

Pathways Victoria

Restorative journeying with Survivors
of Abuse within the Catholic Church

Proposal for Consultation

Foreword

We acknowledge that this work has been undertaken on the lands of our traditional peoples. We pay our respects to elders past present and emerging.

This model for Pathways Victoria has been developed by a project group chaired by Ms Janet Cribbes, with input from a range of professions and experiences, including legal, psychological, social work, safeguarding, survivor voices and Church Authorities. The development was overseen and guided by a Provincial Working Group co-chaired by Bishop Shane Mackinlay (Diocese of Sandhurst) and Sister Monica Walsh RGS (Provincial, Good Shepherd Sisters), with Archbishop Peter Comensoli (Archdiocese of Melbourne) and Sister Veronica Hoey SGS (President, Victorian Towards Healing Association).

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

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

1. Introduction

- 1 Sexual abuse causes incalculable damage for those who have been abused, their families and the broader community.

“Everyone, but particularly those with responsibility for the care of others, must be accountable for any situation in which a safe environment is diminished or threatened. The National Protocol for Church Authorities Responding to Concerns and Allegations of Abuse by Personnel of the Catholic Church in Australia is a most important commitment to the development of a culture of safety, defined by transparency and accountability. This we owe to those whose lives have been forever affected by abuse, their families, their loved ones and the entire People of God.” (NRP, p5)
- 2 Within the Catholic Church in Victoria there are currently two models that are available to respond to complaints of historic abuse: Towards Healing and the Melbourne Response. Nationally, there is now the National Redress Scheme and civil litigation for those who seek compensation to redress past abuse.
- 3 The Melbourne Response and Towards Healing are coming to an end (with the exception of Carelink, which will continue to provide services to its current clients). There is a need to develop a new model and this document outlines the proposed model for consultation. The new entity, called Pathways Victoria, will implement a set of compassionate, just and appropriately resourced processes that implement the National Response Protocol. It will incorporate features from Towards Healing and the Melbourne Response, building on their strengths and effectively bringing their processes to a conclusion and providing a new process to investigate complaints and compensate and care for survivors. The Pathways Model will offer an alternative to existing mechanisms such as the National Redress Scheme and civil litigation.
- 4 In developing Pathways Victoria, the process considers previous reviews of the Melbourne Response and Towards Healing models, along with survivor feedback. There has also been focus on the effect and nature of the trauma and acknowledgement of the need for restoration and connectedness between survivors, victims and the Church to offer a much-needed road to healing.

We acknowledge with great remorse the immense harm and loss of trust and faith in the Church when it fails in the call that it has received from the Gospel and the mission given it by the Risen Christ. The abuse of others by members of the Church is contrary to all that it has been given by the Spirit. It ruptures the lives of those who are hurt and wounded, and it tears the fabric of communion, which is to be the very mark of its identity.

— *National Response Protocol, p.4*

Along that road let us use every opportunity that a tragic situation has afforded us in order to grow.

— David Ranson, *Sexual Abuse, Implications for Initial Formation, The Furrow, April 2000*

1. Introduction

Continued

- 5 The Church has acted to address the recommendations of the Royal Commission. 'Safeguarding' has become the cornerstone of each diocese and religious institution, guided by the central teaching of Jesus and the Church to "love one another as I have loved you". It is the hope that a sense of grace will be the light that shines through the new Pathways Model as it considers:
 - the direct experiential feedback from survivors and their families on the impact and effect of institutional abuse and redress processes
 - the lessons from the multiple inquiries and report findings.
- 6 Through the Pathways Model and processes, Church Authorities seek to take responsibility for addressing wrongs that have been committed. The model responds to the need of those who wish to connect at a pastoral level with a Care Coordinator who will walk alongside survivors on their journey. It facilitates a compassionate approach with the opportunity to restore faith and trust with every step of engagement.
- 7 The Pathways Model offers a governance structure that includes independent investigations and processes for seeking redress. Care Coordination offers survivors a single service and a dedicated care worker with whom to share their experiences, who will guide them as they participate in investigations, and secure redress through a resolution process.
- 8 A key characteristic of the Pathways Model is that it is put forward by the Church. It offers a pathway where survivors are listened to, acknowledged, compensated and cared for. For those who seek it, survivors have an opportunity to reconnect spiritually, with the restoration of links with the Church community.

We need the victims to come first, ... We as the Church have a healing role to play. ...We listen to the victims and then we can do what the Church should be doing - being instruments of Jesus' healing.

— Bishop Ron Fabbro on the Canadian Guidelines, London, Ontario, 2019

- 9 The impact on the spiritual wellbeing of many survivors has resulted in internal conflicts between their spiritual faith and their relationship to Catholic institutions. This dissonance can often extend to a loss of connection to the self, family and community. In the process of healing, Pathways can facilitate survivor reconnection to pastoral care and/or consultation with a spiritual advisor and support the spiritual journey toward restoration and wellbeing. The Care Coordinator can coordinate pastoral, religious or spiritual support counselling for survivors who may feel displaced from their spiritual connectedness to God and the Church.

The Care Coordination model can connect survivors with experienced external psychologists for those who may wish to engage in professional therapeutic supports as part of their recovery.

Proposed Pathways Victoria

Person Centred

One Point of Contact Throughout

Direct Church Response

Transparent and Accountable

Funded Therapeutic Support Available from
First Contact and through the Pathways process

Sharing Experience Once

Pastoral/Spiritual Connection

Resolution Process

Review Process

Scope of Complaints

What misconduct does the Pathways Model cover?

- 10 The process covers a wide range of misconduct by Church personnel including
- neglect or maltreatment, and physical, psychological or sexual abuse of children or vulnerable adults causing physical or psychological harm
 - other acts of a sexual nature which may be an offence under Victorian legislation and where the act does not occur in the workplace of a lay employee
 - adult boundary violations (i.e. consensual sexual relations) which cause physical or psychological harm
 - sexual misconduct, such as grooming or possessing child pornography, as defined in the Crimes Act 1958 (Vic)
 - 'inappropriate or unreasonable acts or omissions of Church personnel who had knowledge of conduct of another Church person involving child abuse.'¹

Which types of Church people are subject to the process?

- 11 A complaint may be made about the conduct of any person who is or was at any relevant time:
- (a) a member of the clergy
 - (b) a lay pastoral minister
 - (c) a seminarian or ordinand
 - (d) a Church employee, office holder or volunteer
 - (e) any of the above who are deceased.

Where a complaint is made against a current employee, the Pathways process will only apply if the complaint is not subject to another statutory regime or to a contractual employment relationship, unless the complaint is referred to Pathways by an employer.

As a matter of nomenclature, it is proposed to refer to a person in this context as a Church person rather than a Church worker and Church personnel rather than Church workers.

To redeem the suffering of so many who have been affected by sexual abuse, the Catholic community must continue facing this problem directly and honestly. The Church cannot undo all of the harm done in the past, but it has the responsibility to do all that is within its power to create an environment in which people will treat other people with respect, dignity and justice. The healing that is necessary involves a long process and will take courage, compassion, openness and forgiveness. Above all it will take faith - faith in one another and faith that God is with us in this journey."

