiry outlines at p. 58 the various types of conferences and 'circles' that were convened in the course of its relationship building process. This included (a) former resident sharing circles (in which former residents gathered), (b) community engagement sessions (which contained broader representation from the African Nova Scotian community), (c) Government engagement sessions (in which information sessions about the work of the restorative inquiry were held with various government departments and (d) Partner circles (which included circles with individual Government departments; police agencies; former Board members from the Home, the AUBA; and members of the African Nova Scotian community closely connected to the Home). NSHCC Restorative Inquiry, *Journey to Light: A Different Way Forward, Final Report of the Restorative Inquiry – Nova Scotia Home for Colored Children* (2019), p. 58.

51 This is referred to in the discussion of the Nova Scotia Inquiry in the report of the later St Joseph's Orphanage Inquiry in Vermont, discussed below. St Joseph's Orphanage Inquiry, *Final Report* (December 2023) p. 18.

42. However, significantly, there was ultimately a complete refusal on the part of the Catholic Diocese of Burlington and the relevant Catholic charities to engage with the Inquiry. Whilst this was initially on the basis that the Task Force was investigating the Orphanage, and the Diocese was anxious not to prejudice an ongoing criminal investigation, when this investigation concluded, the Diocese again refused to participate. The Final Report outlined the effect of this on the Inquiry and the survivors:

The Burlington Catholic Diocese and Vermont Catholic Charities refusal to engage in the Restorative Inquiry was a source of great disappointment to project organizers and participants alike. From the outset, project organizers had designed the Inquiry around the eventual facilitation of restorative dialogues between Diocese and Catholic Charities' representatives and Inquiry participants. Participants also identified several individual and group goals which could only be provided by the Catholic Institutions. The leadership of these religious organizations, however, rejected this opportunity for understanding, repair, and healing.

...

Although 'voluntary participation' is a core principle of restorative justice, Inquiry organizers view the Catholic Institution's intentional isolation from the process as both a missed opportunity and a damaging decision ...

Unfortunately, Vermont Catholic Charities and the Burlington Diocese refused to even engage in exploratory dialogue, including opportunities to surface their concerns and needs, which limited any potential for process learning and growth.

43. The Final Report also noted that the failure to secure any financial redress was a source of significant disappointment to survivors. One success of the Inquiry was a successful lobbying of the Vermont legislature to amend the statute of limitations.
44. Thus, while the Vermont Inquiry appears to have modelled restorative values in centring the experiences of survivors in the process, the Inquiry ultimately did not involve direct engagement with the relevant religious stakeholders, in circumstances where they simply refused to engage. This illustrates the extent to which restorative justice processes are predicated on the voluntary participation of all parties, and an acceptance on the part of the harmer of responsibility and accountability.

E. CES Audit of Religious Orders Responses to Abuse Allegations

45. The CES conducted a survey of schemes and processes operated by ten different religious orders operating in Ireland, namely:⁵²
- Capuchins;
 - Carmelite Fathers;
 - Dominicans;
 - Franciscan Friars;
 - Jesuits;
 - Marist Fathers (Society of Mary);
 - Missionaries of the Sacred Heart;
 - Presentation Brothers;
 - Salesians of Don Bosco;
 - Spiritans.
46. The Scoping Inquiry is grateful to the above orders for the assistance they provided to the Inquiry in engaging with CES.⁵³
47. The survey found that all ten orders operated some form of direct engagement with survivors, primarily by way of face-to-face meetings with survivors. CES note that, overall, these engagements were described as survivor centred and focused on the promotion of survivor healing and reparation.⁵⁴ While noting a significant degree of commonality in approaches among the orders, including all having a stated aim of providing a means of reconciliation that was survivor-centred, CES observed that there was a divergence of approach among some orders, in that some conducted their engagement through a facilitator, while others directly engaged with survivors in a ‘pastoral’ approach.⁵⁵

52 Centre for Effective Services, *Research Report on Restorative Justice and Other Initiatives Implemented by Religious Orders in Response to Reports of Historical Sexual Abuse* (February 2024), p. 40.

53 It should be noted that this process did not involve engagement with survivors as to their experience engaging with these orders, and simply reflects the orders’ accounts of how these initiatives operate.

54 *ibid*, p. 41.

55 *ibid*.

Each religious order detailed some form of direct engagement with survivors. The main method of engaging survivors took the form of a face-to face meeting. Overall, these engagements were described as survivor centred and focused on the promotion of survivor healing and reparation. Two approaches were identified: some religious orders followed a highly structured mediation process facilitated by an independent facilitator. Other orders held a pastoral meeting with survivors, in which the safeguarding officer from the order is tasked with the oversight of running of the meeting. Importantly, both approaches have similar outcomes and goals although the mechanism through which these are achieved differs.

48. The pastoral approach is outlined in some detail by CES as involving a meeting between the order and the survivor, with the order's safeguarding officer having significant responsibility for the administration of the process, including in the meeting itself.⁵⁶

The pastoral meeting process is initiated when the survivor contacts the safeguarding officer ... An invitation to meet is generally offered in response to this initial contact. Preparatory meetings are held between the safeguarding officer and the survivor to explore the needs and wants of the survivor ... The pastoral meeting occurs in an agreed location. The survivors can bring a support person if they wish. In pastoral meetings, the religious orders' safeguarding officers, who are professional safeguarding practitioners and not necessarily members of the congregation, play a larger role compared to the facilitated mediation, where there is an external facilitator. Their role, as described in the interviews, is to believe and support the survivor throughout the process. They are also tasked with facilitating the meeting ... The Provincial takes accountability on behalf of the order and demonstrates a willingness to accept responsibility for past abuses. It is standard that the Provincial offers an apology to promote healing. Further to this the survivor may have questions they want answered to which the Provincial responds.

56 Centre for Effective Services, *Research Report on Restorative Justice and Other Initiatives Implemented by Religious Orders in Response to Reports of Historical Sexual Abuse* (February 2024), pp. 44-45.

49. By contrast, the facilitated approach involves an external facilitator conducting the meeting. The CES report outlines, as an example, the facilitated approach operated by the Spiritans in some detail:⁵⁷

The facilitated process is structured ... Time is allowed throughout for the survivor to open up and share their story at a rate and level of detail comfortable for them. The survivors are empowered to share their story verbally, or they may have notes, or a written piece prepared. Breaks may be taken if the process becomes upsetting for the survivor.

Having shared their story, the facilitator then asks the Provincial to respond. The Provincial is accompanied by the order's safeguarding officer to the meeting ... Oftentimes, the survivor may ask questions of the Provincial and, the interviewees report that this constitutes an important aspect of healing to many survivors. For instance, the survivor may want to know details surrounding the widespread extent of the abuse or details of institutional facilitation of the abuse. The Provincial's main role is to be accountable for the actions of the harmer within the religious order. In this context, honest, open communication and transparency are foundational to healing and repairing the harm.

50. The CES goes on to state its view that the facilitated approach is to be preferred as more closely mapping onto traditional and best practices models of restorative justice processes:⁵⁸

Two primary engagement strategies are identified: facilitated mediations and pastoral meetings. Facilitated mediations involve external facilitators and emphasise respect, transparency, and empowerment; while pastoral meetings, led by the orders themselves, offer a compassionate space for survivors. Both methods aim to promote healing and reparation. In examining these approaches, the chapter highlights their effectiveness in building trust and validating survivors' experiences. However, despite the good intention of the pastoral approach it could not be considered restorative or a wholly neutral approach to restoration for the reasons outlined in previous Chapters of this report.

57 *ibid*, p. 43.

58 Centre for Effective Services, *Research Report on Restorative Justice and Other Initiatives Implemented by Religious Orders in Response to Reports of Historical Sexual Abuse* (February 2024), p. 48.

51. The Report states that all of the orders surveyed have a survivor centred approach, but that there remain areas for improvement. These include, among others:⁵⁹

- Compensation

The report notes that the compensation of survivors was a challenge for orders, some of whom stated they did not have the financial resources to meet these expectations, and indicates that a model for compensation of survivors should be developed.

- Preparedness

The report notes that the capacity of one order to engage with survivors came under pressure following a surge in engagement.

- Understanding survivors' perspective

The report notes that the order may sometimes view an engagement as having been positive, but later learn that the survivor did not share that perspective. It states that the survivor's experience is most important in the process.

- Collective responsibility where an alleged abuser is deceased

The report notes that difficulties can be encountered when the alleged abuser is dead. The report suggests that in such cases the Provincial should stand in to represent the order as a whole.

52. The CES report indicates that there is a commitment among the orders interviewed to reflect on their processes and to address the issues identified:⁶⁰

All the religious orders interviewed have engaged in reflecting on their approach to survivors, which has led to an acknowledgement that there are areas for improvement and development. This transparency reflects a commitment to address these issues.

59 *ibid*, pp. 50 – 52.

60 Centre for Effective Services, *Research Report on Restorative Justice and Other Initiatives Implemented by Religious Orders in Response to Reports of Historical Sexual Abuse* (February 2024), p. 49.

F. Conclusions

(i) Conclusions on restorative justice initiatives operated by the religious orders

53. The CES report found that while all ten orders surveyed operated a process that was survivor centred, there was a divergence of approach amongst them, with some using a 'facilitated approach' and other using a 'pastoral approach'. The report concluded that the facilitated approach is to be preferred as more closely mapping onto traditional and best practice models of restorative justice processes.
54. By way of response to this conclusion, one religious order that operates a 'pastoral' approach fairly noted that this is, in their experience, an approach sought by survivors themselves, and that they have specialist lay staff trained to facilitate their processes in relation to survivors and that these staff are sufficiently independent to carry out this purpose. It thus appears that while a facilitated approach is in line with international best practice in restorative justice, a pastoral approach may nonetheless be appropriate in particular cases.
55. In addition, the independent report outlined areas for improvement in restorative justice initiatives run by the religious orders as including: compensation; preparedness; understanding survivor's perspectives; and collective responsibility (where an alleged abuser is deceased).

(ii) Conclusions on role of restorative justice in a future inquiry

56. As outlined at the outset of this chapter, it must be acknowledged that child sexual abuse is a 'hard case' for the use of restorative justice.⁶¹ Further, notwithstanding the significant amount of academic scholarship canvassed in this chapter, it remains the case that there is an insufficient amount of research and data on the use of restorative justice in the context of institutional child sexual abuse.⁶²

61 See Annie Cossins, 'Restorative justice and Child Sex Offences: The Theory and Practice' (2008) 48 *British Journal of Criminology* 359, 360.

62 Hadeel Al Alosi notes that 'there is limited research on the applicability of restorative justice in historical institutional child sexual abuse cases' in 'Righting Unrightable Wrongs: Exploring the Potential of Restorative Justice in Dealing with Historical Institutional Child Sexual Abuse' (2021) 40(1) *University of Tasmania Law Review* 1, 3. Similarly, Gleeson and Zanghellini observe that 'Restorative justice in the context of historical, institutional child sexual abuse is particularly under-studied.' K. Gleeson and A. Zanghellini, 'Graceful remedies: understanding grace in the Catholic Church's treatment of clerical child sexual abuse' (2015) 41(2) *Australian Feminist Law Journal* 219.

57. However, notwithstanding the concerns in relation to its use, it appears on the basis of the current research that restorative justice may be effective as a response in the context of child sexual abuse in some particular cases, provided that it is administered by specialist, trained facilitators and subject to a number of particular safeguards. In particular, it is an essential pre-condition for the use of a restorative justice process that the offender, or their representative organisation,⁶³ be prepared to voluntarily accept responsibility for the harm caused and to validate the survivor's experience. Further, it must be a response that the individual survivor is willing to engage in. This reflects the fact that voluntariness is an essential principle of restorative justice. The experience of the St Joseph's Orphanage Inquiry in Vermont, USA illustrates the difficulties that can be encountered where an inquiry is framed as a purely restorative response, but ultimately receives no engagement from the institutions alleged to be responsible for the harm caused.
58. The design of the process itself is also essential to a successful restorative process in the context of child sexual abuse. As the Australian Royal Commission's report makes clear, there are several essential features to a successful restorative process in child sexual abuse, including the availability of trained facilitators, rigorous screening of suitable cases, and the availability of specialist sex offender treatment either as a precursor to the process, or as a part of the restorative process.⁶⁴ In its report to the Scoping Inquiry, the Centre for Effective Services also recommended that a detailed feasibility study would need to be conducted to assess the practicality of a publicly co-ordinated restorative justice process, including by reference to available resources and expertise, and following on from engagement with survivors:⁶⁵

63 The Australian Royal Commission's research report noted that survivors are just as likely to be interested in a restorative conference with institutional representatives as with the principal offender: Research on what victims want from justice (Herman 2005), specifically in the aftermath of institutional child sexual abuse (van Wormer & Berns 2004, Gavrielides 2013 and Gavrielides & Coker 2005), suggest that victim-survivors are just as likely to be interested in having a restorative conference with non-criminally liable parties such as institutional representatives. Particularly where a church has been involved and a victim-survivor has had their faith challenged, the potential of restorative justice is in the capacity to create a safe space for these conversations, rather than the meting out of formal justice for child sexual abuse, which is a serious, indictable offence. Jane Bolitho and Karen Freeman, *Report for the Royal Commission into Institutional Responses to Child Sexual Abuse: The Use and Effectiveness of Restorative Justice in Criminal Justice Systems Following Child Sexual Abuse or Comparable Harms* (March 2016), p. 61.

64 Jane Bolitho and Karen Freeman, *Report for the Royal Commission into Institutional Responses to Child Sexual Abuse: The Use and Effectiveness of Restorative Justice in Criminal Justice Systems Following Child Sexual Abuse or Comparable Harms* (March 2016), pp. 43, 44.

65 Centre for Effective Services, *Research Report on Restorative Justice and Other Initiatives Implemented by Religious Orders in Response to Reports of Historical Sexual Abuse* (February 2024), p. 40.

Given the complex and sensitive nature of the issue, a feasibility study would allow for a comprehensive assessment of the practicality, viability, and potential impact of different approaches, ensuring that resources are allocated effectively, and interventions are tailored to the specific needs of survivors and the community. Engaging with survivors would be paramount in this process and their insights, experiences, and perspectives would be instrumental in shaping the approach and ensuring that it is survivor-centered and trauma-informed.

59. The Scoping Inquiry agrees that a further feasibility study would be required before a Government sponsored and coordinated restorative justice scheme for child sexual abuse could be recommended, in light of the concerns outlined and the need for various resources to be in place.
60. However, that does not mean that restorative values and principles should not inform the response to historical child sexual abuse in schools run by religious orders. In particular, the emphasis on centring the survivors and giving them agency in the process is an important lesson of restorative justice schemes. It is also important that a response give a non-adversarial space for survivors to share their stories and to create a master-narrative of the suffering endured.
61. This might be achieved by way of a process by which survivors could give accounts of their experience on the understanding that these accounts would be anonymised, and not used to reach findings in respect of particular individuals or institutions, but used to inform the broader narrative of historical child sexual abuse in schools run by religious orders. Similarly, consideration should be given to regular engagement with survivors throughout the lifetime of a future inquiry in order to provide a voice for survivors within the process of the inquiry.

Chapter 22:

Practical Issues to Consider

- A. Introduction
- B. Avoiding Interference with Garda Investigations
 - (i) Inquiries Sitting in Public
 - (ii) Inquiries Sitting in Private
- C. The Use of Non-Disclosure Agreements
- D. Interaction with other Redress Schemes
- E. Costs and Timeframe of Proposed Responses
 - (i) The Costs and Timescale of Inquiries
 - (ii) The Costs of Redress Schemes

A. Introduction

1. This chapter summarises some of the practical issues that a future inquiry may face. Each of the following issues are considered in turn:
 - (i) The need to avoid interference with Garda investigations;
 - (ii) The impact of non-disclosure agreements;
 - (iii) The interaction of an inquiry with previous redress schemes; and,
 - (iv) The potential costs and timescale of an inquiry.
2. The following discussion is indicative only and it is not proposed to provide a fulsome discussion of these complex issues. Ultimately, it will be for the decisionmaker of any future process to determine how best to balance these practical challenges with the fulfilment of their purposes.

B. Avoiding Interference with Garda Investigations

3. The Scoping Inquiry's Terms of Reference require it to have regard, in assessing options for an future independent inquiry, to the 'legal issues and/or considerations that may arise, including ... risks to any Garda investigations running concurrently'.

(i) Inquiries Sitting in Public

4. Where an inquiry is conducted in public, the risk to Garda investigations running concurrently with such an inquiry is that evidence may emerge before it which risks undermining the Garda investigation. Or, as has arisen in the past, the publicity attendant on the inquiry proceedings may prejudice the right to a fair trial of the accused, if a criminal prosecution is commenced after the Garda investigation is completed. Further, a person charged with rape cannot be identified in public pursuant to the Rape Act 1981.
5. Prejudicial pre-trial publicity can create a serious risk of an unfair trial. This can be so even where the accused has been anonymised by the inquiry, due to 'saturation publicity' of the story itself.¹ However, the general position is that the potential for prejudice caused by such publicity can be allayed by appropriate directions and rulings by the trial judge.²

1 *Z v DPP* [1994] 2 IR 476.

2 *Ibid*, [11.35].

6. As such, the fact that there may be publicity from a public inquiry that might impact a subsequent trial does not require such an inquiry to decline to hear relevant evidence.³ In *Goodman International v Hamilton* Finlay CJ held that the Constitution did not require evidence to be excluded from a tribunal of inquiry on the basis that it may be used at a later trial.⁴
7. Where a criminal trial is imminent, it is open to a tribunal to deal with evidence before it in such a way that the potential for adverse pre-trial publicity is eliminated or at least greatly reduced. For example, the Morris Tribunal heard evidence in private from a witness who was subject to criminal prosecution and prevented publication of that evidence until the conclusion of the criminal case to prevent prejudice to an accused. The report in respect of that module of the tribunal's work was prepared in the normal way and submitted to the Minister. If criminal proceedings were still pending at that stage, the tribunal found that it would be a matter for the Minister under section 3 of the Tribunals of Inquiry (Evidence) Acts, 1921, as amended, ('**the 1921 Act**') to proceed as he thought fit.⁵
8. In other instances tribunals have been adjourned until a criminal trial had concluded.⁶ Further, tribunals such as the Lindsay Tribunal, often referred to as the Blood Tribunal, have taken measures to preserve the anonymity of witnesses, such as pseudonymisation, albeit for reasons unrelated to potentially prejudicing a criminal prosecution.
9. An inquiry sitting in public thus has several options open to it to seek to prevent adverse pre-trial publicity prejudicing the criminal trial of a person whose evidence is relevant to the inquiry's work.

(ii) Inquiries Sitting in Private

10. Where a commission of investigation is sitting in private, issues involving pre-trial publicity would not tend to arise in the same way.

3 *Goodman International v Hamilton* [1992] 2 IR 542.

4 *Ibid*, at 591.

5 http://www.morristribunal.ie/SITECONTENT_395.pdf.

6 See 'Report of the Investigation into the Railway Accident near Cherryvale Junction, County Kildare on the 21st August 1983'.

11. The evidence before a commission sitting in private will usually only become available to the public when the commission publishes its report. However, where it is thought that the publication of such a commission's report is likely to prejudice a criminal trial, an application may be made to the High Court to redact the report so as to remove the prejudicial material. This occurred in relation to the Dublin Archdiocese Report, where the High Court directed that sections of the report relating to two named person be redacted on the grounds that their publication may prejudice criminal proceedings.⁷ Whilst no written judgment is available, newspaper reports at the time suggest that the court found that the Commissions of Investigations Act 2004 ('the 2004 Act') does not envisage that such parts of a report should never be published pending a criminal trial, or that the court could permanently censor elements of the report.⁸ The redacted parts of the report were published after the criminal trials concluded, in December 2010 and July 2013 respectively.
12. Similarly, a chapter of the Cloyne Report was redacted prior to publication. The Minister for Justice sought and was granted the redaction due to concerns that the chapter could prejudice an ongoing criminal proceeding.⁹ The redacted chapter was subsequently published in December 2011.
13. It may be said therefore that where commissions of investigation sit in private this considerably reduces the risks of adverse pre-trial publicity likely to prejudice a criminal trial. However, there are also sufficient mechanisms available to tribunals or commissions of investigation sitting in public to deal with the issues likely to arise in respect of concurrent Garda investigations or prosecutions.

C. The Use of Non-Disclosure Agreements

14. A number of survivors have indicated to the Scoping Inquiry that they are concerned that the terms of Non-Disclosure Agreements ('NDAs') which they have signed as part of settlements or compromise agreements may prohibit or restrain them from fully engaging with a future inquiry. Participation in a confidential committee would be unlikely to pose a difficulty since their participation in the latter would be anonymised.

7 Irish Times 'Edited Report on Dublin Abuse Cleared for Release' (November 20 2009) <https://www.irishtimes.com/news/edited-report-on-dublin-abuse-cleared-for-release-1.774965>.

8 Mary Carolan 'Most of report can be published after judge's ruling' (16 October 2009) *The Irish Times* <https://www.irishtimes.com/news/most-of-report-can-be-published-after-judge-s-ruling-1.757766>.

9 Patsy McGarry, 'Full Cloyne Report to be published, court rules' (17 December 2011) *The Irish Times* <https://www.irishtimes.com/news/full-cloyne-report-to-be-published-court-rules-1.12465>.

15. NDAs are commonly referred to as secrecy or confidentiality agreements. They are contracts that create a legally enforceable agreement that certain information will remain confidential.
16. The survivors have criticised the use of NDAs on the basis that they represent an unfair mechanism used to silence individuals and protect organisations who have committed criminal acts. Survivors have suggested that NDAs should be ‘outlawed’ in cases involving allegations of sexual abuse.
17. NDAs are commonly used in Ireland, particularly in employment and commercial settings. The constitutional permissibility of NDAs has been confirmed, albeit in a commercial setting.¹⁰
18. As NDAs are by their nature contractual, the particular restrictions or limits on disclosure will depend on the terms of the contract.
19. However, notwithstanding the terms of any particular NDA, it appears clear that a statutory inquiry would be able to use its power to compel attendance of a witness to give evidence.¹¹ Were this not the case, then persons could effectively contract out of compliance with a statutory inquiry, which would be clearly contrary to the public interest.
20. As a matter of practicality, and in order to assuage the concerns of a potential witness who has signed an NDA, one would envisage that an inquiry could ask such persons to contact the inquiry and, if such evidence is considered relevant, the inquiry could then use its statutory powers to require them to attend to give evidence.

D. Interaction with other Redress Schemes

21. Persons may wish to come forward to a future inquiry who have availed of the terms of the Department of Education’s revised *ex gratia* scheme arising from the decision in *O’Keeffe v Ireland*.¹² Certain of the persons who fall within the terms of that scheme may also fall within the Scoping Inquiry’s Terms of Reference.

10 *Oblique Financial Services v The Promise Production Co* [1994] 1 ILRM 74.

11 The statutory powers of tribunals and commissions are set out in Chapter 14.

12 *O’Keeffe v Ireland* [2014] ECHR96.

22. In *O’Keeffe v Hickey* a national school run by a religious order successfully denied liability on grounds that it was neither negligent nor vicariously liable for the sexual abuse committed by one of its teachers.¹³ While the plaintiff was unsuccessful in her appeal to the Supreme Court, the European Court of Human Rights (‘ECtHR’) upheld the plaintiff’s complaint, holding that Ireland was in breach of certain provisions of the European Convention on Human Rights (‘ECHR’), and awarded damages. A majority of the ECtHR found that Ireland had failed to protect the Ms O’Keeffe against the sexual abuse to which she was subjected by the principal of the national school she attended and in not providing her with an effective remedy for the consequences of that abuse.
23. Thereafter, the Irish State implemented an *ex gratia* compensation scheme for non-statute-barred claimants in the position of Ms O’Keeffe. The scheme was first opened in July 2015. The scheme was paused in 2019 following a report from retired High Court Judge Iarfhlaith O’Neill who, as Independent Assessor reviewed a number of unsuccessful applications to the Scheme. Of the 50 applications received under the scheme, 45 had been rejected at the time of the review.¹⁴ The Independent Assessor concluded that the requirement for applicants to provide evidence of a prior complaint against their abuser to qualify for the scheme was too restrictive.¹⁵ Moreover, the scheme was only available to those who had instituted proceedings in sexual abuse in school and who had discontinued those proceedings in the wake of judgments of the High Court and Supreme Court in *O’Keeffe*, but before the subsequent ECtHR judgment.
24. The scheme was reopened in July 2021 and permitted any person who had issued proceedings against the State up to that date to apply for an *ex gratia* payment of €84,000 where they could demonstrate that:
- (i) they were sexually abused while a pupil at a recognised day school and that this occurred before November 1991 in a primary school or June 1992 in a post-primary school when the ‘Guidelines for Procedures for Dealing with Allegations or suspicions of Child Abuse’ were introduced in schools and that;

13 [2008] IESC 72, [2009] 2 IR 302.

14 Department of Education, ‘Determination of the Independent Assessor to the Ex Gratia Scheme instituted on foot of the Judgment of the European Court of Human Rights (ECtHR) in respect of *O’Keeffe v Ireland*’. However, some 140 claims had been settled outside of the scheme in relation to proceedings commenced after the *O’Keefe* judgments: Iarfhlaith O’Neill, ‘Independent Assessment of claims for ex gratia payment arising from the judgment of ECtHR in the Louise O’Keeffe v Ireland case (5 July 2019), p 25: available at <https://www.gov.ie/pdf/?file=https://assets.gov.ie/27832/e7f47f4b9871431d88e5c68a69584e7a.pdf#page=1>.

15 Iarfhlaith O’Neill, ‘Independent Assessment of claims for ex gratia payment arising from the judgment of ECtHR in the Louise O’Keeffe v Ireland case (5 July 2019), p 29.

(ii) had the ‘Guidelines for Procedures for Dealing with Allegations or Suspicions of Child Abuse’ been in place at the time the sexual abuse occurred, there would have been a real prospect of altering the outcome or mitigating the harm suffered by them as a result.¹⁶

25. Some 128 survivors of sexual abuse have received redress under the revised *ex gratia* scheme, with the total sum of awards made to date amounting to €10.752 million.
26. Persons may wish to come forward to a future inquiry, or indeed a redress process, who have availed of the terms of the revised *ex gratia* scheme. To receive payment under the *ex gratia* scheme applicants would have been required to waive any claim that they may have against the State.¹⁷ However, it does not appear to be the case that anything in the terms of the *ex gratia* scheme would prevent persons who had received an award from giving evidence to a future inquiry.

E. Costs and Timeframe of Proposed Responses

27. The Scoping Inquiry has been asked to consider the likely timeframe and cost of the proposed responses from Government discussed in this Report. It should be stated at the outset that it is difficult to provide a certain estimate, particularly given the uncertainty that remains regarding the numbers of persons who will come forward to participate in an eventual inquiry or redress scheme.

(i) The Costs and Timescale of Inquiries

28. Looking at the past costs associated with similar inquiries gives some indication of what is in issue. Generally, tribunals of inquiry are lengthier and costlier than commissions of investigation. If one looks at all tribunals of inquiry established since 1990, the average time from establishment to final report is 6 years, with an average cost of €53 million.¹⁸ No tribunal of inquiry has dealt with the investigation of sexual abuse to date.

16 Department of Education, ‘Minister Foley announces reopening of Ex Gratia Scheme for the implementation of the ECHR Judgement in O’Keeffe vs Ireland’ (26 July 2021) <https://www.gov.ie/en/press-release/659f2-minister-foley-announces-reopening-of-ex-gratia-scheme-for-the-implementation-of-the-echr-judgement-in-okeeffe-vs-ireland/>.

17 Ibid, para 34: ‘Payment made under the Scheme is conditional upon the Applicant waiving any claim that they may have against the State arising out of the sexual abuse evidenced in their application and discontinuing any relevant extant legal proceedings ...’

18 This is based on Department of Public Expenditure and Reform (‘DPER’) figures provided to the Public Accounts Committee in December 2022 which put the total cost of the 7 tribunals of investigation established since 1997 as €368,618,698. Dividing this figure by 7 amounts to a rough average cost of €53 million per tribunal: https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/committee_of_public_accounts/submissions/2022/2022-12-30_correspondence-david-moloney-secretary-general-department-of-public-expenditure-and-reform-r1617-pac33_en.pdf.

29. The comparative time and cost of various inquiries that have previously investigated clerical sexual abuse in different contexts has varied significantly, and appears to broadly depend on the number of complaints considered:
- (i) **The Dublin Archdiocese and Cloyne Commission of Investigation:** These inquiries took 3.5 years (Dublin) and 1.5 years (Cloyne) respectively and are collectively estimated as costing €8,788,639.¹⁹ The Dublin Archdiocese Inquiry ran from March 2006 to November 2009. The Cloyne Inquiry ran from March 2009 to December 2010. The timeframe in Cloyne was considerably shorter. However, in practice it operated as an expansion of the Dublin Archdiocese Inquiry whereby the same inquiry team was asked to investigate the diocese of Cloyne. The size of the sample of allegations was also much smaller in Cloyne, namely 46 priests (Dublin) compared to 19 priests (Cloyne).
 - (ii) **The Commission to Inquire into Child Abuse:** The total timeframe from establishment to report in the Commission to Inquire into Child Abuse ('CICA') was 9 years. However, CICA's investigation of sexual abuse in institutions did not, for various reasons, get fully underway until 2005, and was completed in 2009. CICA ultimately heard a sample of survivors' testimony in investigating selected institutions, having received circa 1,700 complaints. CICA found that the process required to investigate each complaint to a sufficient degree to name alleged abusers would have taken up to 18 years to complete. The total cost of CICA was reported in December 2022 as being some €85m.²⁰
 - (iii) **Ferns Non-Statutory Inquiry:** This inquiry took approximately 2 and a half years to complete its investigation into the handling of allegations of sexual abuse against 21 priests. The total cost of the Ferns Inquiry is estimated as €2.068m.²¹
30. The survivors who participated in the Survivor Engagement process were informed of the comparative timeframe of each of the above processes in a booklet provided to them in advance of being asked to indicate their preferred response.²² As discussed elsewhere in this Report,²³ the survivors indicated that they wished to see an early and timely process, given the age profile of survivors.

19 This figure is based on the contents of a DPER December 2022 letter to the Public Accounts Committee, cited above.

20 This figure is based on the contents of DPER's December 2022 letter to the Public Accounts Committee on the subject of the costs of various commissions of investigation, referred to above. See also, Harry McGee, 'Tribunals and commissions of investigation have cost taxpayers over €500m' *The Irish Times*, (12 January 2023) available at <https://www.irishtimes.com/politics/2023/01/11/tribunals-and-commissions-of-investigation-have-cost-the-taxpayer-over-500-million/>.

21 This figure is a reference to the cost of the Ferns Inquiry cited in the DPER December 2022 letter to the Public Accounts Committee, cited above.

22 Appendix 1.

23 See Chapter 7.

31. One consideration relating to timeframe that arises where entirely new or modified forms of inquiry are considered is that it can take a long time to draft and pass legislation through the Oireachtas, which could considerably delay the start of an inquiry.
32. As mentioned elsewhere in this Report, in some inquiries, the sheer scale of affected persons has meant that not every survivor of abuse has been able to give evidence. In CICA it was estimated that for each of the 1,712 persons who initially opted to give evidence to the Investigation Committee to do so would take more than four years.²⁴ If such evidence was tested by cross-examination, the process of hearing evidence would be significantly longer. For this reason, CICA decided not to hear from every witness who wished to give evidence and to only hear evidence necessary for their report. This ‘sampling’ approach has been criticised by survivors,²⁵ but it is difficult to see how else an inquiry can propose to deal with large amounts of complaints.
33. CICA had a wide mandate, and ultimately took 9 years to complete its work. However, it is fair to say that the duration of CICA was increased by a number of factors, including disputes about legal fees and a redress scheme for survivors, which substantially delayed the work of the Investigative Committee for two years, legal challenges to CICA’s terms of reference and decisions, and reviews conducted by the Attorney General and Mr Justice Ryan. At one stage, CICA was obliged to cease operating entirely for a period of months in 2004.
34. The costs of a single day’s hearing in relation to one complainant and one abuser in a single national school was highlighted by Judge Sean Ryan, in his 2004 review of CICA, as being some €50,000 (not including the State and the Commission’s legal costs).²⁶ He commented that:²⁷

What can safely be said, however, is that the legal costs involved in 1,712 individual cases usually involving at least three separately represented parties will be a very large sum. When additions are made for multiple hearings, the overall expenditure would be truly alarming. The possibility (one hopes remote) even exists that the costs paid out to legal representatives could amount to a significant proportion of what is awarded to victims by the Redress Board.

24 Judge Sean Ryan, ‘Review into the working of the Commission to Inquire into Child Abuse’ (15 January 2004), para 4.3.

25 Eoin Burke Kennedy, ‘Group says abuse sampling approach a “stab in the back”’ The Irish Times, 18 September 2003, <https://www.irishtimes.com/news/group-says-abuse-sampling-approach-a-stab-in-the-back-1.499663>.

26 Judge Sean Ryan’s Review into the working of the Commission to Inquire into Child Abuse (25 January 2004), para 4.14.

27 Ibid, para 4.16.

(ii) The Costs of Redress Schemes

35. The primary redress scheme which has included claims for sexual abuse against religious order run institutions is the Residential Institutions Redress Board ('RIRB').
36. The RIRB was established under the Residential Institutions Redress Act 2002 to make awards to persons who, as children, were abused while resident in industrial schools, reformatories and other institutions subject to state regulation or inspection.
37. The State's initial estimates of the liability which would arise from the redress scheme had been subject to a number of revisions; in February 2001, the estimated upper limit of the liability was €254m, while by June 2001, it was established as up to €508m.²⁸ In the report of the Comptroller and Auditor General on the Accounts of the Public Services 2002 (undated), the likely minimum liability of the redress scheme was said to be in the range of almost €560m to €720m.²⁹
38. However, ultimately, the overall cost of the RIRB redress scheme was reported in December 2021 to be in the order of €1.245 billion. As of December 2020, 15,594 awards were made by the Redress Board, with an average award of €62,247. The total cost of applicants' legal costs was reported as €194 million.³⁰
39. A number of survivors have indicated their wish for religious orders to contribute to any redress scheme that forms part of the Government's response. The experience of seeking contributions from congregations as part of the RIRB is instructive of the difficulty in estimating the costs of such schemes in advance and the problem of enforcing offers of contribution which are not legally binding.
40. Any legally binding contribution would likely only be made on the basis of an indemnity for further claims, as was the case with the religious orders' contribution to the RIRB. Any such indemnity would then give rise to further costs to the State. In the reports of the Residential Institutions Redress Special Account to the Houses of the Oireachtas for the year ending 2022, it was provided that up to the end of 2022, a total of €10.29m was expended pursuant to the indemnity.³¹
41. An agreement reached in June 2002 with the Conference of Religious of Ireland ('CORI') in respect of contributions to be made by the congregations in return for an indemnity by the State, provided for an agreed contribution of €128m.³²

28 Comptroller and Auditor General, Report on the Accounts of the Public Services 2002, p. 83.

29 Comptroller and Auditor General, Report on the Accounts of the Public Services 2002, p. 92.

30 Response of Minister Norma Foley, Dáil Éireann Debate Thursday 9 September 2021 Questions (548, 549): <https://www.oireachtas.ie/en/debates/question/2021-09-09/548/>.

31 Residential Institutions Redress Special Account, Account of Receipts and Payments https://opac.oireachtas.ie/Data/Library3/Documents%20Laid/2023/pdf/DOEdocLaid290623_105122.pdf

32 Comptroller and Auditor General, Report on the Accounts of the Public Services 2002, p. 88.

42. Subsequently, in response to a call for further contributions following the publication of CICA's report in 2009, the congregations offered additional contributions, including the transfer of cash and property, to a total value of €352.6m. However, a number of the elements of these offers were not accepted by the Government, while the values of the properties transferred to the State have in general been far lower than those assigned to the properties by the congregations in 2009. In addition, the Christian Brothers' offer of school playing fields and associated lands valued at €127m, which was at one point withdrawn by the congregation, has not yet been completed and, on the basis that the proceeds of any sale of those lands would be split on a 50/50 basis between the State and the Edmund Rice Schools Trust, is unlikely to achieve the value assigned to it by the congregation.³³
43. Ultimately, a total of €480.6m was offered to the State by the relevant congregations: €128m in 2002 (which included past property transfers) and €352.6m in 2009.
44. To date some €125m of the €128m under the 2002 Agreement has been contributed, with the transfer of two properties remaining to be fully completed.³⁴
45. In respect of the offers made in 2009, approximately €120.3m of the €352.6m contribution had been received by the State to date. This includes cash contributions of €111.53m from congregations, which included some refunded legal costs from CICA.³⁵ Under the 2009 arrangement, 18 properties were accepted by the State for transfer and to date 17 of the transfers are completed, to the value of €8.570m.³⁶ This figure does not include the future sale of the portfolio of playing fields which has been transferred from the Christian Brothers to the Edmund Rice Schools Trust.
46. The total amount received by the State from the congregations to date is approximately €245.2m, which is €235.4m less than the amount originally offered by the congregations.