— Sr Maree Marsh csb 2017, *Reflections from the Royal Commission into Institutional Child Sexual Abuse*

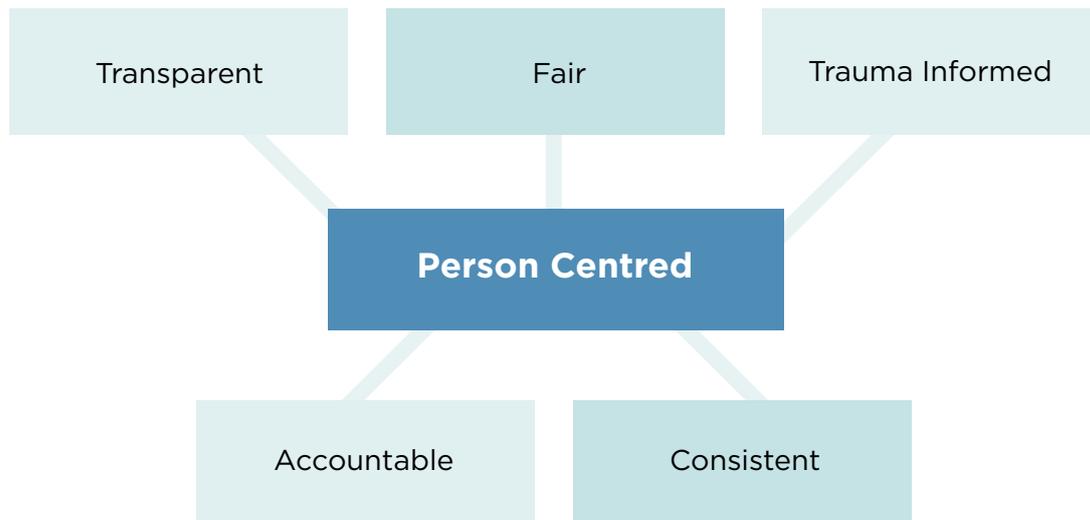
¹ NRP, p10

2. Underpinning Frameworks and Context



Underpinning Principles

- 12 The Pathways Model will be underpinned throughout by trauma-informed care and practice principles. Trauma-informed care has emerged from the growing awareness of the impacts of trauma on survivors of child sexual abuse and recognition that human service systems need to avoid inadvertently re-traumatising survivors of child sexual abuse.
- 13 As a trauma-informed service, Pathways will aim to implement an understanding of trauma in all aspects of service delivery and prioritise the individual's safety, choice and control, while establishing connectedness through a relationship built on trust.



- 14 Trauma-informed care is a cultural and systemic change in approach that is reflected at all levels of the service system:
- “to provide trauma-informed services, all staff of an organization, from the receptionist to the direct care worker to the board of directors, must understand how violence impacts on the lives of the people being served, so that every interaction is consistent with the recovery process and reduces the possibility of re-traumatization” (Elliot et al., 2005, p.462).
- 15 Trauma-informed care has been expressed in the Australian context in similar terms. For example, the Mental Health Complaints Commissioner (MHCC) states that trauma-informed care:
- “exemplifies a ‘new generation’ of transformed mental health and human service organisations and programs that serve people with histories of trauma. Responding appropriately to trauma and its effects requires knowledge and understanding of trauma, workforce education and training, and collaboration between consumers and carers, policymakers and service providers, and crosses service systems. It involves not only changing assumptions about how we organise and provide services, build workforce capacity and supervise workers, but creates organisational cultures that are personal, holistic, creative, open, safe and therapeutic (MHCC, 2013, p.5).
- 16 Pastorally led, Pathways will provide an opportunity to promote healing as Care Coordinators walk alongside survivors on their journey to acknowledgement from the Church and provision of care and resolution.
- 17 Guided by a dedicated Care Coordinator from beginning to end, survivors seeking redress will navigate the Pathways Model at their own pace with expert professional supports available. Their pastorally led road to healing and recovery will begin with disclosure to the Complaints and Redress Director where their past and present experiences are listened to respectfully and recorded in a disclosure report.
- 18 The personal approach to promote healing, spiritual restoration and wellbeing cannot be overstated. Regardless of personal beliefs, spirituality and religion are foundational aspects of culture, experience and behaviour. Pathways recognises the spirituality deeply embedded in individuals and human connections.
- 19 For some survivors, the possibility of acknowledgement and restoration associated with the Church can be helpful for their healing.

20 The Pathways Model seeks to provide a compassionate, fair, transparent and accountable process for complaint handling that:

- respects both complainants and respondents
- upholds the standards and integrity of the Gospel and contemporary insights into best-practice
- promotes the safety of children and adults with whom the Church engages
- respects the primacy of police investigations
- complies with CCYP and canon law requirements.

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

22 Restorative Justice is a theory of justice that emphasises repairing the harm caused to victims of crime. It is best accomplished through a collaborative approach that facilitates willing stakeholders to meet, although other approaches are available when that is impossible. This can lead to transformation of people, relationships and communities. In other words, those who have experienced abuse have an opportunity to influence and change safeguarding within the institution responsible for the abuse in addition to receiving a meaningful acknowledgement of the harm caused.

The Pathways Model proposes to support restorative justice by emphasising the role of the survivor as central to the process, collaboratively working at their pace and facilitating an opportunity to meet with representatives of the Church Authority.

3. Structure

- 23 Pathways will manage complaints about sexual abuse of minors and vulnerable adults within the Catholic Church in Victoria and their claims for redress. It will be distinct from Australian Catholic Safeguarding Ltd, which sets standards to avoid or minimise the risk of sexual abuse of minors and vulnerable adults and audits and oversees Catholic institutions in their observance of those standards. The functions of these two bodies will complement one another.
- 24 This section explores some questions likely to arise during the consultation.

Will Pathways be independent?

- 25 Pathways will be established by the Church as an entity with its own governing board and functional independence. The members of its governing board would include diverse lay men and women with professional expertise in areas such as governance, law, education, child protection, human services, ethics, psychology and counselling, safeguarding or regulation. The members of the entity would be the diocesan bishops and other religious provincials who choose to participate. The vehicle of a company limited by guarantee is under consideration. The governance will be mission led. The Care Unit and the Complaints and Redress Unit will be functionally independent of each other and governed by the board.

Explanation of Roles

The units within Pathways

- 26 Whilst closely connected, the Care Coordination Unit and the Complaints and Redress Unit operate functionally autonomous from one another. Both units are led by the respective roles of Executive Director and the Complaints and Redress Director with separate reporting obligations. Each unit has distinct and unique responsibilities with the Care Coordination unit largely providing external therapeutic supports. Ongoing collaborative relationships are central to the model with a holistic approach in providing care and support led by the Care Coordinators with external health service providers.

The Complaints and Redress Unit engages with claimants from the point of coming forward in hearing and reporting complaints until settlement of redress. Contact thereafter ceases.

Executive Director

- 27 The title of Executive Director is used in the not-for-profit sector whereas CEO is used in the for profit or large not-for-profits. The Executive Director oversees the staffing, financial management maintaining records, compliance and strategic direction. In Pathways there will be a peer relationship with the Complaints and Redress Director, as both are appointed by the Board, and have autonomous functions. However, in this instance the Executive Director will have oversight of Pathways and all its functions, ensuring a central point of information to enable smooth and effective relationships between the two units.