33 This information was provided by the Department of Education.

34 *ibid.*

35 *ibid.*

36 *ibid.*

Chapter 23:

Indicators of the Likely Scale of Historical Sexual Abuse in Schools

- A. Introduction
- B. The Prevalence of Sexual Abuse in Society
 - (i) The Sexual Violence Survey
 - (a) Definition of sexual violence experienced in childhood
 - (b) Attempts to reduce the risk of underreporting
 - (c) General Data on Sexual Violence
 - (ii) Data Provided by the CSO to the Scoping Inquiry
 - (iii) Location of abuse: Sexual Violence Experienced at School
- C. Level of Underreporting of Childhood Sexual Violence
- D. Rates of Offending Amongst Sexual Abusers
- E. Conclusion

A. Introduction

1. This chapter seeks to assess whether it is possible to give an indication of the scale of historical sexual abuse allegations in schools run by the religious orders likely to emerge in the future from looking at broader sources relating to prevalence of sexual violence and the likely scale of offending by child sexual abusers.

B. The Prevalence of Sexual Abuse in Society

(i) The Sexual Violence Survey

2. In 2022, the Central Statistics Office ('CSO') conducted the Sexual Violence Survey ('the Survey'), a national survey examining the prevalence of sexual violence in Ireland. As part of the survey, statistics on childhood experiences of unwanted¹ sexual violence were canvassed, and the results were published in June 2023.²
3. The Survey looks at the prevalence and circumstances of sexual violence experienced in childhood by adults currently in Ireland. More than 4,500 respondents took part.
4. The Scoping Inquiry sought the assistance of the CSO in respect of the Survey results to understand whether they might provide a basis for estimating the potential number of persons coming forward to a future inquiry with allegations of sexual abuse in day or boarding schools run by religious orders. The CSO kindly assisted the Scoping Inquiry in this regard.
5. Data on experiences of sexual violence in childhood from the Survey are provided in the CSO Sexual Violence publications, specifically in the Sexual Violence Survey 2022 – Main Results and the Sexual Violence Survey 2022 – Childhood Experiences reports. To explore sexual violence experienced in childhood, the Survey includes unwanted sexual experiences; both non-contact (experiences not involving physical contact or attempted physical contact) and contact experiences (experiences involving physical contact or attempted physical contact).

1 These experiences are not described as 'non-consensual' as these individuals were under the age of consent at the time, hence the use of the term 'unwanted'. See the Background Notes section of the 'Sexual Violence Survey 2022 – Childhood Experiences' for further details.

2 Central Statistics Office (CSO) 'The Sexual Violence Survey 2022 – Childhood Experiences', available at <https://www.cso.ie/en/releasesandpublications/ep/p-svsce/sexualviolencesurvey2022childhoodexperiences/overallchildhoodexperiences>.

(a) *Definition of sexual violence experienced in childhood*

6. Sexual violence was defined for the purposes of the Survey as including unwanted sexual experiences; both non-contact (experiences not involving physical contact or attempted physical contact) and contact experiences (experiences involving physical contact or attempted physical contact).
7. Experiences as a child referred to experiences that happened before the survey participant was 17 years old. It excluded any sexual experiences that the participant was comfortable with, for example, with a boyfriend or girlfriend who was a similar age at the time.
8. Unwanted non-contact sexual violence experiences included being shown pornographic material, being asked to pose in a sexually suggestive manner for photographs, having someone expose themselves or someone masturbating in front of a child.
9. Unwanted contact sexual violence experiences included a child being touched in a sexual way or being made to touch another person in a sexual way, if they experienced sexual intercourse³ or attempted sexual intercourse, and any other unwanted non-specified sexual contact.
10. Details relating to the sexual violence experience did not capture whether the experience happened in Ireland or another country, either for those who lived in a different country before moving to Ireland and for those who may have experienced sexual violence on a short-term period abroad.
11. The definition of sexual violence in the CSO survey is reasonably similar to the Scoping Inquiry's definition of sexual abuse in its Meaning of Terms document.

(b) *Attempts to reduce the risk of underreporting*

12. As can be seen from the above, the Survey was, by its nature, sensitive and required explicit questions to be asked of participants. The CSO explained that the true prevalence of sexual violence is difficult to identify but a survey, which depends on the cooperation of participants to disclose it, may be a close proxy to the true prevalence level if collected in a way that reduces the risk of underreporting, among other things.
13. The CSO stated that it had put in place many mechanisms to work toward reducing the risk of underreporting, in particular, the use of self-completion when collecting the survey data. This ensured a confidential setting for the provision of the responses.⁴

3 Sexual intercourse includes vaginal sex, anal sex, oral sex and/or penetration with an object or finger.

4 Further detail on how the CSO reduced the risk of underreporting is available in the Background Notes section of the publications.

(c) General Data on Sexual Violence

14. The CSO data on sexual violence shows a clear age and sex difference, with females and younger people noting overall higher levels of sexual violence. Looking at those aged 35 and older, women show a consistently higher prevalence of sexual violence experienced as a child.⁵

(ii) Data provided by the CSO to the Scoping Inquiry

15. The Scoping Inquiry particularly asked the CSO for their assistance in identifying what the rates of childhood experience of sexual violence might be in older population cohorts, looking particularly at the cohort of persons aged 35 and older.
16. It is difficult to extrapolate the results of the Survey to estimate the number of people who experienced sexual violence as children in schools. The Survey asked people about the experience of sexual violence that affected them most, the age they were when this experience began, the location of the abuse, and whether the experience occurred with a person in authority. While these questions are relevant to the context of historical sexual abuse allegations in schools run by religious orders, they do not specifically ask for a detailed list of all experiences of sexual violence experienced as a child. In the publication on childhood experiences, 45% of adults who experienced non-contact sexual violence experience stated that it happened more than once. There were similar rates for those who had experienced contact sexual violence with 46% of adults noted that contact happened more than once.⁶
17. Nonetheless, using the available survey data and notwithstanding the caveats around the application of the data to this question, it is possible to calculate an estimate of the number of males and females nationally who have experienced sexual abuse as a child where the location of the experience that affected them the most was a school. This is set out below.

5 This is extracted from Table 5.2 from the CSO Sexual Violence – Main Results report (<https://www.cso.ie/en/media/csoie/releasespublications/documents/ep/sexualviolencesurveymainresults/2022/P-SVSMR2022TBL5.2.xlsx>).

6 Central Statistics Office (CSO) 'The Sexual Violence Survey 2022 – Childhood Experiences', available at <https://www.cso.ie/en/releasesandpublications/ep/p-svsce/sexualviolencesurvey2022childhoodexperiences/overallchildhoodexperiences>.

(iii) Location of abuse: Sexual Violence Experienced at School

18. The Survey specifically asked for the location of each participant's unwanted sexual violence experience. Overall, 6% of persons aged 18 and over indicated that the location where the contact violence they experienced occurred was in school.⁷ The Survey did not address whether the schools concerned were religious order-run schools or otherwise.
19. In relation to contact sexual violence, 9% of men reported school as the location of abuse, in comparison with 4% of women.⁸ Notably, the Survey results indicate that this figure of 6% varied across different age cohorts. Looking at those 35 and over, there is a variation between age cohorts in respect of those who experienced contact violence in a school:⁹
 - 35-44 age cohort (1%)
 - 45-54 age cohort (3%)
 - 55-64 age cohort (7%)
 - 65 years and over age cohort (9%)
20. In relation to non-contact sexual violence, 14% of men reported school as the location of abuse, in comparison with 4% of women. Looking at those 35 and over again, there is a variation between age cohorts, albeit less marked, in respect of non-contact violence experienced in a school:¹⁰
 - 35-44 age cohort (7%)
 - 45-54 age cohort (4%)
 - 55-64 age cohort (6%)
 - 65 years and over age cohort (5%)
21. The data was solely based on the experience that affected the participant most, and the sexual violence concerned may have been perpetrated in a number of locations.

7 CSO, Sexual Violence Survey 2022 – Childhood Experiences, Contact Experiences – Details chapter, available at <https://www.cso.ie/en/releasesandpublications/ep/p-svsce/sexualviolencesurvey2022childhoodexperiences/contactexperiences-details/>.

8 CSO, Sexual Violence Survey 2022 – Childhood Experiences, Figure 7.5 Childhood experience of contact sexual violence by location of experience 2022, available at <https://www.cso.ie/en/media/csoie/releasespublications/documents/ep/sexualviolencesurveychildhoodexperiences/2022/P-SVSCE2022TBL7.5.xlsx>.

9 Ibid.

10 CSO, Sexual Violence Survey 2022 – Childhood Experiences, Figure 5.5, available at <https://www.cso.ie/en/media/csoie/releasespublications/documents/ep/sexualviolencesurveychildhoodexperiences/2022/P-SVSCE2022TBL5.5.xlsx>.

22. At the Scoping Inquiry's request, the CSO conducted an exercise to estimate the number of persons who have experienced sexual abuse as a child where the location of the sexual violence experience was a school.
23. For this exercise, the CSO highlighted the following assumptions:
 - (i) For those who experience non-contact sexual violence only, it is assumed that the pattern for location for all non-contact sexual violence broken down by age can be applied.
 - (ii) For those who experience contact sexual violence only, it is assumed that the pattern for location for contact sexual violence broken down by age can be applied.
 - (iii) For those who experience both non-contact and contact sexual violence, it is assumed that the pattern for location for contact sexual violence broken down by age can be applied.
24. Hence, using the data from the Survey, it is seen that 15,300 men aged 35 and over are estimated to have experienced sexual violence as a child where the location was a school, by reference to the experience that affected persons the most. It is also seen that the equivalent figure for women is 26,000 (See Table 1):

Table 1 Estimated number of persons who have experienced sexual violence as a child¹¹ by type of experience by sex and age group where the location is a school¹², 2023

| Sex/Age group ¹³ | Number of persons in thousands | | | |
|-----------------------------|--|--|---|---|
| | Experienced non-contact sexual violence only as a child where the location is a school ¹⁴ | Experienced contact sexual violence only as a child where the location is a school ¹⁵ | Experienced non-contact and contact sexual violence as a child where the location is a school ¹⁶ | Total persons who experienced sexual violence as a child where the location is a school |
| Male age group | | | | |
| 35-44 | 2,700 | 200 | 200 | 3,200 |
| 45-54 | 1,300 | 500 | 700 | 2,500 |
| 55-64 | 1,100 | 2,100 | 1,500 | 4,600 |
| 65 years and over | 600 | 2,700 | 1,700 | 5,000 |
| Total 35 and over | 5,700 | 5,600 | 4,100 | 15,300 |
| | | | | |
| Female age group | | | | |
| 35-44 | 3,000 | 500 | 500 | 4,000 |
| 45-54 | 1,300 | 1,600 | 1,900 | 4,800 |
| 55-64 | 1,600 | 2,400 | 3,600 | 7,600 |
| 65 years and over | 1,500 | 3,500 | 4,600 | 9,600 |
| Total 35 and over | 7,400 | 7,900 | 10,700 | 26,000 |

25. The overall percentage of women in the Survey who reported sexual violence was greater than that for men, and therefore the population-based estimate for women is larger despite a higher percentage of men than women specifying that they experienced sexual violence in school.

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- 11 Sexual violence experienced as a child is defined as a range of unwanted experiences from non-contact experiences to unwanted sexual intercourse. Experience of sexual violence as a child refers to those experienced under the age of consent (17 years).
- 12 The location of the sexual violence experience is derived from the sexual violence experience as a child that affected the person the most.
- 13 The age group category classifies the age the respondent was when they answered the survey.
- 14 The percentage applied for the location being a school is derived from the overall non-contact experience table in the Sexual Violence Survey 2022 – Childhood Experiences Table 5.5 – the overall age breakdown is used as an estimate.
- 15 The percentage applied for the location being a school is derived from the overall contact experience table in the Sexual Violence Survey 2022 – Childhood experiences Table 7.5 – the overall age breakdown is used as an estimate.
- 16 The percentage applied for the location being a school is derived from the overall contact experience table in the Sexual Violence Survey 2022 – Childhood experiences Table 7.5 – the overall age breakdown is used as an estimate.

26. Clearly, the information does not tell us whether the school concerned was a school run by a religious order. Further, it is possible that the school concerned was outside the country, as the Survey was in respect of all people currently living in Ireland, who may have been in school abroad at the time of the experience reported. In addition, the sexual violence experience could have been perpetrated by another student/friend/acquaintance of the participant in a school setting as opposed to a person in authority.
27. It is also evident that some survivors who reported sexual abuse were not always abused in the school itself, but at other venues and locations associated with the school or school activities. Thus, the above data does not capture all the possible scenarios that amount to sexual abuse allegations in schools within the Scoping Inquiry's Terms of Reference.
28. To summarise, in the age group of 35 years and over, 15,300 men and 26,000 women are estimated to have experienced sexual violence as a child where the location was a school, taking the experience that affected them the most.
29. Subject to all of the caveats set out above, this data gives some indication of the number of persons in the population who reported experiencing sexual violence as a child in the above categories.
30. In light of the figures that emerged from the religious orders' records, it seems that by far the largest cohort of survivors will be men. The religious orders' records show that 93% of allegations recorded are in respect of male religious order run schools, compared to 7% in respect of female religious order run schools,¹⁷ and it is likely that the great majority of male religious order run schools are boys' schools.
31. As such, the relevant figure to take from the CSO's exercise is the estimate of 15,300 men who have experienced sexual violence in a school as a child.

C. Level of Underreporting of Childhood Sexual Violence

32. The CSO survey asked whether the participant had disclosed an experience of child sexual abuse to anyone. Disclosure meant having told one person or many persons or an organisation or group about the experience. Of those in the age groups between 45 to 65 and over, 40% to 42% reported that they had disclosed their experiences to someone.¹⁸

17 See Chapter 9.

18 CSO, Sexual Violence Survey 2022 – Disclosure of Experiences, Overall Childhood Experiences Disclosure chapter, available at <https://www.cso.ie/en/releasesandpublications/ep/p-svsde/sexualviolencesurvey2022disclosureofexperiences/overallchildhoodexperiencesdisclosure/>.

33. Notably, 81% of adults who disclosed their childhood sexual violence did not disclose to the police.¹⁹ Interestingly, 41% of this group said they did not disclose because they felt the experience was not serious enough. A further 28% said they did not disclose to the police because they felt ashamed or embarrassed, and a further 15% because they felt they would not be believed.
34. Nationally, 4% of adults who experienced sexual violence as a child disclosed to a counsellor/psychologist first, twice the rate for disclosing to the police (2%).²⁰ Even assuming that disclosure made through counsellors would be reported to Tusla, the level of disclosure would still be very low, based on only 4% of participants disclosing their abuse to counsellors.
35. The Survey figures suggest that for men, the level of disclosure of childhood sexual abuse is generally only 25%.²¹ As men appear to be the largest cohort of survivors in light of the number of historical sexual abuse allegations emanating from schools run by religious orders, this suggests a significant level of non-reporting.
36. However, the figures given for disclosure of childhood sexual violence for all adults (male and female) in the age groups from 45 to 65 and over, is generally around 40%.²² That age group is reasonably likely to be among the largest cohort of the survivors of historical sexual abuse in religious order-run day and boarding schools.

D. Rates of Offending Amongst Sexual Abusers

37. Another indication of the possible volume of further allegations of historical sexual abuse in schools arising from the records obtained by the Scoping Inquiry is the number of alleged abusers that have been recorded. Taking the religious order figures as the highest total record of alleged abusers, namely 884 alleged abusers including 20 community schools, there is good reason to think that this number of alleged abusers indicates a far greater number of further allegations will be made than the 2,395 allegations recorded to date by religious orders that ran schools.²³

19 CSO, Sexual Violence Survey 2022 – Disclosure of Experiences, Childhood Experiences Disclosure - Police chapter, available at <https://www.cso.ie/en/releasesandpublications/ep/p-svsde/sexualviolencesurvey2022disclosureofexperiences/childhoodexperiencesdisclosure-police/>.

20 CSO, Sexual Violence Survey 2022 – Disclosure of Experiences, Overall Childhood Experiences Disclosure chapter, Table 7.5, available at <https://www.cso.ie/en/releasesandpublications/ep/p-svsde/sexualviolencesurvey2022disclosureofexperiences/overallchildhoodexperiencesdisclosure/>.

21 CSO, Sexual Violence Survey 2022 – Disclosure of Experiences, Overall Childhood Experiences Disclosure chapter, Figure 7.1, available at <https://www.cso.ie/en/releasesandpublications/ep/p-svsde/sexualviolencesurvey2022disclosureofexperiences/overallchildhoodexperiencesdisclosure/>.

22 CSO, Sexual Violence Survey 2022 – Disclosure of Experiences, Overall Childhood Experiences Disclosure chapter, Table 7.1, available at <https://www.cso.ie/en/releasesandpublications/ep/p-svsde/sexualviolencesurvey2022disclosureofexperiences/overallchildhoodexperiencesdisclosure/>.

23 This figure includes community schools with religious order co-patrons.

38. There does not appear to be any clear statistical data available on the number of victims an abuser is likely to abuse over their lifetime, with much of the research instead focused on the victim and whether a particular instance of abuse is a recurrence of abuse.²⁴ This seems to indicate that those who are sexually abused often experience multiple incidents of abuse.²⁵ As such, a proportion of the survivors who have reported allegations will likely have experienced more than one episode of child sexual abuse, albeit repeated instances of abuse by the same perpetrator may only have been recorded as one allegation.
39. None of this casts any light on the extent to which child sexual abusers offend. Were there some metric for calculating how many victims each alleged abuser was likely to have assaulted over the course of their life, then it might be possible, based on the number of alleged abusers recorded by religious orders, to try to predict the likely scale of allegations one could expect to come forward. Unfortunately, information on this topic appears to be largely anecdotal.
40. Other inquiries have cited examples of individual child sex abusers who have admitted or been found to have assaulted multiple victims over many years. For example, the Dublin Archdiocese report stated that certain abusers admitted abuse far in excess of the recorded allegations against them:²⁶

It is important in the Commission's view not to equate the number of complaints with the actual instances of child sexual abuse. While a significant number of the priests against whom allegations were made admitted child sexual abuse, some denied it. Of those investigated by the Commission, **one priest admitted to sexually abusing over 100 children, while another accepted that he had abused on a fortnightly basis during the currency of his ministry which lasted for over 25 years.** The total number of documented complaints recorded against those two priests is just over 70. In another case, there is only one complaint but the priest has admitted to abusing at least six other children. (emphasis added)

24 Palusci & Ilardi, 'Risk Factors and Services to Reduce Child Sexual Abuse Recurrence' (2020) Vol 25 (1) *Child Maltreatment*, 106; Wildfeuer et al, 'Child Sexual Abuse Recurrence' (2021) 2(2) *CommonHealth* 67, 68;

25 For example, Cossins states 'Repeated sexual abuse by relatives and people known to the child, escalating in seriousness over months or years, is, according to victim reports studies and offender self report studies, the most common type of abuse compared with once off abuse by strangers': Annie Cossins, 'Restorative Justice and Child Sex offences: The Theory and Practice' (2008) 48 *Brit J Criminology* 359, 365.

26 Dublin Archdiocese report, Part 1, [1.9].

41. The Ferns Report also noted that a substantial number of the allegations investigated by the inquiry related to 2 of the 21 priests considered:²⁷
- Within its Terms of Reference, the Inquiry identified over 100 complaints or allegations relating to child sexual abuse by 21 priests under the aegis of the Diocese of Ferns. **Over forty of those complaints related to two priests only.** Ten of the priests complained against are now deceased, three have been laicised and the remaining eight priests are no longer in active ministry. (emphasis added)
42. In a similar vein, in the Third Interim Report of the Commission to Inquiry into Child Abuse, Laffoy J made the following observations:²⁸
- The volume of allegations against named individuals has added complexity and difficulty to the inquiry ... **thirty- six (36) individuals are facing more than twenty (20) allegations.** Table P contains details of the volume of allegations against each of those individuals, without identifying the individual. All of the individuals are, or formerly were, members of Congregations.
- The complexity of the investigation is compounded by the fact that, not only have named individuals multiple allegations made against them, but **in the case of ninety named individuals, there are allegations against them in respect of more than one institution.** Of the ninety named individuals, thirty-one are known to be dead and fifty-nine are alive. (emphasis added)
43. The Report went on to set out, at Table O,²⁹ that just under a third of the 1,195 alleged abusers had been named in between 2-10 allegations. A further 4% (49 alleged abusers) had been named in between 11-20 allegations. Finally, a further 3% (36 alleged abusers) had been named in more than 20 allegations. It was noted that two individuals had more than 70 complaints against them.³⁰
44. The above figures give some idea of the extent to which previous inquiries investigating similar issues found that certain alleged abusers had multiple allegations made against them.

27 Ferns Inquiry Report, p.6.

28 'Third Interim Report of the Commission to Inquire into Child Abuse' (Dublin Stationery Office, 2003), p. 180: available at <https://childabusecommission.ie/wp-content/uploads/2022/04/abuse.pdf>.

29 'Third Interim Report of the Commission to Inquire into Child Abuse', p.193.

30 CICA, Third Interim Report, p. 194, Table P.

45. It is notable that some of the schools listed in the school-by-school breakdown of numbers of allegations and numbers of alleged abusers, show very high numbers of alleged abusers associated with some schools. This is particularly the case in relation to special schools. It seems reasonable to suggest that where the ratio of allegations compared to the numbers of alleged abusers is relatively low, there is a greater likelihood that more allegations will emerge in time.

E. Conclusion

46. The NSBCCCI has recently noted their experience that an increase in reported allegations tend to occur after publicity surrounding alleged abuse in an institution run by a church body. In their 2022/23 Annual Report, they comment that a spike in notifications of abuse to the NSBCCCI in December 2022 and February 2023 were 'as a direct consequence of media interest in reports of abuse in boarding schools'.³¹ It seems that survivors are encouraged to report and recount experiences of abuse when they hear another survivor coming forward to tell their story. This appears to have occurred after the Ryan brothers spoke of their experiences in the RTÉ Documentary on One: Blackrock Boys. Many of the survivors in the Scoping Inquiry's Survivor Engagement process told us that they had found courage to come forward as a result of hearing of their experiences.
47. It is very difficult to estimate what the likely increase in numbers of allegations will be in the event of a future inquiry or, if a redress scheme is established. Given the large number of schools (308) in respect of which there are allegations of historical sexual abuse,³² and the large number of 884 alleged abusers recorded by the religious orders,³³ it seems reasonable to suggest that a future inquiry will be dealing with in excess of 2,395 allegations of sexual abuse. The figure of 2,395 allegations must be seen in a context where underreporting of allegations is well-known, and according to the CSO only roughly a quarter of such allegations are reported.
48. Moreover, it appears that the likelihood is that the overall number of persons coming forward to allege historical sexual abuse in day or boarding schools is likely to increase following the publication of this Report and the further open discussion of this topic which one hopes this Report will provoke.

31 National Board for Safeguarding of Children in the Catholic Church in Ireland, Annual Report 2022/3, p. 15. Some 76 Notifications were received in December 2022, 75 of which related to allegations of sexual abuse. 60 notifications were received in February 2023, 55 of which related to allegations of sexual abuse. This compared to figures ranging from 3 to 16 notifications for the other months of the year (April 2022 to March 2023).

32 This figure includes community schools. See Appendix 7.

33 This figure includes 20 alleged abusers associated with community schools, set out at the bottom of Appendix 7.

49. Additionally, it is evident from the estimates provided by the CSO based on its Sexual Violence Survey that there is a significant volume of school-associated sexual abuse, with the CSO estimating that, among persons aged 35 and over, 15,300 men and 26,000 women have experienced child sexual abuse in a school.
50. Finally, many survivors who participated in the Survivor Engagement programme have stated that they were amongst a number of victims of the perpetrator of their abuse. Some described entire classrooms of children being routinely sexually assaulted. Many others spoke of being aware that other children were being abused by the same abuser. Those accounts suggest that there may have been large scale abuse in some schools.

Chapter 24:

Co-operation of Religious Orders with a Future Inquiry

- A. Introduction
- B. Process of Engagement with Religious Orders
 - (i) Questionnaire Responses
 - (ii) Letter of 14 December 2023
 - (a) Summary of responses to 14 December letter
- C. Conclusions and Summary

A. Introduction

1. The Scoping Inquiry was directed by the Terms of Reference to engage with the religious orders with a view to establishing the level and extent of their cooperation with a future inquiry. The Inquiry was thus tasked with:¹

... engagement both at an early stage and throughout the scoping process, with the religious orders to establish the level and extent of co-operation with any proposed inquiry.
2. The Scoping Inquiry engaged with the religious orders with a view to ascertaining the level and extent of their cooperation with a future inquiry on two primary occasions. In the first instance, the Inquiry sought the views of the orders in relation to a future inquiry in relatively general terms. This information was requested as part of the Questionnaire sent to all of the religious orders seeking information in relation to allegations of child sexual abuse reflected in their records.
3. The Scoping Inquiry subsequently wrote to the orders in December 2023 seeking more detailed views of the orders in relation to various potential mandates of a future inquiry, and on a variety of different issues that had arisen in previous inquiries. In view of a number of questions arising from this letter, the Scoping Inquiry attended an information meeting with the religious orders in order to answer questions arising from the December letter. This meeting was held on 9 January 2024 in All Hallows College, Dublin.
4. This chapter will outline in general terms the responses of the religious orders to the questions raised by this Inquiry in relation to their likely cooperation with a future inquiry.

1 Department of Education, *Terms of Reference for the Scoping Inquiry into Historical Child Sexual Abuse in Schools run by religious orders* (7 March 2023).

B. Process of Engagement with Religious Orders

(i) Questionnaire responses

5. In the Questionnaires sent to the orders on 3 May 2023, the Scoping Inquiry first asked the orders in relatively general terms about the likely extent of their engagement with a future inquiry. The Questionnaire asked:

If relevant to your Religious Order, and if the Scoping Inquiry concludes that an appropriate Government response to the historic allegations of sexual abuse in schools is to recommend the establishment of an Inquiry or Investigation into same, can you indicate in principle, as required by the Terms of Reference of the Scoping Inquiry, whether:

- a. your Religious Order will be willing to engage with such an Inquiry?
and/or
- b. would be willing to give evidence to such an Inquiry or Investigation?
and/or
- c. to collate and provide all necessary and relevant documents to such an Inquiry or Investigation,
whether or not there is a power in such Inquiry or Investigation to compel attendance or disclosure of documents?

6. For the majority of responses received, the orders replied positively to the above questions,² and in particular the large majority of orders responded positively to the first question, namely that they would be willing, at least in principle, to engage with such an Inquiry. However, a number of orders indicated that, while willing to cooperate in principle, they viewed it as essential that the future inquiry have certain features in order to facilitate such cooperation.

2 A significant number of orders responded either simply 'Yes' or 'Yes in principle', or some variation of same, to all three questions, including, e.g. Augustinians, Benedictines of Kylemore Abbey, Benedictines of Glenstal Abbey, Brothers of Charity, Cistercians of Mount Melleray Abbey, Discalced Carmelites, Dominican Sisters of Cabra, Faithful Companions of Jesus, Franciscan Brothers, Loreto Sisters, Marist Brothers, Missionary Sisters of Our Lady of the Apostles, Religious Sisters of Charity, Salesian Sisters, Salesians of Don Bosco, Sisters of Our Lady of the Missions, Sisters of St Clare, Sisters of the Holy Faith, Sisters of the Holy Family of Bordeaux, Ursuline Sisters, Vincentians. The Marist Fathers responded to all three questions stating 'Yes. Within the parameters of a mutually agreed legal framework.' (Questionnaire, 11 May 2023). The Carmelites responded to all three questions stating 'Yes, once it is legally viable' (Questionnaire dated 25 January 2024.). The Redemptorists answered 'Yes' to the first two questions, and 'Yes, subject to GDPR and legal advice' in response to Question C (Questionnaire dated 26 June 2023).

7. In response to the first question, the De La Salle Brothers responded that their level of cooperation would depend on a number of factors, including privacy, data protection and confidentiality for former and deceased members of the Order.³
8. In respect of the latter two questions, a number of the orders indicated that certain procedural protections would need to be place, such as the privileges and immunities ordinarily applicable to witnesses giving evidence in the High Court,⁴ and that it might be necessary for the Inquiry to have powers of compellability in relation to documents,⁵ in order to obviate concerns in relation to data protection and confidentiality. For example, the Spiritans stated in response to Question B:⁶

The Congregation would wish to give any assistance to an Inquiry or Investigation as may be requested of it. However, it is noted that as any such inquiry necessarily will involve testimony which would impact the reputational rights of third parties, it would be essential that the usual privileges and immunities that attend upon statutory inquiries are available to witnesses.
9. Similarly, the Spiritans stated in response to Question C:

The Congregation would wish to provide all relevant records to any Inquiry or Investigation but would require to be satisfied that the provision of documents is compliant with data protection law, the right to privacy of individuals and any duties of confidentiality it owes. In practice, this may mean that it is not possible to participate in anything other than an inquiry with the power to direct the production of records.
10. The Dominicans similarly indicated that, while they emphasised that they were willing to cooperate with a future inquiry, such an inquiry must have a ‘supportive legal framework’ to facilitate such cooperation:⁷

We wish to emphasise that we are willing to co-operate with statutory services/inquire, subject to certain clarifications. However, it would have to be in the context of a supportive legal framework that complies with GDPR and which facilitates the co-operation.

3 The De La Salle Brothers stated in response to Question A:

‘Our cooperation in the future would depend on privacy, confidentiality concerning deceased and former Brothers and complainants and GDPR in relation to the current and former Brothers and complainants.’ (Questionnaire dated 1 June 2023)

4 See e.g. the Spiritans Questionnaire, dated 2 November 2023.

5 For example, the Jesuits stated in response to Question C:

‘On providing documentation, again the answer in principle is yes, but we understand that the power to compel is required to allow the Society to disclose documents in relation to many named third parties.’ (Jesuits Final Questionnaire dated 2 May 2024).

6 Spiritans Questionnaire, dated 2 November 2023.

7 Dominicans Questionnaire, dated 28 July 2023.

11. Similarly, the Patrician Brothers stated in response to all three questions that:⁸

We are willing in principle to co-operate with any future Inquiry, but we have concerns about being asked to commit to this without knowledge of the terms of reference of any such inquiry or the statutory framework upon which it would be based. Any such cooperation or engagement would require appropriate legal framework that complies with GDPR to facilitate such co-operation.

12. The Missionaries of the Sacred Heart also stated that it was ‘essential’ that a future inquiry have powers of compellability in order to overcome GDPR concerns in relation to the disclosure of documents and records:⁹

It would not be possible to agree, in principle, to engage in any Inquiry without sight of the Terms of Reference and with specific regard to GDPR requirements. Any engagement with such a statutory inquiry necessitates the inclusion of “powers of compellability”, and Q. 2.8). c. of the Questionnaire asks whether the organisation will disclose sensitive data “whether or not there is a power” to compel disclosure of documents. Our legal advice is that it would be essential for any future inquiry to provide a statutory basis for the production/disclosure of such sensitive personal data and Article 10 data.

...

We wish to emphasise that we are willing to co-operate, and that a supportive legal framework that complies with GDPR will facilitate the co-operation.

13. The Christian Brothers, while responding positively to Questions A and C, responded ‘not sure’ to the question of whether they would be willing to give evidence to a future inquiry.¹⁰

8 Patrician Brothers, Questionnaire, dated 26 June 2023. Similarly, the Society of African Missions replied by stating:

‘While we wish to emphasise that while we are willing in principle to co-operate with any future Inquiry, this would be on the assumption that there is an appropriate legal framework that complies with GDPR to facilitate such co-operation.’ (Questionnaire dated 26 June 2023).

9 Missionaries of the Sacred Heart (Questionnaire dated 28 June 2023).

10 Christian Brothers, (Questionnaire dated 16 June 2023). The Christian Brothers responded “Yes” to the other two questions.

14. Some orders did not respond directly to the questions posed, and indicated that they would consider requests from a future inquiry as and when they arose, or when the Terms of Reference of such an inquiry is published.¹¹ For example, the Hospitaller Order of St. John of Gods responded:¹²

The Hospitaller Order of Saint John of God have always co-operated and participated in any State Inquiry or investigation into child sexual abuse. The Order will consider and respond to any future request to (a.) engage with an Inquiry or Investigation, (b.) give evidence to such an Inquiry or Investigation and (c) collate and provide documents to such an Inquiry or Investigation should the establishment of an Inquiry or Investigation be recommended by the Government and once the details of any proposed Inquiry or Investigation become available and its scope and terms of reference established. In its considerations the Order will have due regard to its obligations including GDPR, confidentiality, good practice, its ethos and values and legal advice.

15. Similarly, the Rosminians did not respond directly to the questions posed, and indicated that while they have ‘wholeheartedly’ cooperated with all previous inquiries, the likely extent of their cooperation with any future inquiry would depend on its terms of reference. In this context, the Provincial of the Rosminians criticised what he saw as the narrow terms of reference of the Scoping Inquiry:¹³

The Rosminians have cooperated wholeheartedly with all Inquiries, whether statutory or non-statutory, including the audits of the Catholic Church and of the HSE. Cooperation and engagement with any future Inquiry will depend on the terms of reference. It has to be said that it is difficult to understand the very narrow terms of reference of the Scoping Inquiry focusing as it does exclusively on ‘schools run by Religious Orders’. Such a narrow focus does not give confidence that these matters are being dealt with in an even-handed manner.

11 For example, in response to all three questions, the Mill Hill Missionaries responded: ‘Willing to cooperate with any future enquiry once aware and furnished with the TOR’. (Questionnaire, dated 15 May 2023). Similarly, the Presentation Brothers stated:

‘The Congregation reserves its position on these questions until such time as a decision is made to establish an inquiry or investigation and/or until its terms of reference, form and/or powers have been set out. A range of practical and legal issues may arise depending upon the nature of and such investigation / inquiry and considered response must await sight of the terms of reference etc.’ (Questionnaire, dated 16 May 2023).

12 Hospitaller Order of St. John of Gods, Updated Questionnaire, dated 22 December 2023.

13 Letter from Fr Joseph O’Reilly, Provincial of the Rosminians, 30 May 2023.

16. A small number of orders were more equivocal. The Sisters of St Joseph of Cluny responded 'Perhaps' to the first two questions, and indicated that they 'have no documents' in response to the third question.¹⁴ The Sisters of St Louis, in answer to Question A answered 'Yes, provided the Inquiry would apply to all schools, not just those run by religious orders' and answered 'Unsure at this point' to Question B.¹⁵
17. A number of orders did not respond to these questions in the Questionnaire.¹⁶ Some orders did not respond on the apparent or explicit basis that they did not have any allegations of child sexual abuse in their records, and therefore did not deem the questions relevant to them.¹⁷
18. The common theme running through the responses to these questions was that the majority of orders stated a willingness, at least in principle, to engage with a future inquiry. However, a number of orders, and in particular a number of the larger orders, regarded it as necessary for the Inquiry to have an appropriate legal framework, including powers of compellability and privileges and immunities for witnesses. Other orders indicated that while they would likely be willing to engage, they would need to know the Terms of Reference before stating a definitive view.¹⁸

14 Sisters of St Joseph of Cluny (Questionnaire, dated 17 May 2023).

15 Sisters of St Louis (Questionnaire, dated 15 May 2023).

16 E.g. the Marianists (Questionnaire, dated 12 May 2023). the Missionary Oblates of Mary Immaculate (Questionnaire, dated 9 May 2023), the Sisters of Mercy (the Sisters of Mercy did not return the Questionnaire directly, but provided information in relation to allegations in respect of its schools by letters on various dates in October and November 2023). The Marist Sisters' Questionnaire stated that while the current Provincial did not envisage any difficulty in cooperation, she could not speak for her successor, and as such did not wish to make a commitment on another's behalf. (Questionnaire, dated 31 May 2023). The Legionnaires of Christ, the Presentation Sisters and the Daughters of Wisdom all answered 'Yes' to the first question, but made no response the other two questions.

17 E.g. the Sisters of the Christian Retreat (Questionnaire, dated 23 May 2023), the Sisters of the Sacred Hearts of Jesus and Mary (Questionnaire dated 12 May 2023), the Ursulines of Jesus (Questionnaire, dated 15 May 2023), the Society of the Holy Child Jesus (Questionnaire, dated 15 May 2023), Sisters of the Infant Jesus (Questionnaire dated, 15 May 2023), the Missionary Sisters of the Holy Rosary (Questionnaire, dated 14 May 2023), the Religious of Jesus and Mary (Questionnaire, dated 19 May 2023). The Sisters of the Cross and Passion stated that the Questions were not applicable, but that if an allegation did come to light, they would cooperate (Questionnaire, dated 15 May 2023).

18 E.g. the Mill Hill Missionaries (Questionnaire, dated 15 May 2023).

(ii) Letter of 14 December 2023

19. Further to the initial questions outlined above, the Scoping Inquiry wrote to the religious orders on 14 December 2023 with a more detailed set of questions to ascertain the likely engagement of the orders with a future inquiry. The letter noted that the Inquiry has already raised preliminary questions in relation to likely engagement with a future inquiry in the Questionnaire, and now sought to canvas the views of the orders in greater depth. In particular, the letter asked, in light of the conciliatory approach taken by a number of the orders in recent years in relation to allegations of child sexual abuse, whether the orders might similarly not seek to contest certain matters before a future inquiry, or not seek to rely on the full extent of their legal and procedural rights:

The Scoping Inquiry notes that a number of Religious Orders have taken a conciliatory approach when confronted with allegations of historical sexual abuse against their members or former members, living or deceased ... In this spirit, and in light of the work of Religious Orders in supporting safeguarding in their schools in recent years, the Scoping Inquiry wishes to identify whether there are perhaps matters which may be investigated by a future inquiry, which may not be contested, or fully contested, or where the religious orders may not seek to rely on the full extent of their legal rights.