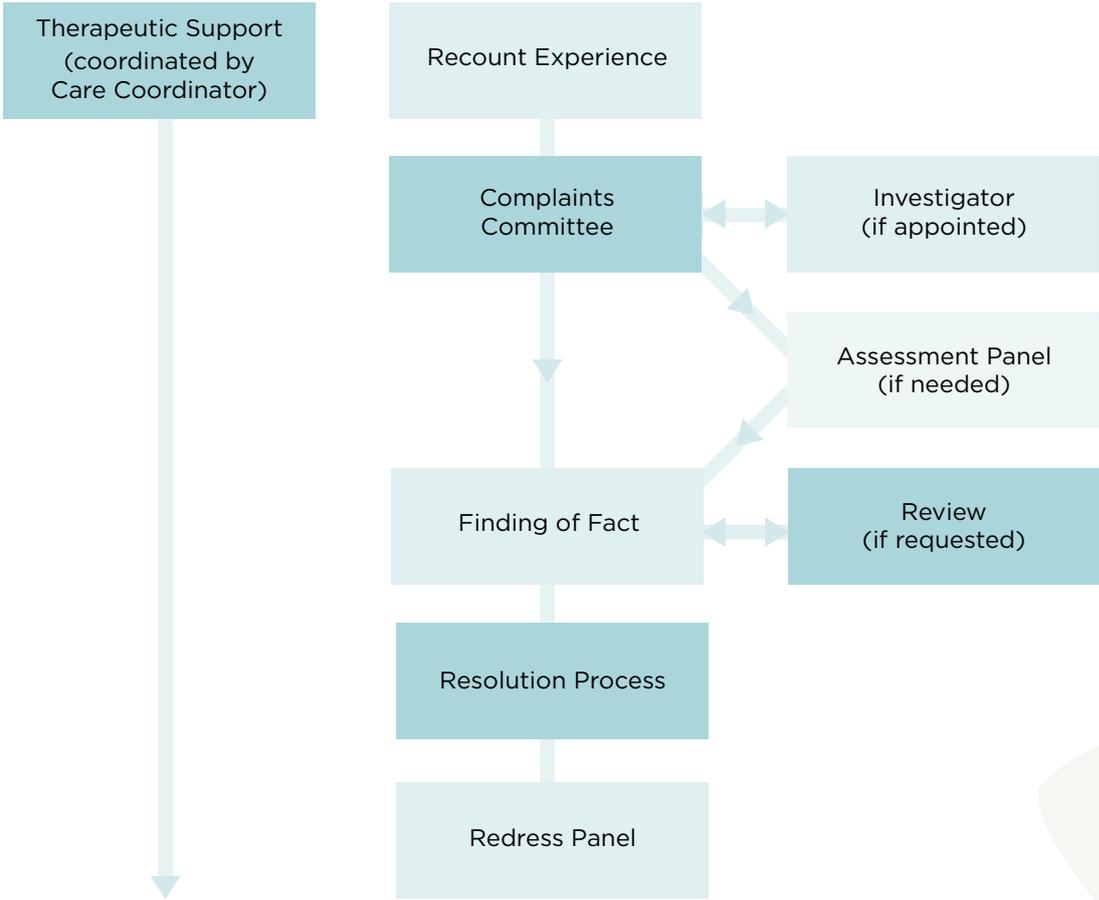
- 28 In addition, the Executive Director provides oversight of the Care Coordination model. The Executive Director has delegated authority to provide approvals regarding client episodes of care and other financial delegations in addition to stakeholder management of external health service providers.

Complaints and Redress Director

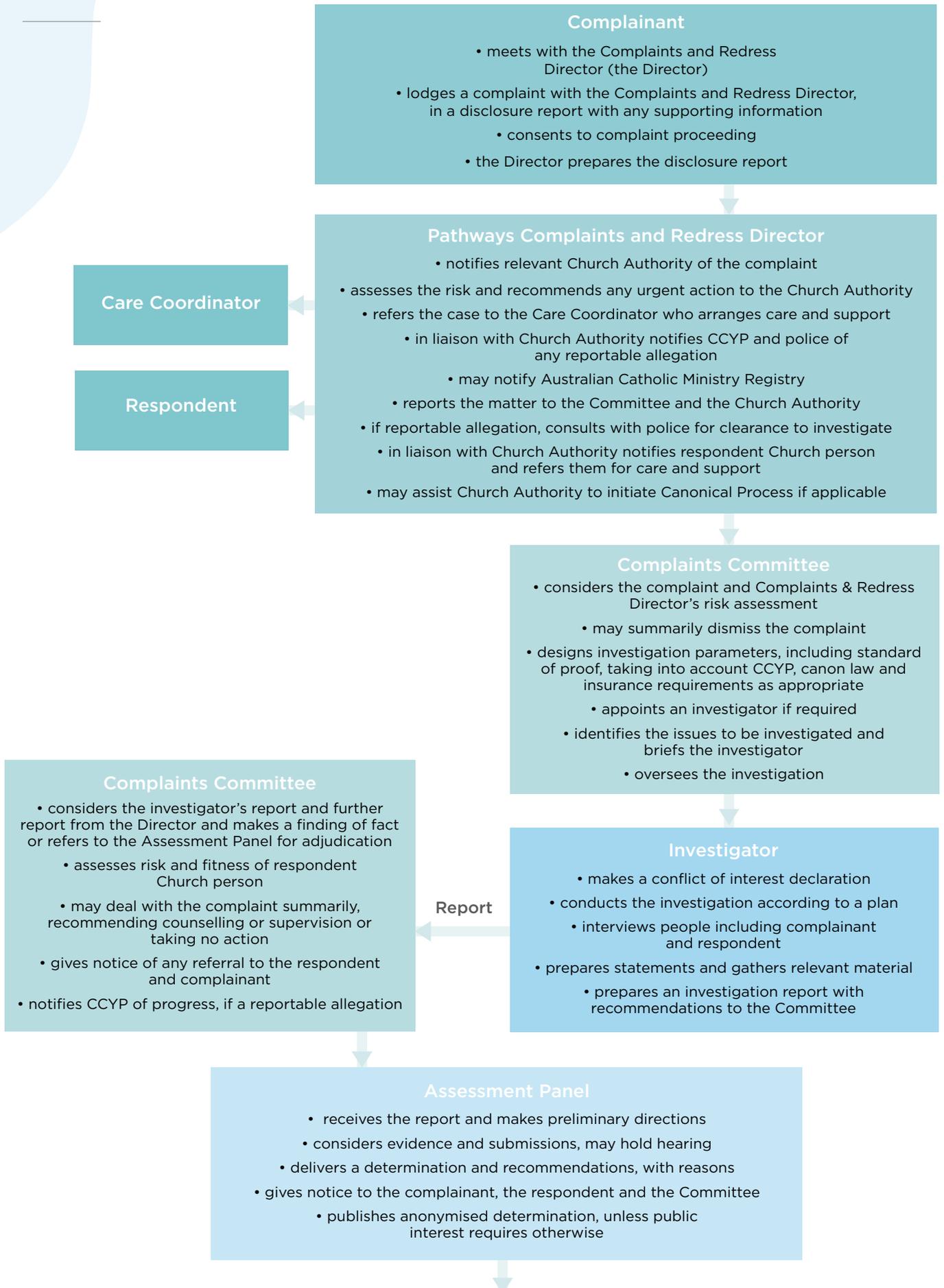
- 29 The Complaints and Redress Director is appointed by and reports to the governing body.³ The Director liaises with the Executive Director for operational matters. The Director has delegated authority from the governing board to oversee and manage the complaints process and the redress process with the Complaints Committee and the Redress Panel. Skilled in engaging with adults who have experienced abuse, the person in this role will hear first-hand accounts of complaints and be responsible for all communication with complainants about the complaint and redress process. The Director liaises with Church Authorities and reports to and prepares relevant reports for the Complaints Committee, Assessment Panel and Redress Panel. The Director also has authority to source and provide direction to the independent investigator, refer complainants for therapeutic supports to the Care Coordinator and assist Church Authorities with reporting obligations to external bodies such as CCYP and the Police.

³The Complaints and Redress Director is intended to have independent functions including determining interim care and assistance, arranging the participation of the parties and referral of any application to the Redress Panel.

Overview of Pathways Model



4. Complaints Process



Complaints Process

Continued from previous page



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

Every member of the Church, and especially its leadership, is entrusted, then, with the imperative to foster and develop a culture of safety for everyone. At every level we must work together, especially to protect children and adults from abuse or harm.

– *National Response Protocol, January 2021*

Protocols for Discussion

- 30 The National Protocol for Catholic Church Authorities in Australia (National Response Protocol), responding to Concerns and Allegations of Child Abuse², provides a framework for Church entities to offer a consistent response to children and adults who have been subjected to abuse by Church personnel. ‘Church personnel’ includes clerics and religious, employees and volunteers currently or previously associated with a Church Authority. The purpose of this outline is to propose the means by which, through the Pathways Model, the protocol will be brought into operation in the state of Victoria for participating dioceses and religious institutes.
- 31 For ease of reference, this outline sets out the proposal for the Pathways Model by reference to the stages discussed in the National Response Protocol. There will be an operating Pathways framework agreed to by each participating Church Authority.

Recommendation 26: That independent bodies comprised of civil, canonical and relevant professional expertise be established to deal with allegations against Catholic Church personnel (including bishops, religious, priests, deacons, employees and volunteers).

– *The Light from the Southern Cross, Promoting Co-Responsible Governance in the Catholic Church in Australia, 2020*

²Version 5, October 2020

Stage 1: Receive and Acknowledge the Concern or Allegation

32 Complaints may be made directly to Pathways by a complainant or referred to it by a Church Authority. If the complaint is made directly, the Church Authority is notified of the complaint promptly.

Making a complaint

33 The Complaints and Redress Director (the Director) will receive complaints and assist a complainant in preparing a disclosure report. It is expected that the Director would have experience in hearing reports of abuse and responding with characteristics which display warmth, patience and empathy whilst also able to explore, question and furnish a report.

34 The complainant at this stage would be allocated and meet with a Care Coordinator if they wish to take up the offer of therapeutic support. They are not required to tell their story again to the Care Coordinator. An applicant as part of the complaints process, assisted by a Care Coordinator, may apply to the Director for a direction that a Church Authority pay or meet the expense of interim care and assistance. The Complaints and Redress Director would have authority to determine that application subject to specified limits.

35 Any person, including the Complaints and Redress Director would be able to make a complaint of misconduct to the Complaints Committee (the committee). The Complaints and Redress Director would manage the complaint in the first instance. The Director would serve as executive officer to the committee to facilitate its work in the handling of complaints. The Director will receive complaints on behalf of the committee.

36 An immediate risk assessment is made upon receipt of a complaint and communicated to the relevant Church Authority. The Director may assist the Church Authority with mandatory reporting to relevant entities such as Victoria Police and CCYP.

Explanation of the Initial Risk Assessment and Interim Measures

- 37 The National Response Protocol also contemplates at this stage –
- ‘a risk assessment to identify risks to children and others and the steps required to address these. See Recommendation 16.51 of the Royal Commission;’⁴

The Royal Commission recommended at 16.52 –

‘All religious institutions’ complaint handling policies should require that, if a complaint of child sexual abuse against a person in religious ministry is plausible, and there is a risk that person may come into contact with children in the course of their ministry, the person be stood down from ministry while the complaint is investigated.’

- 38 Under the Pathways Model, the Director would conduct this initial risk assessment of the fitness of the respondent Church person to continue in ministry and the risk they may present. The Director would report to the Church Authority and the Complaints Committee. If the risk of harm to another was immediate and unacceptable, the Church Authority would be expected to take interim action to stand down the Church person or take other steps such as supervision, limited duties or the like, pending the determination of the matter.
- 39 The respondent Church person would be accorded procedural fairness to respond to any decision by the Church Authority and would have the opportunity to contest the action taken before the Complaints Committee discussed below. The outcome would be either that the committee recommends interim action against the Church person or declines to do so.

- 40 The committee’s independent function to assess risk in this context best serves the fulfilment of Principle A of the National Response Protocol –

‘Prioritise the safety and wellbeing of children and adults subjected to childhood abuse within a culture of prevention of harm.’⁵

It also gives effect to the direction in the protocol to –

‘Ensure that investigations are conducted with integrity and impartiality, ensuring that processes and outcomes can withstand external scrutiny and that conflicts of interest (perceived, potential or actual) are identified, addressed and managed appropriately.’⁶

Automatic stand down in some circumstances

- 41 In accordance with NRP P. 26, if a Church person has been charged in any jurisdiction in Australia or elsewhere with a sexual offence, that person should be required under the process forthwith to stand down from the duties of their role pending the determination of the charge.

⁴NRP, p25 ⁵NRP, p13 ⁶NRP, p15

- 42 If the Director becomes aware that Victoria Police is investigating an allegation, neither Pathways nor the Church Authority must start or continue to investigate the allegation until the Chief Commissioner of Police –
- (a) advises that the police investigation has been completed; or
 - (b) agrees that the investigation may proceed in consultation with Victoria Police.⁷
- 43 A complaint may be in any form – in writing on paper or by email or facsimile or conveyed orally. A Care Coordinator will be appointed and would be the point of contact for the complainant throughout the process. All complaints would be recognised and would be managed in accordance with the applicable published Pathways procedures. The Care Coordinator would make available to the complainant trauma-informed and audience-specific guidelines about those rules and any applicable protocol.⁸
- 44 If a complaint is made to a Church Authority, it may refer the complaint to the Complaints Committee.

Reporting to relevant Church personnel

- 45 The National Response Protocol (NRP) provides:⁹
- ‘It is imperative that all concerns and allegations of abuse of a child be recognised, however they are received. They must be taken seriously when they are first received or identified, and not missed or prematurely dismissed...’
- The person who receives the concern or allegation of child abuse follows internal reporting procedures to inform the relevant Church personnel with appropriate responsibility. If the person receiving the disclosure is not the Professional Standards Officer appointed by the Church entity, they must convey the disclosure to the Professional Standards Officer immediately.’
- 46 Pathways is involved ONLY when a matter is referred to it; for example, because a Church Authority requests an investigation or because the complainant approaches it directly. The Complaints & Redress Director ensures that any complaint that is received directly is notified promptly to the relevant Church Authority.
- 47 If a Church Authority becomes aware of a complaint of child sexual abuse allegedly perpetrated by a bishop or his equivalent, then that Church Authority is to inform the Holy See as well as the Metropolitan of the ecclesiastical province where the alleged perpetrator is residing (VELM Art 3 §3). The investigation procedures of VELM Arts 12-18 is the responsibility of Australian Catholic Safeguarding Ltd.

⁷Child Wellbeing and Safety Act 2005 (Vic), s16U(2)

⁸National Response Protocol, (NRP) January 2021, p22

⁹NRP, page 21

An independent Complaints Committee

48 The Director is at the coalface dealing directly with complainants, survivors and respondent Church personnel. The Complaints Committee represents the collective wisdom of people of different skills, experience and background. It can bring an objective perspective to the evaluation of a complaint, unaffected by direct dealing with participants in the process.¹⁰ The decision does not rest solely on the judgement of one person. The Complaints and Redress Director brings reports to and facilitates the deliberations of the committee.

49 Under the proposed Pathways Model, the committee could have collective experience at least in law, canonical law, child protection, investigations, criminology, social work, ethics and psychology.

50 Some questions for consultation – In the interests of promoting confidence in the composition and work of the committee:

- (a) Should at least one member of the committee have experience in ministry either in the Catholic Church or another denomination?
- (b) So far as reasonably practicable, should at least 50% of the panel comprise individuals who are not members of the Catholic Church?
- (c) So far as reasonably practicable, should the committee have equal numbers of men and women?

51 The Complaints Committee will have responsibility for the investigation of complaints. The committee will comprise diverse lay men and women with a variety of professional expertise drawn from fields such as governance, civil/canon law, education, child protection, human services, ethics, psychology and counselling, safeguarding and regulation. There will be four members at any one time from the professional fields named.