20. In order to more fully canvas these views, the letter included an appendix outlining three potential mandates that might be given to a future inquiry, and further outlining 5 questions, and requesting that the order give its views in relation to those questions by reference to the three potential mandates. The three potential mandates for a future inquiry in respect of which views were sought were:
- A. To identify whether an individual school or schools run by a religious order or orders, were institutions where historical sexual abuse had taken place.
 - B. To identify how sexual abuse allegations or suspicions of sexual abuse had been handled by the Order or Orders and/or the school or schools concerned, whether at the time the abuse was reported or suspected, or in later years, and/or to identify who was responsible for the handling of those allegations/suspicions.
 - C. To identify who was responsible for historical sexual abuse in the school or schools in question, including deceased members or former members and/or incapacitated/otherwise unavailable members of the Order or Orders in question.

21. The appendix requested the orders views in respect of these mandates, and further asked, in light of these potential mandates, for the orders views on five questions, namely:
1. Are there any general observations you wish to make concerning the level and extent of your Order's co-operation with any proposed inquiry?
 2. If a future inquiry was charged with investigating all or any of the matters listed above, would your Order be likely to bring a legal challenge to the entitlement of the inquiry to make findings related to any of these matters? If you believe this to be likely, can you specify which aspect(s) your Order would be likely to challenge?
 3. If your Order did not bring a legal challenge with regard to the matters listed above, would the Order rely on all rights available to it to contest any allegation concerning individual schools, alleged perpetrators and/or persons in positions of responsibility for handling allegations of abuse?
 4. Are there any circumstances, in principle, in which your Order would take the view that it will not seek to contest the finding of a particular fact or facts by a future inquiry in respect of the above mandates? For example, would the volume of allegations of historical sexual abuse against your Order or in respect of a particular school or schools run, or previously run by your Order, or a particular deceased/incapacitated/otherwise unavailable member or former member, inform the Order's views on whether it is likely to contest a finding that sexual abuse took place in schools run by your order, or in a particular school run by your order, or at the hands of a particular deceased/incapacitated/otherwise unavailable member or former member?
 5. What is your Order's view concerning allegations against deceased members or former members? Or those members or former members who may be incapacitated/otherwise unavailable? If such members were accused of historical sexual abuse, or criticised as to the handling of allegations of historical sexual abuse or suspicions of same, would your Order seek to defend such members, and/or seek separate legal representation for such members before any future inquiry?
22. The letter emphasised that these responses would be treated as responses in principle, and would not in any sense bind the orders or prejudice their rights before a future inquiry.

23. The Scoping Inquiry received 55 letters of response to the above letter. Of those who did not respond, the majority were orders who either never ran a school, or had previously informed the Inquiry that they had no allegation of child sexual abuse in their records. However, there were 5 orders who previously informed the Inquiry of allegations of abuse, but did not respond to the Inquiry's letter of 14 December 2023.¹⁹ As noted previously, in response to a number of requests for clarification in relation to the 14 December letter, the Scoping Inquiry attended an information meeting with representatives from the orders at All Hallows College, Dublin on 9 January 2024 and answered questions of clarification from the orders about the matters raised in the 14 December letter.

(a) Summary of responses to 14 December letter

24. For a significant number of the orders who responded to the 14 December letter, the response indicated that the order could not answer the questions posed, or had significant difficulty in doing so, in the absence of a published terms of reference.²⁰ It should be noted, however, that the majority of such responses indicated a willingness in principle to cooperate with a future inquiry. An example of responses of this kind is the response of the De La Salle Brothers, who stated:²¹

We are, in principle, happy to cooperate with any future inquiry but the details of such an inquiry are too vague at present for us to comment further. It appears that we are being asked to provide a commitment to participating in an inquiry, the format and terms of reference of which are unknown to us at this stage. We therefore cannot confirm the manner of our participation in such an inquiry until further information is available.

25. Another significant number of orders indicated that, as they were not aware of any allegations concerning their schools, or did not run schools, the questions were therefore not applicable to them and/or they would likely have limited engagement with a future inquiry, and made no responses to the individual questions. Again, it should be emphasised that the majority of these responses nevertheless indicated a willingness to cooperate with any future inquiry.²²

19 The Rosminians, the Cistercians of Mt. St. Joseph, the Discalced Carmelites, the Missionary Oblates of Mary Immaculate, and the Legionnaires of Christ.

20 Examples include the Capuchins, the Christian Brothers, Congregation of Dominican Sisters, De La Salle Brothers, Dominicans, the Franciscan Brothers, the Franciscan Friars, the Jesuits, the Marist Brothers, the Missionaries of the Sacred Heart, the Missionary Sisters of Our Lady of the Apostles, Patrician Brothers, the Presentation Brothers, the Presentation Sisters, the Sisters of the Holy Faith, the Sisters of Mercy, the Sisters of St Clare, the Sisters of St John of God, the Society of African Missions, Society of the Sacred Heart, the Spiritans, the Hospitaller Order of St. John of God; Vincentians.

21 Letter from Br Ben Hanlon, Provincial, De La Salle Brothers, dated 7 February 2024.

22 Examples include the Congregation of the Daughters of the Cross of Liege, the Congregation of the Faithful Companions of Jesus, the Redemptorists, the Sisters of the Christian Retreat, the Sisters of Christian Education, the Society of the Holy Child Jesus.

26. Some orders, while not answering all of the questions individually, stated that they would be unlikely to challenge an Inquiry established.²³ Other orders indicated a general willingness to engage with a future inquiry, but did not provide responses to the individual questions.²⁴
27. A number of orders responded to aspects of the questions posed, but not all. For example, two orders indicated that they would be prepared to cooperate with a ‘fact-finding’ inquiry, but appeared to suggest they might have more difficulty with an inquiry tasked with making particular findings as to who was responsible for abuse.²⁵ For example, the Salesians of Don Bosco stated:²⁶

If a future inquiry was mandated by its terms of reference, when determined, to carry out any of the tasks specified at paragraphs A, B, and/or C ..., we can confirm that, in principle, it would seem that the matters specified in paragraphs A and B are to a greater or lesser extent part of a fact finding process which may arguably be the function of such an inquiry (subject to its terms of reference). However, it would appear that the identification of responsibility for historical sexual abuse as detailed in paragraph C may go beyond the fact-finding processes of such an inquiry ...

It would appear to us that such inquiry should not proceed on the basis of asserting propositions of fact, provisional or otherwise, and then leaving itself potentially open to challenge potentially or being required to forensically prove those propositions. It is submitted therefore that it is not the function of such inquiry to, as would be the case of a prosecutor in a criminal trial or a plaintiff in civil litigation to attempt to or actually engage in attempting to prove or disprove anything. The scope and function would be investigative with a report ultimately on the findings.

23 E.g. the Carmelites.

24 Examples include the Benedictines of Glenstal Abbey, the Mill Hill Missionaries, the Order of St Camillus, the Religious Sisters of Charity. The Benedictines of Kylemore Abbey indicated an intention to cooperate, and answered the individual questions by stating:

Based on this limited experience, our reply to Question 1 is as expressed above: to continue to respond cooperatively to questions raised by a possible public inquiry. Our response to Questions 2, 3, 4 and 5 will depend of course on the content of the questions. Please be assured however that it will be directed by our intention to cooperate fully with you and your team.

25 Salesians of Don Bosco, Salesian Sisters.

26 Letter from Fr Eunan McDonnell, Provincial, Salesians of Don Bosco, dated 27 January 2024.

28. A small minority of the orders responded to most or all of the questions individually. A small number of those orders indicated that they would be likely to bring a legal challenge to the entitlement of an inquiry to make findings in relation to any of the potential mandates set out in the 14 December letter,²⁷ while a small number of other orders indicated that they would only bring a challenge to an inquiry that was overbroad or did not abide by fair procedures. A number of orders indicated an intention to rely on the full range of procedural protections available to them,²⁸ while others indicated that the extent to which they would rely on their procedural rights would depend on the facts of particular cases.²⁹
29. By contrast, a small number of orders indicated that not only would they not seek to challenge the Inquiry, they would also not rely on the full extent of their procedural rights before such an Inquiry.³⁰ For example, the Augustinians stated that it was

27 The Sisters of Charity of St Paul the Apostle stated:

‘The issues above have been the subject of challenge and controversy in previous Inquiries. Therefore, it is possible, subject to the legal advice sought, that we may bring a legal challenge to the entitlement of the inquiry to make findings related to the matters above.

Likely challenges may include (but are not limited to) the following:

- *Lack of clarity regarding the terms of reference which set out the matters under review/investigation.*
- *The scope of the review/investigation.*
- *The approach and methodology applied.*
- *If the parties who are the subject of an investigation or affected by the outcome of an investigation are not provided with an opportunity to review the draft report, to provide feedback on issues of factual inaccuracy and provide general comment on the report.*
- *A report that fails to protect the identity of parties, witnesses and other people mentioned.*
- *Failure to make any required changes to the draft report, subject to the feedback provided, prior to being finalised.’*

The Sisters of Our Lady of the Missions, in response to the question of whether they would bring a legal challenge to a future inquiry, queried whether a focus on religious schools only amounted to discrimination. However, they went on to state that ‘If any historical allegation came to light, in principle, we would not block any investigation and be open to researching details or any evidence that would support an investigation.’

28 E.g. the Marist Sisters; Sisters of Charity of St Paul the Apostle.

29 E.g. the Marianist Community. The Salesians of Don Bosco indicated that any waivers or discharges of procedural rights ‘would be strictly subject to the Government being prepared to indemnify the Order against claims by or on behalf of any relevant estate and/or any relevant personal representatives on satisfactory terms.’ (Letter of Fr Eunan McDonnell, Provincial, dated 27 January 2024).

30 Examples include the Brothers of Charity, Infant Jesus Sisters, Loreto Sisters, the Sisters of Charity of Jesus and Mary.

'highly unlikely' that they would seek to bring a legal challenge against a future inquiry. The Augustinians further stated in response to Question 3, concerning whether they would rely on the full extent of their procedural rights, by stating:³¹

The Augustinians would not contest any allegations concerning above (3). However, in the event a member is wrongly accused and this can be proved, the Order would obviously challenge and contest findings.

30. A number of orders stated they would likely not seek to bring a legal challenge provided a future inquiry acted in accordance with fair procedures, and that its Terms of Reference were clear and specific in order to provide certainty and fairness to all parties,³² and another order similarly stated that they likely would not seek to challenge an inquiry provided it acted in accordance with 'law and with justice'.³³ The Religious of the Sacred Heart of Mary indicated that their approach 'would be to seek clarity rather than to contest'.³⁴ The Carmelites stated that they would be unlikely to challenge or otherwise hamper an inquiry unless it or its findings were manifestly illegal or unjust:³⁵

It is unlikely that we would ever contest, challenge or hamper an Inquiry, such as the one described in your letter, unless it or its findings were manifestly illegal, discriminatory, unjust, or incorrect.

31 Response from Augustinians dated 17 January 2024. Similarly, the Brigidine Sisters stated in response to Question 3:

We would be assuming that any inquiry would follow fair procedures, and that there would be no need to bring any legal challenge in those circumstances. So, for example, if there was a complaint or criticism against any Sister, we would be anticipating that the inquiry would follow fair procedures and she would have an opportunity to see the complaint and surrounding materials, be entitled to raise queries, be entitled to a right of reply and to supply responding submissions etc. etc. We trust that best practice in terms of fair procedures and natural justice would be observed. It is important to note that as a leadership team we have no canonical or civil authority to waive the Constitutional rights of any of our individual members. (Letter from Sr Theresa Kilmurry csb, dated 2 February 2024.)

32 Sisters of St Louis, the Ursuline Sisters.

33 Sisters of the Cross and Passion.

34 Letter from Sr Mary Mullins, Area Leader, Religious of the Sacred Heart of Mary, dated 31 January 2024.

35 Letter from Fr Michael Troy, Provincial of the Carmelites, dated 15 February 2024.

31. In respect of the orders' attitude to allegations against deceased or incapacitated members, most orders did not address this question in detail.³⁶ However, one order indicated that in the case of allegations against a deceased member, the order would seek to assist the inquiry by way of the the production of any contemporaneous records and/or providing statements from other members who are still alive and might be able to shed light on the events.³⁷
32. One order simply declined to answer any of the questions at all.³⁸
33. It should be noted that a number of orders advised that they could not guarantee that a future Provincial would take the same approach, in circumstances where a prior Provincial cannot bind his or her successor.³⁹
34. It should also be noted that a large number of orders indicated their objection to a future inquiry focussing exclusively on religious and/or religious order run schools, and suggested that this focus was unfair and/or discriminatory.

C. Conclusions and Summary

35. It is important to emphasise that the great majority of the religious orders have engaged fully with this Inquiry, and have largely been very responsive and accommodating of the Inquiry's requests for information and other assistance. For many of the orders, there is little reason to believe that this would not continue with a future inquiry.

36 The Brigidine Sisters indicated that they hoped that an inquiry would not assume guilt on the part of a deceased person, merely because they were dead, and stated that they would consider individual cases on their facts:

We presume that any future inquiry would not assume any person's guilt simply because they are dead or incapacitated and have no ability to respond to allegation or criticisms. We would also presume that fair procedures will be followed insofar as that is possible when someone is dead or incapacitated. We appreciate that there could be different types of scenarios that might arise, and that different approaches might be warranted in each of those scenarios. We would intend to treat each case individually and respond in justice. (Letter from Sr Theresa Kilmurry csb, dated 2 February 2024.)

The Salesians of Don Bosco indicated that that 'a deceased person and his personal representatives have certain rights pertaining to the defence of a person's good name and regarding rights to legal representation, especially since they are not in a position to defend themselves', and indicated that they would consider such matters on a case by case basis. (Letter of Fr Eunan McDonnell, Provincial, dated 27 January 2024).

37 The Ursuline Sisters.

38 Sisters of St Joseph of Cluny.

39 E.g. the Franciscan Friars; The Sisters of Our Lady of the Missions.

36. However, a majority of the religious orders, and in particular the great majority of the religious orders who have informed this Inquiry of a significant number of allegations in their records, have indicated that they would need to know the actual or proposed Terms of Reference of a future inquiry before they were able to offer a detailed response in relation to their likely attitude to various aspects of a future inquiry. It will therefore prove necessary for there to be further engagement with the orders in relation to their likely engagement and cooperation with a future inquiry when the Terms of Reference of that inquiry are published.
37. It is possible, however, to outline certain general features of the orders likely attitude to a future inquiry from this Inquiry's engagement to date. In the first instance, the majority of the orders have indicated that they are, in principle, willing to engage and cooperate with a future inquiry. Some orders have suggested that the level of such cooperation might depend on whether fair procedures are duly observed by such an inquiry. In addition, a number of orders, and in particular the larger orders, have indicated that certain procedural protections for witnesses should be in place, and further that it would be necessary for a future inquiry to have powers of compellability, in order to obviate any concerns that the disclosure of documents and records would breach data protection law and/or obligations of confidentiality.
38. Of those orders who did respond to the individual questions in our 14 December letter, a small number indicated that they would not seek to rely on the full extent of their procedural rights and/or would not seek to contest an allegation against a deceased or otherwise unavailable member where there was a weight of evidence against such a member, or in respect of a particular institution.
39. However, while only a similarly small number explicitly stated that they would seek to rely on the full extent of their rights and/or would generally seek to defend their deceased or otherwise unavailable members etc, for the great majority of orders, and in particular the orders in respect of which there are a significant number of allegations, there was no response to these questions, for the reasons canvassed above. The attitude of the orders to these questions is particularly important to any future inquiry, as the extent to which the orders may accept the fact of abuse in particular institutions, or in respect of particular members, without the need for full witness evidence and cross-examination etc, may inform the likely length of a future inquiry, the resources required, and potentially the focus of the future inquiry.

40. It is therefore difficult to draw specific conclusions in relation to the design of a future inquiry from the engagement with the orders as to their likely cooperation, other than to say that there is a general willingness in principle on the part of the majority of the orders to cooperate with a future inquiry. However, it cannot be said at this juncture that there is a likelihood that a significant number of the religious orders would make concessions and/or not seek to rely on the full range of their procedural entitlements before a future inquiry. It is therefore strongly recommended that there be further engagement with the orders when a proposed Terms of Reference is agreed upon.

Chapter 25:

Conclusion: A Potential Framework for Government Response

- A. Introduction
- B. The Responses Sought in the Survivor Engagement Process
 - (i) A Statutory Inquiry
 - (ii) The choice between a Tribunal of Inquiry and a Commission of Investigation
 - (a) Rationales Given for Preference for Public Hearings
 - (b) Possibility of Public and Private Hearings Before an Inquiry
 - (c) Differing Procedural Rights before Tribunals and Commissions
 - (iii) Reconciling Survivors' Views on a Type of Inquiry
 - (a) Retraumatisation Risks of an Inquiry Process
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 - (i) An Investigation of the Handling of Complaints/Suspensions of Sexual Abuse
 - (ii) What Schools Should Be Included?
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 - (i) The Necessity for Powers of Compellability
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- (ii) A Survivor-Centred Commission: Practical Approaches to be Adopted
 - (a) Consultation with Survivors & Other Stakeholders
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 - (a) Consideration of Sampling and Divisions
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- (i) Improving The Experience of Survivors in the Legal System
- (ii) Commemoration and Memorials
- (iii) Counselling and Mental Health Supports for Survivors
- (iv) Divestment

H. Best Practice Findings Regarding Restorative Justice and Child Protection

- (i) Restorative Justice Initiatives by Religious Orders
- (ii) Child Protection

I. Summary of Recommendations

A. Introduction

1. The Scoping Inquiry was asked to set out a potential framework for a government response to historical sexual abuse in day and boarding schools run by religious orders.
2. In assessing options for an independent inquiry, the Scoping Inquiry must have regard to:
 - (i) Alignment with outcomes sought by survivors;
 - (ii) The potential impact of the process and its outcomes on survivors and their families, including the potential for re-traumatisation;
 - (iii) Legal issues and/or considerations that may arise, including the necessity for powers of compellability and risks to any Garda investigation running concurrently; and
 - (iv) Timeframe and cost.
3. The Scoping Inquiry was also tasked with analysing the potential scale of historical sexual abuse in schools run by religious orders. In addition, we were asked to outline findings of best practice in the area of child protection and undertake a critical analysis and audit of restorative justice initiatives offered by religious orders.
4. Each of these issues is considered in turn below.
5. The responses of survivors as to what the Government should do next are set out below. These responses are set against the backdrop of the accounts from survivors set out elsewhere in this Report. The level and extent of sexual assaults on schoolchildren described in the accounts makes for disturbing and harrowing reading. Survivors' accounts and the scale of recorded allegations concerning a large number of schools run by religious orders gives rise to serious concerns about what was happening in those schools. Survivors have called for an inquiry to investigate the concerns raised. It is important that the inquiry process itself, in so far as possible, minimises the risks of any further harm to survivors coming forward to such an inquiry. This objective has informed all of our recommendations and conclusions and is, we believe, in keeping with the views of the survivors who participated in our Survivor Engagement process.

B. The Responses Sought in the Survivor Engagement Process

6. Participants in the Survivor Engagement process had a range of views and opinions on how the Government should respond.¹ Two matters particularly emerged as key concerns that most participants wanted, namely a statutory inquiry and a redress scheme.

(i) A Statutory Inquiry

7. In considering the desired outcome for a statutory inquiry, and what form that inquiry should take, it is necessary to consider the outcomes sought by survivors:

- (i) **Accountability and Respect:** Survivors wanted those accused of sexual abuse or, where those individuals were deceased or incapacitated, members of their religious order or school management, to listen to their accounts of abuse, and answer questions on why actions were not taken;
- (ii) **Support for Survivors:** Survivors wanted a space to be heard to give their accounts of their experiences, to have those accounts believed, to have a process sensitive to survivors and as non-adversarial as possible.
- (iii) **Learning:** Survivors wanted any inquiry to include learning for the future to try and make sure that such sexual abuse would not be repeated. There was a call for a sociological understanding of the prevalence of sexual abuse of children and an understanding of why it occurred among religious orders. Participants also wanted the work of any inquiry to be available to help inform other countries.
- (iv) **Early/Immediate Action:** Concerns were raised about the length of time that an inquiry would take. Participants said that, as many survivors are aging, it is important that they see and receive justice within their lifetimes. The publication of the report of the Scoping Inquiry was seen by many survivors as a first step, with early action on its recommendations.

8. Most of the participants opted for a statutory inquiry, as a process that would offer some measure of accountability. Many did not have a preference for any particular type of inquiry and some said they did not want any inquiry.
9. There was much overlap and nuance in the rationales given for participants' preferences. Some participants were clear in stating their preference for a Tribunal of Inquiry or a Commission of Investigation, while others were less sure about the similarities and differences between these. However, there was a clear consensus in seeking accountability.

1 See Chapter 7.

10. It was important to participants that a statutory inquiry would be open to the public and the media, have powers of compellability, be transparent, and would ultimately issue a public report. What was of concern for participants was the implications of any adversarial legal process, including being cross-examined, not being believed or, for some, having to give their account in public, leading to the possibility of being retraumatised.
11. Many of those who wanted a statutory or public inquiry said they would be prepared to give evidence. However, many said they did not want to be cross-examined or challenged on their evidence. Some said they would only give evidence in private, and some said, based on previous experience with the legal system, that they would not participate in a public inquiry. Some participants expressed support for more than one type of statutory inquiry.

(ii) The choice between a Tribunal of Inquiry and a Commission of Investigation

12. Most participants wanted a statutory inquiry, with the choice being between a tribunal or a commission. Both tribunals and commissions are established on a statutory basis with extensive powers of compellability of witnesses and documents and issue reports available to the public. Each form of inquiry ultimately has the power to apply to the High Court if individuals or bodies fail to obey their orders and directions.
13. However, while the public and media may attend tribunals, which are generally held in public, commissions are typically held in private without the public or media in attendance. As discussed below, tribunals may sit in private and commissions may sit in public in certain circumstances.

(a) Rationales Given for Preference for Public Hearings

14. Many participants in the Survivor Engagement process were of the view that public engagement and scrutiny was an effective way to establish the facts in relation to sexual abuse in schools and any cover-up of such abuse. Public scrutiny was also seen as a means to challenge stigma and silence in relation to sexual abuse in schools. National awareness of the details of what happened and its influence on the perceptions of the religious orders was also cited by participants as a reason to hold the inquiry in public. Transparency was also cited, in the sense that participants felt that transparency was strengthened in a publicly accessible process.
15. While most survivors wanted an inquiry held in public, which would typically mean a tribunal, most survivors also wanted as non-adversarial a process as possible. A tribunal is court-like and adversarial in its processes as a consequence of its public nature. These two views are therefore not easy to reconcile.

(b) Possibility of Public and Private Hearings Before an Inquiry

16. While the default position is that a tribunal sits in public and a commission sits in private, both also have statutory powers to do the opposite in certain circumstances. A tribunal may sit in private if it believes it is ‘in the public interest expedient to sit in private for reasons connected with the subject matter of the inquiry, or the nature of the evidence, in particular if there is a risk of prejudice to criminal proceedings’.² In practice, this has only occurred on an exceptional basis.³ The circumstances where tribunals have held sittings in private are detailed elsewhere in this Report.⁴
17. The default position for a commission is that it sits in private unless ‘a witness requests that all or part of his or her evidence is given in public, and the commission grants that request’. Alternatively, the commission can hear evidence in public if it is satisfied ‘that it is desirable in the interests of the investigation and fair procedures to hear all or part of the evidence of witness in public’.⁵
18. While a commission may sit in public, in practice this has been the exception to their usual procedure. A recent example of a commission sitting in public is the South East Commission into the response to complaints or allegations of child sexual abuse made against Bill Kenneally and related matters, which heard the evidence of a number of witnesses, including a convicted child sexual abuser, in public with full media reporting.⁶
19. Both inquiry models, therefore, can accommodate hearings in public or private. The extent to which either type of inquiry may exercise their power to do so largely turns on their respective statutory provisions and is dependent on the particular circumstances under consideration.
20. When a tribunal sits in private, while the public will not be present, generally, the other parties and their legal representatives will be present to hear the evidence. When a commission sits in private, it has a statutory discretion to exclude other parties, and thus has flexibility to decide who may be present during evidence.

2 Tribunals of Inquiry (Evidence) Act, 1921, s 2(a).

3 In the Morris Tribunal certain evidence was heard in private. Similarly, in the Moriarty Tribunal, some evidence from Charles Haughey was taken in private on grounds of ill health. Other measures can also be adopted: the Blood Tribunal heard certain witnesses in public behind screens and with their names pseudonymised.

4 See discussion in Chapter 14.

5 Commissions of Investigation Act 2004, s 11(1).

6 The Commission of Investigation (Response to complaints or allegations of child sexual abuse made against Bill Kenneally and related matters).

(c) *Differing Procedural Rights before Tribunals and Commissions*

21. In general, the main difference between tribunals and commissions is that a commission is entitled to be less court-like in its processes and procedures than a tribunal. A commission has statutory powers that give it flexibility in deciding whether the full range of procedural rights must be afforded to a person accused of wrongdoing, including a right to cross-examine his or her accuser. The commission can decide whether cross-examination is necessary to fairly determine the issues the commission needs to decide, and cross-examination is only permitted if the commission so directs.
22. When evidence is given in public before a tribunal the accused person's reputation will suffer as a result of the immediate reporting and publicization of the accusatory statements made in public. Such a person must therefore be permitted to immediately defend themselves by cross-examining their accuser. A tribunal is therefore the most adversarial model of inquiry, being the most court-like in its processes, with full procedural rights, including cross-examination of witnesses, generally afforded to parties before tribunals who may be the subject of adverse comment or criticism.
23. Where a commission is sitting in private, there is no immediate publicity attendant on the statements made in evidence, and the commission can take the view that the person accused can fairly defend themselves without cross-examination by, for example, providing written submissions. When a witness is giving evidence, other persons and their legal representatives may only be present if the commission is satisfied that their presence would be in keeping with the purposes of the investigation and would be in the interests of fair procedures.
24. Commissions have a power to allow evidence to be heard by video link or recording, which also gives it flexibility in dealing with witnesses before it who may be vulnerable.

(iii) *Reconciling Survivors' Views on a Type of Inquiry*

25. Survivors want the most rigorous legal process to bring the religious orders and others they feel are responsible to account. At the same time, it is also evident that survivors want to recount their experiences and be believed in the most non-adversarial manner possible. This gives rise to a dilemma. A tribunal process is a highly adversarial process which will subject the religious orders and other relevant actors to difficult and arduous questioning. However, that highly adversarial process would be equally applicable to survivors, and brings with it the risks of retraumatisation of survivors.

26. Clearly, these preferences are not easily reconcilable. The Scoping Inquiry does not believe that the wishes of survivors may be met by suggesting some form of bespoke legislation to try to cater for both desired outcomes, as the legal position as regards fair procedures will remain the same. Further, the drafting and enactment of bespoke legislation would delay the setting up of an inquiry.

(a) Retraumatism Risks of an Inquiry Process

27. In assessing the options for a future inquiry, the Scoping Inquiry had particular regard to the likely impact on survivors and their families including risks of retraumatism.

28. An adversarial process carries a high risk of retraumatism for survivors. We have set out elsewhere in this Report the studies, albeit limited in size, that look at the impact on survivors of engaging with inquiries.⁷ Most survivors speak of the retraumatism nature of the experience and its negative consequences, even where attempts were made to limit cross-examination or to otherwise support survivors.

29. In addition, those participants in the Survivor Engagement process who had experienced cross-examination viewed it as traumatic and inappropriate for survivors of sexual abuse. It is also quite clear from many participants' responses that they are very aware of the risks of retraumatism and are concerned about those risks, and therefore favour the least adversarial process possible.

30. In truth, for those survivors who wish to give evidence to a statutory inquiry, it is likely that, even without cross-examination, some will experience retraumatism. The nature of the experiences being recounted to a statutory inquiry are such that for some, speaking about the experience may cause significant distress.

31. It is thus impossible to completely protect survivors against the risks of retraumatism in any inquiry process. It is fair to say, however, that the commission model of inquiry provides for the greatest prospect of reducing retraumatism because it is a less adversarial inquiry model. It is also possible for an inquiry to take certain measures, discussed below, to try to reduce the risks of retraumatism.

(b) Meeting the Principles Underpinning Survivors' Views

32. We have carefully considered the views of participants and found that the range of preferences expressed are best accommodated, for the widest number of participants possible, by opting for a Commission of Investigation as opposed to a Tribunal of Inquiry.

7 See Chapter 18.

(c) Transparency

33. Given the powers of both types of inquiry are similar, the preference for a public hearing would appear to favour a tribunal, which generally sits in public. We believe that the need for transparency of process can be met by a commission however, notwithstanding that commissions generally sit in private.
34. Firstly, a commission will produce a public report, which will likely attract significant media coverage and public attention.
35. Secondly, commissions can conduct hearings in public, with members of the media and the general public present. While commissions generally sit in private, it is clearly possible for a commission to sit in public to hear evidence; for example one could envisage the hearing of evidence in relation to convicted child abusers associated with schools being held in public. These are matters for the commission to determine when organising modules and hearing of evidence. Individual survivors who may wish to give evidence in public can equally apply to the commission to have their evidence, or part of it, heard in public. Subject to the interests of the investigation and fair procedures, these options would be open to a commission of investigation.

(d) Flexibility of Procedures

36. The capacity of commissions to deal with procedural rights in a flexible fashion, particularly in relation to whether witnesses are to be cross-examined, what parties may be present while a witness is giving evidence, and the ability to hear evidence by video link or recording, suggest that a commission model of inquiry offers the best prospect of mitigating the risks of retraumatisation and of providing the least adversarial model of inquiry possible.

(e) Inclusion

37. Since a tribunal is a more court-like model of inquiry, it is likely to be very challenging for those survivors who expressed concerns about an adversarial process, being cross-examined, or having to give evidence in public. The Scoping Inquiry team noted that many of the survivors who came forward spoke of their hope that others who had not yet come forward or spoken about their experiences would be inspired to come forward to an inquiry. Participants also said that any future inquiry should seek maximum participation of survivors. Overall, the sense was that participants would like as many survivors as possible to come forward to a future inquiry. In the circumstances, it seems that the public and more court-like process of a tribunal

could discourage survivors from coming forward, particularly those coming forward for the first time. On the other hand, a commission is less court-like, with more flexibility as to its procedures, and is more likely to encourage a broad range of survivors to participate.

(f) *Speed of Resolution*

38. Most participants in the Survivor Engagement process expressed the desire that any inquiry process should report as quickly as possible. While it is not possible to give a clear indication of the timeframe for a future inquiry, it is generally accepted that tribunals tend to be of longer duration than commissions.

(g) *Conclusion on Form of Inquiry*

39. It is not possible to meet every desired outcome of survivors under either inquiry model. However, for the reasons set out above, our conclusion is that the commission model offers accountability, transparency, flexibility, compellability and a speedier mechanism to investigate matters of public concern, and does so in the least adversarial model available.
40. We must, in accordance with our terms of reference, consider the risks of retraumatisation for survivors of any inquiry process. Adopting the least adversarial model is in keeping with those considerations and is in keeping with the desired outcomes of the majority of participants in the Survivor Engagement process. We hope that the commission model will encourage a broad range of survivors to come forward to an inquiry.

We recommend the establishment of a Commission of Investigation pursuant to the Commissions of Investigation Act 2004.

(iv) *A Redress Scheme*

41. There is a clear mandate that a redress scheme should form part of the Government response. Ultimately, this will be a matter for the political process.
42. Most participants stated that they wanted to see a redress scheme established for survivors. Participants saw redress as an important element of accountability, and whilst they are clear that it cannot compensate for the harm that was done, most survivors who engaged in this process viewed it as a means to achieve some degree of recognition from the religious orders of the damage caused.

43. Many participants pointed to the financial cost of dealing with the impact of abuse on their lives, which ranged from loss of education and professional opportunities, to the impact of addiction and mental illness because of abuse, to the need to pay for support services and therapeutic interventions for themselves. Whilst not all survivors want redress for themselves, there was a broad support for redress for those who want or need it.
44. Notably, many participants wanted the religious orders to pay for or contribute to a redress scheme, while others were of the view that the State should also contribute to such a scheme. Some of those who had attended fee-paying schools remarked that they wanted the money their parents paid in fees refunded by the religious orders.
45. Redress is a complex issue, as can be seen from the comments of the participants in the Survivor Engagement process.⁸ While there was widespread support for redress, there were differences between survivors as to how redress should be structured. Some favoured a flat payment that was not dependent on the seriousness of the incidents of sexual abuse alleged or the forms of injury/impact of sexual abuse. Others felt that these factors should be taken into account. There was, however, consensus that any redress process should be as non-adversarial as possible.
46. Many survivors envisaged compensation in the form of a single payment, whilst others suggested periodic payments would be more suitable. A smaller group were of the view that redress should take the form of enhanced health, housing, educational, and other benefits for survivors. There was also agreement amongst survivors that redress should be expedited in light of the age profile of many survivors.

We recommend that in early course consideration be given by the Government to establishing a redress scheme for survivors of historical sexual abuse in day and boarding schools run by religious orders. We further recommend that the Government approach the relevant religious orders about contributing to a redress scheme.

C. Scope of Proposed Commission of Investigation

47. The next question that arises is what the scope of the proposed commission should be. At the outset, it should be acknowledged that, irrespective of whether a tribunal or commission inquiry model is chosen, there would likely be considerable difficulty in establishing whether an individual instance of sexual abuse had occurred in any individual case at this remove.

48. It is generally accepted that public inquiries, whether a tribunal or a commission, are not the correct forum to make findings as to whether individual instances of sexual abuse occurred, and cannot take the place of a criminal trial. Rather, public inquiries are designed to address broader questions of systemic failings and institutional responsibility.

(i) An Investigation of the Handling of Complaints/Suspicious of Sexual Abuse

49. A majority of participants in the Survivor Engagement process stated that they wanted accountability. For most participants that meant that they wanted:
- (i) a public acknowledgment from the religious orders of the sexual abuse that had occurred in schools;
 - (ii) the public to believe and understand what had happened; and
 - (iii) ongoing improvements to ensure that it would never happen again.
50. In relation to the scope of a future inquiry, the majority of survivors said that they wanted an investigation into:
- (i) what had happened;
 - (ii) who was responsible;
 - (iii) whether there had been a cover-up; and
 - (iv) what can be learned.
51. The following themes emerged as to what participants wanted investigated by a future inquiry:
- (i) what was known by the religious orders/school management at the time. Many participants said that the school authorities had to have known that sexual abuse was taking place;
 - (ii) who had known about sexual abuse in the school, and what actions they had taken, and if no action taken, why was that so;
 - (iii) whether there was a cover-up of sexual abuse in the school;
 - (iv) whether there had been co-ordinated actions such as a paedophile ring operating in the school;
 - (v) whether those accused of abuse were sent to other schools or institutions where they had access to children;
 - (vi) that research be conducted to understand the reasons for and prevalence of child sexual abuse in Irish schools which would have a sociological rather than a legal focus; and

- (vii) that the role of other public bodies such as An Garda Síochána, health and social services, and government departments be investigated to ascertain what was known about sexual abuse in schools by those bodies during relevant periods, and if steps were taken to address any issues identified.
52. The above issues largely fall within the rubric of an investigation into the handling of complaints of historical sexual abuse in day and boarding schools run by religious orders.
53. As set out elsewhere in this Report, an investigation into the handling of complaints of historical sexual abuse can investigate whether there was a cover-up of historical sexual abuse, what happened when sexual abuse allegations or complaints were made, or suspicions and concerns arose and whether the accused person was relieved of duty pending investigation and/or transferred to another school or other institution where that person had access to children.
54. The question of whether the Commission names individuals alleged to have abused children is a matter for the Commission. Some individuals were named in reports of the Ferns,⁹ Dublin Archdiocese,¹⁰ and Cloyne¹¹ inquiries in circumstances where alleged abusers were deceased, had been convicted of offences, or were notorious such that their names were already in the public domain. A commission can decide how this issue should be dealt with, bearing in mind fair procedures and the particular circumstances before it.
55. Whether the Commission believes that it is necessary, in the interests of fair procedures, to afford a right to cross-examine to the persons who handled abuse claims or had concerns/suspicions about sexual abuse in a school will depend on the circumstances of each case. Clearly, where persons have been convicted of child sexual abuse of a survivor, distinct considerations would arise. Further, in some cases, there may be clear documentary evidence about what was known and the decisions made at the time of the complaint. In other cases, witness testimony may be the sole source of evidence available. If the individual or individuals concerned are deceased, a commission will have to decide how it intends to proceed and determine the extent of the congregations' entitlement to seek to defend the reputations of deceased members.
56. It will also be necessary to examine the response of state bodies such as An Garda Síochána, health and social services, and the Department of Education to complaints of sexual abuse.

9 Murphy et al, *Ferns Report* (2005).

10 Murphy et al, *Report by Commission of Investigation into Catholic Archdiocese of Dublin* (29 November 2009) Dublin: Stationery Office ('**Dublin Archdiocese Report**').

11 Commission of Investigation Report into the Catholic Dioceses of Cloyne (December 2010) Dublin: Stationery Office ('**Cloyne Report**').

57. For the reasons set out above, the Scoping Inquiry is of the view that an investigation into the handling of allegations of historical sexual abuse in day and boarding schools run by the religious orders is the most expeditious and effective manner in which to investigate what happened in schools, and is the manner most likely to minimise re-traumatisation of survivors in an inquiry process.