In the interests of transparency, the composition of the committee, as with all the office holders in the process, would be a matter of public record on the Pathways website.

The Committee designs a suitably rigorous investigation, taking into account the complexity of the case, the likely availability of evidence and witnesses, and any relevant requirements of CCYP and canon law.

52 The committee will oversee the investigation of a complaint and a triage function of deciding the appropriate avenue to deal with the complaint. If at any time the Committee identifies a risk of harm to a minor, vulnerable person or others raised by the conduct alleged, the committee recommends an appropriate action to the Church Authority and other relevant persons specifically taking into account as relevant to CCYP, canonical law where appropriate and balance of probability.

¹⁰The proper functioning of a professional standards committee was examined by Young CJ in *Hedges v Australasian Conference Assn Ltd* [2003] NSWSC 1107

Stage2: Report to External and Internal Authorities

Stage 2A: Report to external authorities

53 The National Response Protocol states that –

All personnel, regardless of their role, understand and comply with their legal and additional obligations with respect to protecting children, including any delegated and/or obligatory reporting requirements.

54 The Pathways Model would operate in conjunction with the obligations under Victorian law to report instances of child abuse to both police and government agencies. It is useful to set out those requirements here in summary. It is proposed that these requirements be publicised on the Pathways website..

Victorian reporting requirements

A. Duty of every Victorian adult to report child sexual abuse

55 Any adult who forms a reasonable belief that a sexual offence has been committed by an adult against a child under 16 has an obligation to report that information to Police. Failure to disclose the information to Police is a criminal offence unless exemptions apply, such as the survivor now being an adult and requesting confidentiality: Crimes Act 1958 (Vic), s327.

B. Duty of responsible organisational person to act to protect

56 A person who knows of a substantial risk of child abuse by someone over 18 years of age associated with the organisation, and has the power or responsibility to reduce or remove that risk and negligently fails to do so, commits a criminal offence under this section, punishable by 5 years' imprisonment; Crimes Act 1958 (Vic), s490.

C. Mandated reporting of children at risk

57 Mandated reporters, including ordained persons, teachers, and persons authorised for lay pastoral ministry, who in the course of their ministry form the belief on reasonable grounds that a child is in need of protection on a ground referred to below, must report to the Secretary of the Department of Human Services that belief and the reasonable grounds for it as soon as practicable –

- (a) after forming the belief; and
- (b) after each occasion on which he or she becomes aware of any further reasonable grounds for the belief.

The grounds are that –

- (c) the child has suffered, or is likely to suffer, significant harm as a result of physical injury and the child's parents have not protected, or are unlikely to protect, the child from harm of that type; and
- (d) the child has suffered, or is likely to suffer, significant harm as a result of sexual abuse and the child's parents have not protected, or are unlikely to protect, the child from harm of that type.

Children, Youth and Families Act 2005, s184

D. Duty of the holder of a WWCC to report any change in circumstances

58 The holder of a Working with Children Check in Victoria is subject to a statutory obligation to notify the Secretary to the Department of Justice of any relevant change in circumstances as defined in that section: *Working with Children Act 2005* (Vic), s20.

E. Duty of Head of Entity to report conduct to the CCYP

59 Under the *Child Wellbeing and Safety Act 2005*, the Head of a religious body has a duty under the Act within three business days of becoming aware of a reportable allegation to notify the Commission for Children and Young People (CCYP) of those allegations and take further specified action.

60 At the request of a Church Authority, Pathways will be able to design and conduct an investigation that satisfies legal requirements of the Reportable Conduct Scheme under the *Child Wellbeing and Safety Act 2005*.

61 It remains the case in any event that any person may disclose a reportable allegation to the CCYP.¹¹

¹¹*Child Wellbeing and Safety Act 2005* (Vic), s16L

Stage 2B: Report to internal authorities and bodies

- 62 The National Response Protocol states that –
- A report is made to the Church Authority with canonical responsibility and **to the relevant safeguarding and professional standards personnel.**

Stage 3: Determine course of action

- 63 How the Director now proceeds with the complaint or any concern disclosed depends in part on the nature of the matter and the position of the respondent. The National Response Protocol calls at this stage of the process for –
- An assessment by the (Complaints and Redress Director) Professional Standards Officer of the Church entity about the appropriate course of action is made based on the potential nature and seriousness of the concern or allegation.¹²
- 64 It is anticipated most investigations will involve deceased respondents. If respondent is alive the Director will contact the respondent and make available trauma-informed and audience-specific guidelines about the process, the complaint, and any further details provided, within a specified time from the complainant giving their consent, unless as noted above a police investigation is proceeding, or it is impracticable in the particular circumstances. Under the process, the respondent is accorded procedural fairness. The Director notifies the complainant that this is happening.

Written response from the respondent

- 65 Any living respondent will be expected to provide the Complaints Committee with a written response to the complaint within three weeks (or such longer period as the Director may allow in writing) of receiving a copy of the complaint and any accompanying details. The Director will write to the respondent about this timeline and what happens if they do not respond.
- 66 The respondent will have the right under the rules or applicable protocol –
- (a) to obtain independent legal or other professional advice, before responding to the complaint; and
 - (b) to make submissions (with or without evidence) as to why the committee should not entertain the complaint or should dismiss it or take no further action in relation to it.

The Director would inform the respondent of these rights when contacting them about the complaint.¹³

Summary determination

- 67 The National Response Protocol refers to a determination as to the semblance of truth and whether further investigation is required. Many courts and domestic tribunals adopt in their rules provisions for summary determination of a proceeding or complaint. It can enable a quick resolution of a matter and avoid the cost and inconvenience to the parties of a protracted process. Pathways Victoria should have such a provision and specify the grounds on which the committee may act summarily. Those grounds would include if the complaint were frivolous or vexatious or totally lacking in substance, for example, mistaken identity.

The committee may also make a summary determination to uphold a complaint in circumstances such as admission by an offender or acceptance of the complaint by a Church Authority.

¹²NRP, p25

¹³This serves in the appropriate case to *nip a matter in the bud*, avoiding a protracted process.

68 This summary jurisdiction is intended to give the committee considerable flexibility in dealing with the matters before it, ranging from dismissing the matter or taking no action or taking limited action. It is part of the triage function that the committee exercises in relation to complaints.

69 If a complaint is dealt with by the committee under the summary procedure, the committee would give the complainant and the respondent a written notice of the outcome including the reasons.

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

70 Where the Church person of one Church Authority is engaged in ministry by another Church Authority (for example, religious working in a parish), the National Response Protocol¹⁴ raises the question where responsibility for reporting and investigation should rest.

71 The Pathways Model will provide a framework for addressing this question, particularly as between the respective Church Authorities participating in the model.

Stage 4: Investigate

Purpose of the investigation

72 The model will be governed by a process that reflects the purposes of the investigation as envisaged by the National Response Protocol –

An investigation into the concerns or allegations received by a Church Authority is required to assess the concerns or allegations and to provide an impartial and independent review of the facts and circumstances disclosed, including the fitness of the relevant Church personnel to continue in ministry and the risk of harm that may present.¹⁵

73 If the Complaints Committee considers that an investigation is needed into an allegation against a living cleric or religious, the Church Authority should consider establishing the Pathways investigation as a canonical ‘preliminary investigation’ (Can. 1717).

74 As noted above, proceeding with any investigation of a reportable allegation will be subject to advice from the Chief Commissioner of Police.¹⁶

75 After appropriate consultation with all parties, the committee may appoint an independent investigator, who collects evidence and who may be asked by the committee to recommend a finding. The Complaints and Redress Director will facilitate the work of the committee. The investigations process will be suitably rigorous for the particular circumstances of the complaint, and will be designed to ensure that only a single investigation needs to be undertaken. It will be informed by the National Response Protocol and any requirements stipulated in a particular case by the Commissioner for Children and Young People (CCYP). The committee will make a finding of fact on the balance of probabilities or will refer the evidence it has collected to the Assessment Panel.

¹⁴NRP, commentary, p28

¹⁵NRP, commentary on stage 4, p28

¹⁶See paragraph 82 on p28

Stage 4A: Appoint an investigator

- 76 The committee will have responsibility for the investigation of complaints under the model. The committee performs that function through its delegate or appointee who may be the Complaints and Redress Director or an independent outside investigator.
- 77 The complaints protocol adopted by the Pathways board of directors will provide guidelines for the conduct of the investigation and procedures intended to assure procedural fairness. The guidelines will also reflect the expectations of the Victorian Commission for Children and Young People (CCYP) with respect to the investigation of reportable allegations by or on behalf of the head of an entity under the Reportable Conduct Scheme. The CCYP is given statutory functions to –
- oversee investigations.
 - where necessary, conduct its own investigations; and
 - investigate the handling of a reportable allegation by an organisation or regulator.¹⁷

Stage 4B: Plan the investigation

- 78 The rules of the model would specify the powers and authority of the investigator. A protocol approved by the governing board of Pathways would provide for each investigation to have an approved terms of reference. The function of the investigator would be to gather statements and relevant materials and may include recommending findings to the committee.
- 79 The committee and the investigator would prepare an investigation plan before any investigation started. The plan would identify what issues needed to be investigated, what evidence would be needed to investigate those issues, and the best way to obtain that evidence. This would include thinking about the witnesses who need to be interviewed.

¹⁷ *Child Wellbeing and Safety Act 2005 (Vic)*, s16(g) – (f)

Stage 4C: Conduct the investigation

Investigation and report

80 The CCYP has published an investigation guide¹⁸ in relation to a reportable conduct allegation that is helpful for investigations generally. An investigator under the model would observe the procedures discussed in the National Response Protocol under this heading.¹⁹ These procedures would inform the terms of reference set for the investigation. An investigator must observe procedural fairness towards the complainant and the respondent in the conduct of the investigation – 4D Consider the Evidence; 4E Complete the Report. The investigator presents their report with any recommended findings to the committee, which oversees the process.

In investigations required by the CCYP, the available categories of findings are –

- Substantiated
- Unsubstantiated – insufficient evidence
- Unsubstantiated – lack of evidence of weight
- Unfounded
- Conduct outside scheme
- Review of the determination

Stage 5: Assess the report and make determination

Consideration by the Complaints Committee

81 The power to make a determination about facts would rest with the Assessment Panel in referred cases, otherwise with the committee. The committee would consider the investigator's report and any recommended findings and any report from the Director and ordinarily make a finding of fact. It may also determine to refer the matter to the Assessment Panel for adjudication, for example if the allegations are contested. It would give notice of that referral to the respondent and the complainant and would also notify the CCYP of the progress of the matter if it was a reportable allegation. This would generally only occur when a respondent is alive and contests the allegations.

If a complaint against a living person is sustained, the committee would then make an assessment of the respondent's fitness and the risk they present. This assessment is reported to the Church Authority as a recommendation for action, if any, that should be taken in relation to the respondent.

¹⁸Guide for Organisations, Investigating a Reportable Conduct Allegation, version 1.0 June 2018 available on its website.

¹⁹NRP, commentary, p27 - 35

The function of the Complaints Committee

- 82 Under the model, the decision maker (to use an expression from CCYP material) will be either the committee once the investigator has collected all of the evidence and statements with a recommended finding to the committee or if the matter is referred, the Assessment Panel. The procedures stipulated in the National Response Protocol apply to those bodies when exercising that function. The standard of proof will be as stated in the protocol –

In determining whether the available evidence is sufficient to sustain an allegation, investigators apply the “balance of probabilities” as the standard of proof. This means that an investigator determines whether it is more likely than not that the abuse happened. A sustained finding is based on material that shows that all the facts necessary to establish the incident are made out to the reasonable satisfaction of the investigator as provided in *Briginshaw v Briginshaw*.

- 83 The committee can also be given the power to recommend to the Church Authority any steps that might reduce or eliminate the risk of misconduct either generally by Church personnel or in relation to the respondent by way of educational, training, counselling or mentoring program or by way of changes to any protocol, whether diocesan or under the rules of the model. That kind of recommendation would be advisory only and not binding on the Church Authority. The ultimate responsibility remains with the Church Authority.

Assessment Panel Procedures

- 84 If the respondent is still alive and contests a complaint, the Complaints Committee may refer the outcome of its investigation to an Assessment Panel. In these cases, the panel will make findings of fact and recommend action against the respondent that should be taken by the Church Authority.
- 85 The Assessment Panel in considering a matter referred to it would –
- (a) be obliged to act with fairness and according to equity, good conscience, natural justice and the substantial merits of the case without regard to technicalities or legal forms; and
 - (b) not be bound by the rules of evidence but may inform itself on any matter in such manner as it thinks fit. It would adapt its procedures in a sexual abuse matter to recognise child witnesses or witnesses that were vulnerable.²⁰
- 86 The Panel would have flexible powers:
- (a) It may regulate the proceedings of its meetings as it sees fit.
 - (b) It may hold a hearing at which evidence is adduced or submissions heard orally.
 - (c) It would be obliged to give the committee and the respondent a reasonable opportunity to adduce evidence and make submissions to the panel, including presentation of the complainant’s account; and where a hearing was held, it could permit the examination or cross-examination of witnesses.
 - (d) It would be obliged to give reasons for any determination and recommendation or direction, other than by way of directions in the course of an application, unless the determination was made by consent of the respondent and the committee.

²⁰The procedure and rules relating to children and vulnerable people prescribed under the *Criminal Procedure Act 2009* (Vic), Part 82, would offer useful guidance. This would reflect principle B of the NRP –

Provide a just and compassionate response, respecting the dignity and diversity of all involved, and ensuring inclusive and supportive process.

The purpose of a complaint handling process is to investigate a complaint to determine whether an incident has occurred, in order to make decisions about what protective and/or disciplinary measures need to be put in place and what the institution can do to better prevent similar incidents from occurring in the future. The purpose of a redress process is to determine ... measures such as a direct personal response (that is, an apology) from the institution, access to therapeutic counselling and psychological care, and monetary payments.

- Royal Commission Final Report, vol 7, p199

- 87 The Assessment Panel will comprise members with expertise in law, canon law, impacts of abuse (mental health professionals, ethics, human services and others with relevant expertise).
- 88 The Church Authority (e.g. the diocesan bishop or provincial of the religious institute) will be responsible for giving effect to any recommendations by the Complaints Committee or an Assessment Panel or any modification consistent with the facts found and the substance of the recommendations.

A determination by the Assessment Panel

- 89 The Panel's function would be to determine whether the allegations comprising the complaint have been made out on the balance of probabilities and if so to consider the fitness of the respondent to continue engaging in ministry and the risk, if any, they may present in so doing. The committee would recommend any action that should be taken by the Church Authority with respect to the respondent Church person, for example, counselling, reprimand, suspension or termination of employment or revocation of a faculty to engage in ministry, either permanently or for a specified period.²¹ It may also recommend the removal of the respondent from the Australian Catholic Ministry Register.
- 90 The Panel would deliver a written determination with reasons.