We recommend that the Commission investigate the handling of historical sexual abuse allegations, and concerns and suspicions of sexual abuse in day and boarding schools run by religious orders.

(ii) What Schools Should Be Included?

58. A number of participants in the Survivor Engagement process wanted the scope of a future inquiry to include all schools where historical sexual abuse had occurred. Many of the religious orders also expressed the view that confining a future inquiry to religious order run schools was inherently unfair and inequitable.
59. We have set out below suggested terms of reference for a future inquiry to examine the handling of complaints of historical sexual abuse in religious order-run schools. However, it is open to the Government under the provisions of the 2004 Act to expand the role of the Commission to cover all day and boarding schools, and to amend the terms of reference suggested below as necessary to achieve that end.
60. It is our view that the inquiry should be expanded to include other schools and denominations. We recommend that serious consideration be given to extending the scope of the proposed commission to include historical sexual abuse in all day and boarding schools for the reasons set out elsewhere in this Report.¹² In terms of sequencing, given the preliminary work undertaken by the Scoping Inquiry, it would appear advisable for a Commission to first consider schools run by religious orders before turning to other types of schools.

We Recommend that consideration be given to extending the Terms of Reference of Commission to include all schools.

12 See Chapter 12.

D. The Scale and Extent of Sexual Abuse Allegations in Schools Run by Religious Orders

61. It is difficult to provide a certain estimate of the likely scale and extent of sexual abuse in schools run by religious orders. We have set out our findings primarily by reference to the information provided by the religious orders from their records,¹³ but have also outlined other sources of information,¹⁴ including the recent Central Statistics Office ('CSO') Sexual Violence Survey,¹⁵ in seeking to provide as broad a survey as possible of this issue.
62. The data provided by religious orders gives the best indication available as to the scale and extent of allegations relating to schools. Currently, the total number of allegations recorded by the religious orders as associated with their schools is 2,395 allegations across 308 schools.
63. The Scoping Inquiry was not otherwise able to obtain any comprehensive data on the number of allegations of sexual abuse arising in religious order-run schools:¹⁶
- (i) Given the manner in which the records of the Gardaí are held and recorded, it was not possible to obtain figures of the number of allegations reported concerning historical sexual abuse in schools, without extensive manual searches;
 - (ii) Tusla identified 1,387 sexual abuse allegations relating to religious orders that ran schools. These figures were extracted from data recorded for Tusla's Audit, and only include relevant sexual abuse allegations up to 31 January 2018;
 - (iii) The National Board for Safeguarding Children in the Catholic Church in Ireland (NBSCCI) has conducted reviews in respect of 69 religious orders that run schools, which have recorded 2,500 allegations. The NBSCCI figures include allegations divorced from a school setting and also only relate to allegations against members of religious orders. Moreover, these audits are not limited to allegations of sexual abuse and include figures for Northern Ireland;
 - (iv) The Department of Education confirmed that they had records of a total of 311 allegations of abuse which they believed related to allegations in schools run by religious orders, but they could only provide information that was recorded from July 1994 onwards. As discussed elsewhere in our Report,¹⁷ it appears that most incidents likely occurred prior to this period; and,

13 See Chapter 9.

14 See Chapter 10

15 See Chapter 23.

16 Chapter 10 details the background to the these figures.

17 See, for example, the NBSCCI annual report data discussed in Chapter 10.

- (v) Some 182 questionnaire responses provided to the Survivor Engagement process separately provides a source of data in relation to the allegations of sexual abuse recorded therein.
64. The anonymised records of allegations of historical sexual abuse received from religious orders, the Department of Education, and Tusla cannot be cross checked. It may well be the case that there is some duplication between these sources of allegations. The potential for duplication means that one cannot simply add these allegations to the total number of allegations recorded by religious orders to arrive at a total number of allegations.
65. The Scoping Inquiry approached the Central Statistics Office ('CSO') for assistance in ascertaining the likely scale of sexual abuse allegations that may emerge. The figures from the CSO's Sexual Violence Survey ('SVS') indicate significant levels of underreporting of childhood sexual violence, particularly among men.¹⁸ The religious orders' figures should be read with that in mind.
66. The Sexual Violence Survey asked participants about the location where the sexual violence occurred, including at school.¹⁹ The figures below include all schools as the location and are not confined to schools run by religious orders. The resulting figures are estimates only, and subject to a number of caveats,²⁰ but in summary they suggest that of those aged 35 years and over, some 15,300 men and 26,000 women can be estimated to have experienced sexual violence as a child in a school.

18 The figure for reporting for men generally is 25%, and for all adults in the age groups of 45 years and over, it is between 40% to 42%. CSO Sexual Violence Survey CSO, Sexual Violence Survey 2022 – Disclosure of Experiences, Overall Childhood Experiences Disclosure chapter. <https://www.cso.ie/en/releasesandpublications/ep/p-svsde/sexualviolencesurvey2022disclosureofexperiences/overallchildhoodexperiencesdisclosure/>.

19 The SVS data was solely based on the experience that affected the participant the most, and the sexual violence may have been perpetrated in a number of locations. See Chapter 23.

20 The SVS data caveated based on a number of factors, including that it is solely based on the experience that affected the participant the most, and the sexual violence may have been perpetrated in a number of locations. See discussion in Chapter 23.

E. Issues Required to Be Considered Under Our Terms of Reference

(i) The Necessity for Powers of Compellability

67. There will clearly be a requirement for an inquiry to have a statutory basis with powers of compellability over documents and witnesses. Regardless of the extent of voluntary co-operation by religious orders, a statutory power to require disclosure of documents will be required since the religious orders and other bodies will otherwise be subject to data protection provisions. As such, a non-statutory inquiry would not be feasible. Commissions of Investigation are equipped with all the necessary statutory powers to compel documents and the attendance of witnesses before them.

(ii) Risks to Garda Investigations Running Concurrently

68. As set out elsewhere in this Report,²¹ where the publication of a commission's report risks prejudicing a criminal trial, there is a power to make an application to the High Court so that the relevant part of the report is not published until the criminal proceedings have concluded. Commissions therefore have a clear means to prevent prejudice to criminal trials or investigations. However, unless a commission must investigate the matter at issue to give effect to its terms of reference, it is probably preferable to seek to avoid such potential conflicts arising or, where possible, to delay the hearing of modules where such issues may arise.

(iii) Timeframe and cost

69. We set out elsewhere in this Report a more detailed analysis of the potential timeframe and cost of a future inquiry.²² Generally, commissions of investigation are considered a more speedy and cost-effective mechanism than tribunals of inquiry.

70. It is difficult to provide a certain estimate of the likely timeframe and cost of a future inquiry given the uncertainty as to the number of persons who may come forward.

21 See Chapter 22.

22 *ibid.*

71. If an inquiry is established, it is likely that it will encourage more people to come forward. It is not possible to estimate what the increase in numbers is likely to be. However, the total number of allegations provided by the religious orders are currently less than the total number of persons who applied to CICA (3,648), and somewhat greater than the number of people whose applications ultimately proceeded before CICA (2,097).²³
72. It seems reasonable to suggest that a relatively small proportion of the overall number of complainants will come forward to a future inquiry.²⁴ However, it must be borne in mind, in light of the figures mentioned in the CSO Sexual Violence survey discussed above coupled with the levels of under-reporting of child sexual abuse, the numbers coming forward to an inquiry may be far greater than 2,395 persons.
73. In addition, this Report has recommended that consideration be given to expanding the terms of reference of a future inquiry to include historical sexual abuse in all schools, rather than just schools run by religious orders.²⁵
74. Given the uncertainty about numbers, it is difficult to predict a timeframe with any certainty. The Dublin Archdiocese Report, for example, took 3.5 years to complete, and examined the manner in which the archdiocese dealt with complaints, or suspicions or reasonable concerns in respect of the behaviour of 46 priests in connection with 320 children. It is likely that a future inquiry will be dealing with a larger number of individuals accused of abuse, and a larger number of individuals involved in the handling of complaints, and a large number of religious orders. In the Dublin Archdiocese Inquiry, complaints were relatively centralised, whereas for a future commission this will not be the case, as there is a very large number of schools, spread out across the country in respect of which there are allegations of historical sexual abuse. Preliminary procedures such as inviting expressions of interest from those who wish to come forward to the commission, and necessary processes such as gathering documentation are likely to be much more time-consuming for a future commission. In the circumstances, it seems reasonable to suggest a timeframe of at least 5 years.
75. In general, the costs of a commission would be much less than a tribunal. In addition, a future commission might consider adopting methodologies such as sampling, and/or sitting in divisions to expedite its work. This is discussed further below.

23 Comptroller and Auditor General Special Report: Cost of Child Abuse Inquiry and Redress. Rept. no 96, December 2016, paragraph 2.9 which sets out the figures for both the Investigation Committee and the Confidential Committee.

24 In the case of CICA, while a total of 3,648 applications were made to CICA, the number of persons who had applied to the Residential Institutions Redress Board ('RIRB') by the end of 2015 was 15,579 claimants

25 See Chapter 12.

(iv) The Extent of Co-operation By Religious Orders with a Future Inquiry

76. As discussed in Chapter 24, the great majority of the religious orders have indicated that they are, in principle, willing to engage and cooperate with a future inquiry.
77. Some orders have suggested that the level of such cooperation might depend on whether fair procedures are duly observed by such an inquiry. In addition, a number of religious orders, and in particular the larger orders, have indicated that certain procedural protections for witnesses should be in place, and further that it would be necessary for a future inquiry to have powers of compellability, in order to obviate concerns regarding data protection law and/or obligations of confidentiality. These requirements will be met by a commission.
78. However, the great majority of religious orders did not respond to the more specific queries raised by the Scoping Inquiry as to what issues they might be willing to concede, on the basis that they could not respond until they see the terms of reference of a future inquiry. In particular, the religious orders in respect of which there are a significant number of allegations did not respond to these questions for that reason.
79. The attitude of the religious orders against which there are large numbers of allegations is particularly important to any future inquiry. The religious orders are entitled to rely on their legal and procedural rights before a commission. However, the extent to which they may do so, and the extent to which issues are contested, will be relevant to the likely duration of the commission's work, and to the experience of survivors before such an inquiry, having regard to the need for oral evidence and cross-examination. It is therefore clear that further engagement with the religious orders is advised after the terms of reference are fixed by the Government.

F. Proposed Framework for a Government Response

80. Having concluded on the type and scope of an inquiry to be adopted, we now proceed to set out a potential framework for delivering the Government responses sought by participants in the Survivor Engagement process.

(i) A Survivor-Centred Approach: Survivor Engagement Programme

81. The Scoping Inquiry is of the view that the Commission should be as survivor-centred as possible and that values such as accountability, truth, respect and inclusion should inform its approach. Adopting such values reflects the imperative of reducing the risk of retraumatisation for survivors and accords with the recent emphasis on protecting the rights of victims in the legal process.²⁶

26 See, for example, the Criminal Justice (Victims of Crime) Act 2017.

82. In furtherance of this approach, we recommend that the Commission put in place a Survivor Engagement Programme to afford as wide a range of survivors as possible the opportunity to tell their story. A completely non-adversarial environment that allows survivors to do this was something that participants in the Scoping Inquiry's Survivor Engagement process felt would be beneficial. This programme would be somewhat similar to the Survivor Engagement process instigated by the Scoping Inquiry.
83. A Survivor Engagement Programme will include those who cannot, or do not wish to, give evidence in commission hearings, so that the greatest number of survivors have an opportunity to participate in a meaningful way.
84. The Survivor Engagement Programme should allow survivors to provide statements of their experiences of historical sexual abuse in schools, in writing or in person, in a non-adversarial and supportive manner.
85. The purpose of the Survivor Engagement Programme shall be to:
- (i) Record survivors' experiences, the impacts and consequences of sexual abuse;
 - (ii) Provide a non-adversarial setting for survivors, family members of deceased survivors, and other relevant persons to recount their experiences;
 - (iii) Engage in relevant sociological research and analysis based on survivors experiences with a view to informing future policy; and
 - (iv) Produce and submit a report to the Commission in relation to the survivor experiences recounted and formulate such proposals as it sees fit to inform future policy, particularly in relation to managing the lifelong impacts of childhood sexual abuse.
86. The Survivor Engagement Programme:
- (i) shall receive oral and written statements and/or documentation from former survivors, family members of deceased survivors, and other relevant persons;
 - (ii) shall agree an anonymised summary of the account of each person who comes forward to it;
 - (iii) shall not hold formal hearings, nor act as a public inquiry, nor conduct a formal legal process;
 - (iv) shall not have powers to compel any person's attendance or the provision of documents;
 - (v) may adopt any informal procedures or methods it may consider expedient; and
 - (vi) shall report to the Commission on a periodic basis.

87. The Survivor Engagement Programme shall conduct its work in the most efficient and expeditious manner possible while supporting survivors who come forward. The Survivor Engagement Programme should appoint appropriately qualified facilitators to assist in the carrying out of its functions.
88. We recommend that the Survivor Engagement Programme shall:
- (i) Operate under the direction of the Commission;
 - (ii) Explain to persons coming forward to it that it is not investigating their complaints, but compiling an anonymised record of their experience for publication, which will inform proposals on policy and shall be included in a report to be published by the Survivor Engagement Programme;
 - (iii) Provide in its procedures that the identity of individuals making statements to the Survivor Engagement Programme shall remain confidential and all statements will be anonymised, so that any person or institution named in the statement shall not be identified or identifiable. Any anonymised account should be approved by the survivor concerned.

We recommend that the Commission put in place a Survivor Engagement Programme to carry out the above functions in the manner set out above.

(ii) A Survivor-Centred Commission: Practical Approaches to be Adopted

89. In relation to both the inquiry and Survivor Engagement Programme strands of its work, we recommend that the Commission adopt the following approach:

(a) Consultation with Survivors & Other Stakeholders

90. An initial period of time should be set aside by the Commission for preliminary consultation with a wide range of survivors and other stakeholders, to consult on issues such as cooperation with the inquiry, language and nomenclature, mechanisms for engagement and communication with the Commission and similar issues.

(b) Transparency: Allowing Survivors to Make Informed Choices

91. Giving participants sufficient information about what the Commission is designed to do and how it intends to go about its work would be helpful to survivors. The risk of retraumatisation can be reduced if participants understand the Commission process and can make informed choices about how they will participate, namely by going forward as a witness to give evidence to the inquiry or, alternatively, to give their account to the Survivor Engagement Programme.

92. Prospective participants should be invited to state a preference for one or other process. However, it should be explained to prospective participants at the outset that it may not be possible for the Commission to hear everyone who wishes to give evidence before it, and that in the event that their evidence cannot be heard by the Commission for any reason, they will be given the option to participate in the Survivor Engagement Programme.
93. Insofar as practicable, information as to what survivors can expect in putting themselves forward to give evidence, the supports that will be available to them, and the likely length of time before they will be asked to attend the Commission to give evidence should be provided, as early as possible in the process.

(c) Regular Communication with Stakeholders

94. The Commission should give consideration to establishing a means of regular communication with all stakeholders, particularly survivors, in an accessible manner, about the Commission's ongoing work and any interim findings or rulings of the inquiry. The development of an inquiry website would be essential to achieve this. The Scottish Child Abuse Inquiry developed a quarterly short newsletter to provide updates on progress made and what modules were being undertaken or forthcoming; such an approach merits consideration.

(d) Support for Survivors

95. At key stages of the process, such as when survivors are preparing witness statements or giving evidence in person, and after they have given evidence, all efforts should be made to ensure that survivors have access to appropriate support.

(e) Training

96. Commission members, its staff and legal team should receive appropriate and adequate training to inform them about the needs of victims of sexual crimes, including understanding trauma associated with sexual crimes and retraumatisation, how it occurs, and the effects of same, in order to assist the Commission in its interactions with survivors. This training should also be made available to the legal teams of those representing persons appearing before the Commission.
97. Training for the Commission should include consideration of what measures may reasonably be taken to avoid retraumatisation of such persons in engaging with the Commission, insofar as such measures are consistent with fair procedures.

(f) Practical Steps to Lessen Retraumatiation

98. Practical steps should be taken to facilitate survivors to give their evidence in a manner that minimises retraumatiation. In this regard we recommend that consideration be given, as far as possible, to the following:
- (i) survivors being facilitated to provide witness statements of their experiences, including through the use of the summaries already gathered as part of the Scoping Inquiry's Survivor Engagement process, as an alternative to giving evidence-in-chief to the inquiry, if they so choose.
 - (ii) the Commission's own counsel being the primary channel by which lines of questioning sought to be explored by respondent parties are put to survivors.
 - (iii) survivor evidence being given remotely or, if in-person, with the use of screens as appropriate.
 - (iv) using separate rooms and communal spaces for survivors called as witnesses, so as to minimise the likelihood of survivors encountering respondents, staff, or others associated with their former schools while attending to give evidence;
 - (v) the appropriate venue for Commission hearings, which if at all possible should not be a courthouse; and
 - (vi) whether those giving evidence can be facilitated to attend in advance of giving evidence to be briefed by Commission staff as to what they can expect.²⁷
99. The above recommendations as to practical issues are ultimately a matter for the Commission to implement. We acknowledge that the provision of some of these measures may be subject to resource difficulties in terms of the possible scale and location required, but we nonetheless think every avenue should be explored to minimise the risks of retraumatiation for survivors.

We recommend that the Commission, in furtherance of a survivor-centred approach, put in place the matters listed above at (a) to (e), and give consideration to putting in place the practical steps set out at (f), in so far as practicable and consistent with fair procedures.

²⁷ This would be similar to the 'court familiarisation' process undertaken by the staff of the office of the Director of Public Prosecutions in liaison with An Garda Síochána in proceedings concerning sexual offences, in Chapter 16.

(iii) The Breadth and Sequencing of a Government Response

100. In terms of recommendations for the breadth and sequencing of a future commission, the following considerations arise.

(a) Consideration of Sampling and Divisions

101. It may well be the case, given the number of allegations that have emerged from the religious order responses, and the number of schools and alleged perpetrators associated with them, that the commission will not be able to investigate every allegation or every school in respect of which allegations arise. Most previous clerical sexual abuse inquiries adopted a sampling approach. In some instances this was provided for in their terms of reference,²⁸ while in other instances sampling was adopted after the inquiry found that hearing evidence from every survivor would have greatly prolonged the inquiry process.²⁹

102. In due course, should the Commission deem it necessary to do so in light of the scale and duration of its work, the Commission may wish to give consideration to sitting in divisions to enable it to complete its work in a timely fashion. This may require legislation, which of itself may take some time to achieve, but nonetheless may lead to an ultimate saving of time.

We recommend that the Commission be entitled to adopt a sampling approach, if required, to decide what issues it must investigate and the extent of the investigation of same, and may give consideration to sitting in divisions to enable it to complete its work in a timely fashion.