²¹Compare the NRP, p37 - 38

²²NRP, p28

- 91 Where the matter involves a reportable allegation that has been notified to the CCYP and therefore subject to its monitoring, the committee's determination also needs to be responsive to the expectations of the CCYP
- 92 The National Response Protocol states²⁴-
 Make the right of appeal to an external body available to all parties regarding the process and outcomes of responses to concerns and allegations. This may be facilitated by Australian Catholic Safeguarding Ltd. If the Church Authority has an established independent external review body, then it, too, can be utilised.
- 93 The rules for the model will provide for a right of review by an independent Review Board constituted by Australian Catholic Safeguarding Ltd.

Protection for office holders under the model

- 94 The Committee, the Director and Members of other panels established would all be appointed by the board of directors of Pathways. They would each operate independently of the Church and would have the benefit of an indemnity from each participating institution for their respective matters provided they acted in good faith and in the discharge or purported discharge of their duties under the model.

The Church Authority

- 95 The Church Authority would give effect to the recommendation of the committee or review board or any modification consistent with the facts found and the substance of the recommendations, and if not show cause why not.
- 96 If the investigation has been established as a canonical preliminary investigation and finds that there is a 'semblance of truth', the Church Authority must refer this finding to the Congregation for the Doctrine of the Faith and await direction on how to proceed in relation to the alleged perpetrator.
- 97 For the purpose of the process, the Church Authority will be the officeholder charged with the appointment of the relevant Church workers:
- the diocesan bishop for diocesan clergy, and for religious in respect of appointments given by the diocesan bishop
 - the head of a religious institute for religious
 - the priest in charge for lay Church workers in a parish.

²³CCYP Information Sheet No 8; compare the NRP at p35

²⁴NRP, Principle C, p15

Stage 6: Address and communicate outcomes

- 98 All parties will receive written communication advising of the outcome and will be given the opportunity to receive a copy of the full determination.

Stage 6A: Communicate with and support affected persons

- 99 Upon receipt of the outcome, the complainant and other affected persons will be offered support through the Care Coordinator or other relevant body as described in section 5.

Stage 6B: Communicate with and support affected communities

- 100 The Church Authority would liaise with the Director to inform the complainant of the steps taken by it to give effect to the recommendation.²⁵ It would also give notice to the respondent and to the Director. In an appropriate case where the public interest required, the Church Authority might make public the name of the respondent against whom action had been taken. An appropriate pastoral response to the relevant community would also be provided.

Stage 7: Continuous improvement

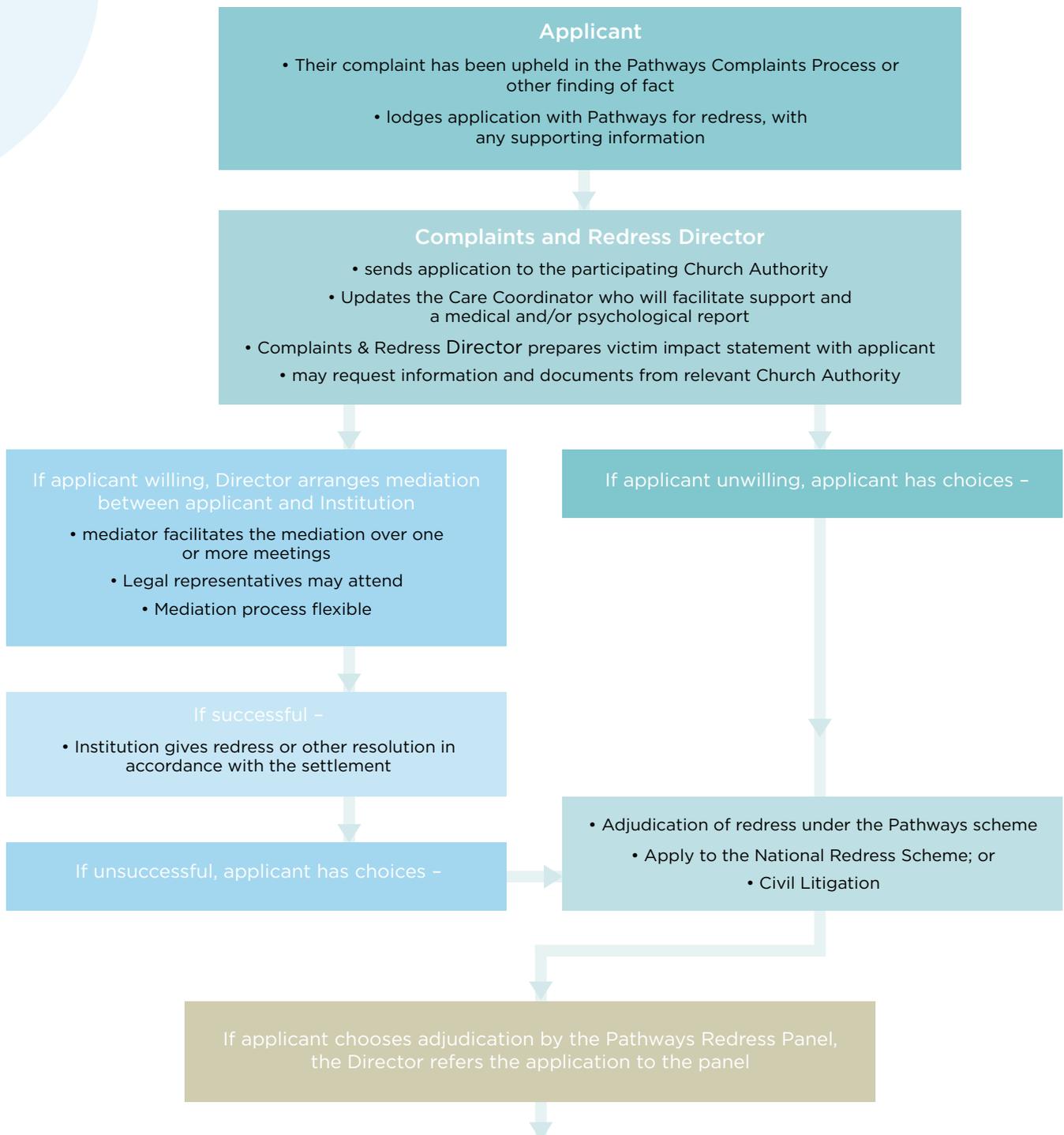
- 101 Consideration will be given to a procedure under which persons aggrieved by the way the process was managed in their case (but not the outcome) can be dealt with in a constructive manner.
- 102 In addition, Pathways would put in place a process of seeking feedback from the complainant and respondent following the conclusion of a particular matter.

Regular review

- 103 Regular and ongoing review will consist of:
- Statistics on outcomes (complaints upheld/not upheld, outcomes, matters dealt with etc)
 - Feedback from complainants on their experience of the process
- 104 The Church Authority will undertake the following actions:
- give notice of its decision to the Complaints and Redress Director and the Complaints Committee, the complainant and the respondent, including its reasons for any variation to the recommended action; and
 - regularly (annually?) release statistical information to the public about its decisions in these matters, which will be made anonymous unless it is necessary or desirable in the public interest to identify the respondent Church person.