(b) Sequencing

103. We are of the view that the Commission will be best placed to determine the sequencing of the topics it deals with. It will be best placed to know what evidence is available and how that evidence should be dealt with. The Commission may wish to proceed on the basis of investigating certain schools, religious orders, or state agencies during certain periods, or to investigate certain alleged abusers, or convicted abusers, or a combination of these approaches. The approach adopted will likely be determined by the circumstances, including evidence and records available to the Commission.

28 See discussions on Dublin Archdiocese and Cloyne Inquiries in Chapter 15.

29 See discussion re Commission to Inquire into Child Abuse in Chapter 15.

104. In so far as possible, we are the view that the Commission should devise modules of hearing, so that at the end of each module it is possible to report the conclusion in respect of that module. Interim reports allow for the survivors who are involved to know the outcome of the investigation of a particular issue without the necessity to wait for the final report of the inquiry. The Commissions of Investigation Act 2004 contemplates that it is a matter for the Minister to seek an interim report from a commission, rather than the commission preparing same. We recommend that consideration be given to utilising the mechanism in the Act to enable reports of completed modules to be made publicly available.

We recommend that the mechanism in section 33 of the Commissions of Investigation Act 2004 be utilised to enable reports of completed modules of investigation to be published.

(iv) Membership of the Commission

105. In general, it would be of benefit if the membership of the Commission include persons who are appropriately qualified in a range of relevant disciplines.

(v) Non-Disclosure Agreements

106. As discussed elsewhere in the Report,³⁰ some survivors expressed concern about non- disclosure agreements generally, and particularly expressed concerns that the existence of such agreements may prevent their participation in a future inquiry. The Scoping Inquiry recommends that the Commission be entitled to request information pertaining to matters relating to a confidentiality agreement. If a survivor has previously signed a non-disclosure agreement, but wishes to participate in the Commission, they should nevertheless make themselves known to the Commission, and the Commission can determine what (if any) obligations may be imposed by such agreement in relation to giving evidence to the Commission.

F. Learning Focus for the Commission

107. The Commission may make such recommendations as it deems fit as a result of its investigation, and in particular in respect of any recommendations concerning child protection.

We recommend that the Survivor Engagement Programme furnish a report to the Commission, and that the Commission may have regard to any proposal of the report, including in respect of policy matters relevant to survivors and the lifelong impact of child sexual abuse in making its recommendations.

30 See Chapter 22.

G. Further Recommendations for a Government Response

(i) Improving The Experience of Survivors in the Legal System

108. Survivors have described their extremely negative experiences of the legal system as a result of their involvement in civil and criminal proceedings.
109. We set out elsewhere in this Report the steps that have been taken, some of which are still in train, to make the criminal justice system more victim-centred. The Scoping Inquiry recommends that the outstanding recommendations to be implemented from the Report of the Review of Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences (2020) (the O'Malley Report)³¹ and the Garda Inspectorate, *Responding to Child Sexual Abuse, A follow up Review from the Garda Inspectorate* (2017)³² report are prioritised and completed.

We recommend that the outstanding recommendations to be implemented from the above reports be prioritised and completed.

110. In relation to the experience of survivors who have brought civil proceedings seeking damages from religious orders, we note that the Law Reform Commission has brought forward a number of proposals for consultation aimed at addressing the procedural difficulties arising from the status of religious orders as unincorporated associations, and that this process is still ongoing.

(ii) Commemoration and Memorials

111. Survivors made a number of suggestions as to how the experiences of those who suffered child sexual abuse in day and boarding schools run by religious orders might be remembered, particularly those who died by suicide as a result of their experiences. We recommend that there should be a process of engagement with the Department of Education as to appropriate memorialisation for survivors.
112. We are aware of the whole-of-government initiative involving the establishment of a National Centre for Research and Remembrance ('NCRR'), which will stand as a site of conscience to honour all those who suffered institutional abuse and will include a research centre and repository of records related to institutional trauma in the 20th century.

31 The Report of the Review of Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences (2020) was followed by an implementation report 'A Victim's Journey: A plan to help victims and vulnerable witnesses in sexual violence cases'.

32 The Garda Inspectorate report was followed by implementation reports from the Interagency Implementation Group chaired by Caroline Biggs SC.

113. Consideration could be given to the inclusion of the experiences of those who suffered child sexual abuse in day and boarding schools in this national initiative and to including relevant records in its repository of records, which will form part of the National Archives. We recommend that detailed consultation is undertaken with survivors on this issue, in order to ensure that the development of the NCRR would adequately and appropriately reflect, at a national level, the trauma experienced by those who suffered child sexual abuse in day and boarding schools.
114. Some participants in the Survivor Engagement process suggested that they would wish to see memorials established in the schools themselves. This is something that the religious orders may wish to consider in consultation with survivors.

We recommend that there should be a process of engagement with the Department of Education as to appropriate memorialisation for survivors, and consideration be given to inclusion of survivors of historical sexual abuse in day and boarding schools in the NCRR, and that detailed consultation with survivors take place on this issue.

(iii) Counselling and Mental Health Supports for Survivors

115. Many participants spoke of experiencing mental health and substance abuse difficulties, and some said they had experienced homelessness. Participants in the Survivor Engagement process were concerned that the needs of the most vulnerable survivors would be met by enhanced mental health support for survivors.
116. Participants also wished to see counselling made freely available for survivors and their families. Numerous participants expressed a desire to avail of mental health counselling, but cited long waiting lists and costs as a barrier to accessibility. Currently, both the State and Catholic Church bodies fund free counselling for adult victims and survivors of historical sexual abuse. The Catholic Church funds 'Towards Healing' which is a free counselling service for survivors and their families.³³ It also provides telephone counselling. The State funds the National Counselling Service, with priority given to adult survivors of institutional abuse in Ireland. They also run 'Connect' which is an anonymous telephone counselling and support service for survivors of physical, emotional and sexual abuse. There are complaints, however, that there is a long waiting list for the NCS counselling service.

We recommend that consideration be given to dedicated support services being put in place for survivors, particularly at the time of the Commission's establishment, hearings, and final report.

33 <https://towardshealing.ie/>.

(iv) Divestment

117. Some survivors want to see large scale changes in the Irish educational system as part of the Government's response and, in particular, for schools to be taken out of the hands of religious orders.
118. The issue of religious orders' ownership of schools is a complex one. However, the essence of the issue is that property that is privately owned by religious orders, their members, or trusts cannot simply be taken away by the State since this would breach the constitutional right to protection of property and equal treatment.
119. It has been government policy to seek divestment of schools for some time, and there is currently a commitment to reach 400 multid denominational schools by 2030. The process of divestment has been a slow one because it is largely dependent on voluntary divestment by religious authorities or the opening of new or merged schools. Generally, in the latter instance, prospective pupils' parents are asked for their views on patronage. In the main, this process has resulted in a growing cohort of new multid denominational schools under the patronage of Educate Together or the Education and Training Boards (including Community National Schools), though some parents have opted to retain religious order patronage.

H. Best Practice Findings Regarding Restorative Justice and Child Protection

(i) Restorative Justice Initiatives by Religious Orders

120. We set out elsewhere in this Report our conclusions on restorative justice, and the independent report commissioned by the Scoping Inquiry in respect of same. In summary, the report found that there was a divergence of approach amongst the 10 orders surveyed, with some using a 'facilitated approach' and other using a 'pastoral approach'. The report concluded that the facilitated approach is to be preferred as more closely mapping onto traditional and best practice models of restorative justice processes.
121. By way of response to this conclusion, one religious order that operates a 'pastoral' approach fairly noted that this is, in their experience, an approach sought by survivors themselves, and that they have specialist lay staff trained to facilitate their processes in relation to survivors and that these staff are sufficiently independent to carry out this purpose. It thus appears that while a facilitated approach is in line with international best practice in restorative justice, a pastoral approach may nonetheless be appropriate in particular cases.

122. In addition, the independent report outlined areas for improvement in restorative justice initiatives run by the religious orders as including: compensation; preparedness; understanding survivor's perspectives; and collective responsibility (where an alleged abuser is deceased).
123. There was relatively little support among survivors for a restorative justice scheme as a response to the revelation of sexual abuse in schools. It is also clear that, in order for a restorative justice response to be safe and effective in the context of child sexual abuse, a number of particular resources and safeguards would have to be put in place. The independent report commissioned by the Scoping Inquiry found that a further feasibility study would be necessary in order to assess this. It is therefore not recommended, at this juncture, that a large-scale restorative justice project be included as part of the government response. However, that is not to say that restorative justice values do not have a role to play, and restorative values such as accountability, respect, survivor-centredness and a focus on repair and healing have informed the Scoping Inquiry's recommendations.

(ii) Child Protection

124. Child protection is an issue of great importance to survivors. This Report sets out an extensive examination of current child protection provisions in schools, supplemented by the independent expert report of Dr Helen Buckley on the development of child protection over the decades since the early 1990s and how the current child protection framework operates in schools.
125. As previously outlined in this Report,³⁴ we have found that there is currently a robust child protection structure in place in schools. There are a number of areas where we consider that this system could be further strengthened:

We recommend that the following initiatives should be considered to promote best practice in the area of child protection:

- (i) *The Department of Education should establish a group to be called 'The Child Protection in Schools Group' ('the Group') to progress the matters outlined below concerning the Department's plans for child protection in schools and other matters with a view to implementing same as expeditiously as practicable.*

34 See Chapter 20.

- (ii) *The Group is to be established as soon as practicable and to have any necessary authority required to carry out its functions. The Group shall endeavour to complete its work as soon as possible. It shall provide a report detailing the progress made in implementing the relevant measures so that the Commission may consider same for the purpose of any recommendations it may wish to make.*
- (iii) *The Group should be required do the following:*
 - (a) *Progress the Department of Education's plans to implement the recommendations of the Buick report generally and, in particular, in respect of a stronger focus in child safeguarding inspections on the culture and climate of schools.*
 - (b) *Progress the Department of Education's plans to improve and increase training for DLPs, deputy DLPs, teachers, and school staff, including any bespoke training in child protection and safeguarding, and provide for regular consultation with stakeholders to ensure that the training provided is meeting their needs and update same as required.*
 - (c) *Consult with DLPs, deputy DLPs and other relevant persons, to identify aspects of the current child safeguarding provisions that may be strengthened to support and assist DLPs and Deputy DLPs in the carrying out of their functions.*
 - (d) *Discuss with Tusla how communication between schools and Tusla concerning child protection matters might be strengthened and improved.*
 - (e) *Consult with the standards body for teacher qualifications, and any other relevant body, to examine the adequacy of pre-qualification teacher education in child protection, and the implementation of any necessary reforms to the teacher training curriculum.*
 - (f) *Consult with the relevant bodies to strengthen SPHE in pre-qualification and post-qualification teacher education.*

In addition, we recommend that there be a review of child safeguarding measures in unrecognised schools to consider the current measures and make any recommendations for the improvement or strengthening of same.

I. Summary of Recommendations

126. In summary, our primary recommendation for a Framework for a Government response into historical sexual abuse in day and boarding schools run by religious orders is that the Government establish a Commission of Investigation pursuant to the Commissions of Investigation Act 2004, while also establishing a Survivor Engagement Programme to collect and publish anonymised accounts of survivors who cannot or do not wish to give formal evidence before the Commission. We recommend that the Commission be as survivor-centred as possible and consistent with fair procedures.
127. We also recommend that consideration be given to establishing a redress scheme for survivors of historical abuse in day or boarding schools run by religious orders and to consulting with the religious orders about contributing to a redress scheme.
128. The proposed terms of reference for a Commission of Investigation into Historical Sexual Abuse in Day and Boarding Schools Run by Religious Orders and the proposed framework for such a Commission are set out in the next chapter.

Chapter 26:

Proposed Terms of Reference and Framework for a Commission of Investigation into Historical Sexual Abuse in Schools Run by Religious Orders

1. The Commission is directed to investigate the following matters:
 - (a) the handling of allegations or complaints of child sexual abuse in schools run by religious orders and the response to cases where there was knowledge of, suspicions of, or reasonable concerns regarding such abuse.
 - (b) the nature of the response of religious orders and/or schools to allegations or complaints, knowledge, suspicions, or reasonable concerns in relation to child sexual abuse in schools run by religious orders and whether such response was adequate or appropriate.
 - (c) the nature of the response of religious orders and/or schools to suspected abusers, including but not limited to the following:
 - (i) the use of disciplinary procedures;
 - (ii) the use of compromise or settlement agreements;
 - (iii) references provided to subsequent employers of suspected abusers;
 - (iv) subsequent employment or movement of suspected abusers to other schools or institutions in Ireland and abroad.
 - (d) the extent to which religious orders and/or schools sought to investigate, learn lessons, implement changes, and/or provide support and reparations to victims and survivors, in response to
 - (i) allegations of child sexual abuse by individuals associated with such schools;
 - (ii) criminal investigations and prosecutions and/or civil litigation in relation to alleged abuse by individuals associated with the school;
 - (iii) reports, reviews and inquiries into child sexual abuse and/or safeguarding, including internally commissioned reports and reports by external authorities, inspectorates or agencies.
 - (e) the nature of the response of public and statutory authorities, including An Garda Síochána, relevant health boards/the Health Service Executive, and the Department of Education, to any allegations or complaints in relation to, or knowledge of, the sexual abuse referred to above and whether such response and/or investigation was adequate or appropriate.

- (f) the adequacy of inter-agency reporting and information sharing between institutions in relation to child sexual abuse in schools;
2. The Commission shall be conducted in accordance with the provisions of the Commissions of Investigation Act 2004 and shall be as survivor-centred as possible, consistent with fair procedures.
 3. The Commission of Investigation shall cover the period from 1927 to 2013, but the Commission shall have the power to reduce the time period under investigation in respect of all or any component part of its investigation or in respect of any school, religious order, person or body within its terms of reference as it considers appropriate for the purposes of its investigation.
 4. The Commission shall tailor its processes and methodologies so as to achieve effective investigations in the most timely and cost effective manner possible, consistent with its terms of reference. To this end, the Commission may give consideration to sitting in divisions to enable it to complete its work in a timely fashion.
 5. The Commission may adopt such sampling methods as it deems fit in conducting its investigation, having regard to the interests of the parties before the Commission.
 6. The Commission shall have due regard to any criminal prosecution, currently in train or pending, that may be affected by evidence adduced at the Commission.
 7. The Commission shall notify the Minister for Education at the conclusion of any module or part of its investigation and, upon the request of the Minister, prepare an interim report in respect of same. In so far as practicable, the Commission shall endeavour to keep all stakeholders informed of the work of the Commission and updated as to its progress at reasonable intervals.
 8. The Commission shall receive a report from the Child Protection in Schools Group outlining the progress made in implementing the child protection matters within its remit.
 9. The Commission shall make such recommendations as it sees fit on any aspect of the current child protection regime in schools and may have regard to reports or research on this topic, and to the report of the Child Protection in Schools Group in this regard.
 10. The Commission may make such further recommendations as it sees fit arising out of its investigation, including recommendations as regards future policies and practices, having regard to the report of the Survivor Engagement Programme.

11. The Commission may inform the Minister for Education in relation to relevant matters identified in the course of its investigation that it considers warrant further investigation as part of the Commission's work in the public interest.
12. The Commission shall prepare a report to the Minister for Education at the conclusion of its investigation, and/or within 5 years from establishment, setting out its findings in accordance with these terms of reference.

The Survivor Engagement Programme

13. The Commission shall establish a Survivor Engagement Programme to operate under the auspices of the Commission. The purpose of the Survivor Engagement Programme shall be to:
 - (i) Record survivors' experiences, including the impacts and consequences of sexual abuse;
 - (ii) Provide a non-adversarial setting for survivors, family members of deceased survivors, and other relevant persons to recount their experiences;
 - (iii) Engage in relevant sociological research and analysis based on survivors experiences with a view to informing future policy;
 - (iv) Carry out its function in as survivor-centred a manner as possible;
 - (v) Produce and submit a report to the Commission in relation to the survivor experiences recounted and formulate such proposals as it sees fit to inform future policy, particularly in relation to managing the lifelong impacts of childhood sexual abuse.
14. The Survivor Engagement Programme:
 - (i) shall receive oral and written accounts and/or documentation from survivors, family members of deceased survivors, and other relevant persons;
 - (ii) shall agree an anonymised summary of the account of each person who comes forward to it;
 - (iii) shall not hold formal hearings, nor act as a public inquiry, nor conduct a formal legal process;
 - (iv) shall not have powers to compel any person's attendance or the provision of documents;
 - (v) may adopt any informal procedures or methods it may consider expedient;

- (vi) shall explain to persons coming forward to it that it is not investigating their complaints, but compiling an anonymised record of their experience for publication which will inform proposals on policy and shall be included in a report to be published by the Survivor Engagement Programme; and
- (vii) shall provide in its procedures that the identity of individuals giving accounts to the Survivor Engagement Programme shall remain confidential. Any person or institution named in the statement shall not be identified or identifiable. Any anonymised account should be approved by the survivor concerned.

Proposed Framework for the Commission

1. The Commission shall, in so far as practicable, and in accordance with fair procedures, adopt a survivor-centred approach to the workings of the Commission.
2. The Commission shall set aside, at the outset, a period of time to consult with a wide range of survivors and other stakeholders on issues including cooperation with the inquiry, language used, mechanisms for engagement and communication with the commission.
3. The Commission shall provide information to survivors and other participants about its work and processes, including the following issues: whether it may employ sampling or sit in divisions, the scheduling of hearings, and the difference between the Commission and the Survivor Engagement Programme.
4. The Commission shall establish a means of regular communication with all stakeholders, particularly survivors, about its ongoing work.
5. At key stages of the Commission's work, all efforts should be made to ensure that survivors have access to appropriate one-to-one support.
6. The members of the Commission, its staff, and legal team should receive appropriate and adequate training to inform them about the needs of victims of child sexual crimes, including understanding trauma associated with sexual crimes and retraumatisation.
7. Consideration should be given by the Commission to adopting the following practices, in so far as is practicable and consistent with fair procedures:
 - (a) survivors being facilitated to provide witness statements of their experiences, as an alternative to giving evidence-in-chief to the Commission, if they so choose;

- (b) the Commission's own counsel being the primary channel by which lines of questioning sought to be explored by respondent parties are put to survivors;
 - (c) survivor evidence being given remotely or, if in-person, with the use of screens as appropriate;
 - (d) using separate rooms and communal spaces for survivors called as witnesses;
 - (e) using a venue other than a courtroom for commission hearings; and
 - (f) facilitating a familiarisation process similar to the 'court familiarisation' process undertaken in proceedings concerning sexual offences.
8. The Commission shall, in so far as practicable, in determining and implementing its processes and procedures for the taking of evidence, take into account the prospect of retraumatisation of survivors of sexual abuse when giving evidence and/or take all reasonable steps consistent with fair procedures to avoid such retraumatisation.

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