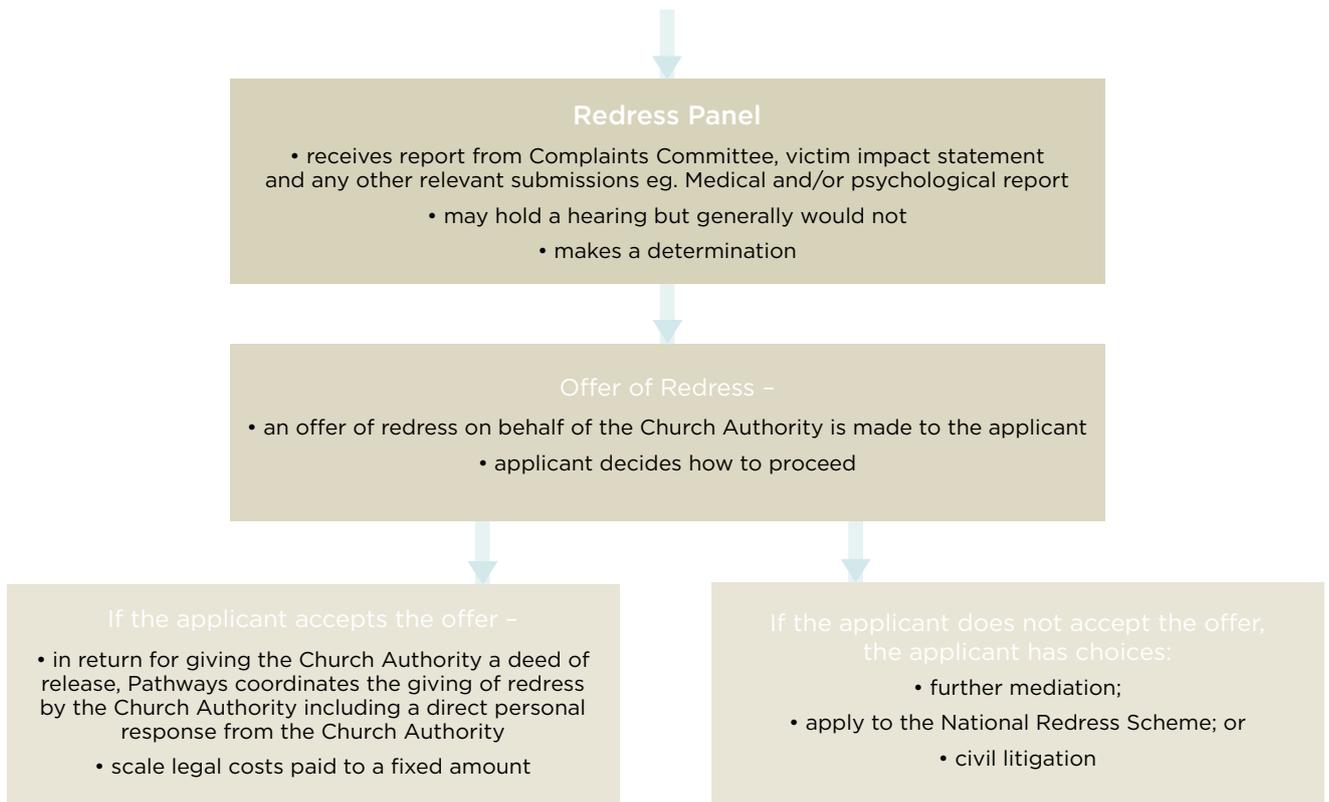
²⁵NRP, p40 - 41

5. Pathways Redress



Pathways Redress

Continued from previous page



Introduction

- 105 Under the proposed Pathways Model, a survivor can seek redress or other resolution of their claims against a participating diocese or religious institute (a participating institution) or a number of them. It is a process that would offer the opportunity to a survivor, through engagement in without-prejudice discussions, to achieve a settlement or an adjudicated offer of Pathways redress. This redress process is separate from the complaints process administered by Pathways.
- 106 Pathways would be the operator of the Pathways Redress Model, with the benefit of an indemnity from each Church Authority for their respective matters provided Pathways acted in good faith and in the discharge or purported discharge of their duties under this model.
- 107 The Complaints and Redress Director would manage the application for redress in accordance with published terms of reference agreed to by the participating institution with Pathways.²⁶
- 108 The Terms of Reference of the model would set out the framework for the provision of redress to an eligible survivor either by agreement under the settlement stage or by an adjudicated outcome.

Guiding principles

- 109 The Pathways Model would implement the principles set out in the National Response Protocol; in particular, it would adopt the following.

(A) Survivor focused

The model would be committed to ensuring that a survivor's rights and choices as an applicant are respected and supported.²⁷ They are under no obligation to use the model.

The Complaints and Redress Director would consult with the survivor, as an applicant, on their priorities and needs and their choices will be at the centre of the Pathways process. The model would offer the applicant support during the process.

(B) Trauma-informed

The approach of Pathways is trauma-informed, that is to say, it is underpinned by a clear understanding of the nature and impacts of child sexual abuse. It seeks to avoid, further harm or re-traumatisation.

(C) Accessible

With limited exceptions, the model is to be accessible to all the following:

- those whose allegation of abuse has been upheld by the Pathways complaints process
- those whose allegation of abuse has been upheld by a criminal conviction
- Those whose allegation of abuse has been admitted by an offender
- Those whose allegation of abuse has been accepted by a Church Authority

Consultation with the Church insurer will better inform any decision in this regard

²⁶NRP, p44 - 45

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

- Information about processes and the decision-making by a Church Authority or entity about a Church entity's processes of response is transparent, clear and readily accessible;

²⁷Ibid.

- 110 Except with the agreement of the relevant Church Authority applications for an offer of redress may not be submitted where the person –
- (a) has already made an application for an offer of redress under the model²⁸
 - (b) is actively prosecuting legal proceedings²⁹ against a participating institution in a Court for compensation in connection with the abuse that is or may become the subject of an application for an offer of redress or if legal proceedings seeking contribution or indemnity against a participating institution for the payment of compensation or damages in respect of that abuse are afoot; or
 - (c) has applied to the operator of the National Redress Scheme for redress and that application has not been withdrawn or an offer made under that scheme is still open for acceptance or has been accepted; or
 - (d) has previously by the operation of the National Redress Scheme Act released the Church Authority from liability in connection with the alleged abuse or any other deed of release.

Application for an offer of redress

- 111 A person would apply to Pathways for an offer of Pathways redress to be given by one or more Church Authorities as applicable and would agree to the application being dealt with in accordance with the Terms of Reference of the Redress Model.³⁰ Pathways, through its Complaints and Redress Director, would operate the Redress Model independently of any Church Authority. The model would facilitate the provision of redress or other resolution by the Church Authority by giving applicants the opportunity for a resolution process and/or an adjudication process.

Scope of abuse covered

- 112 The process covers a wide range of misconduct by Church personnel including
- neglect or maltreatment, and physical, psychological or sexual abuse of children or vulnerable adults causing physical or psychological harm
 - other acts of a sexual nature which may be an offence under Victorian legislation and where the act does not occur in the workplace of a lay employee
 - adult boundary violations (i.e. consensual sexual relations) which cause physical or psychological harm
 - sexual misconduct, such as grooming or possessing child pornography, as defined in the Crimes Act 1958 (Vic)

Interim care and assistance

- 113 The National Response Protocols include interim care and assistance at the redress stage; however, Pathways will incorporate this support at commencement of a complaint subject to specified limits.

²⁹A survivor who had instituted proceedings could be eligible to apply if they agreed to a moratorium for a specified period on their proceedings.

³⁰The application form could be relatively simple.

Medical / Psychological Assessment

114 The Care Coordinator would facilitate an independent assessment with an experienced private psychiatrist qualified in medico-legal reports. This report can be helpful in supporting the applicant through resolution of their case by providing a statement of facts by the medical practitioner of the history given and their observations. Secondly, the report contains the medical practitioners expert opinion of the impact of abuse and any recommendations regarding future treatment and care.

Victim Impact Statement

115 Complainants would be encouraged to write a victim impact statement with the Complaints and Redress Director and support from their personal supports and treating practitioners. The purpose of a victim impact statement is to allow the affected individual to describe to the panel and the Church Authority of the impact the abuse has had on them. This statement is an opportunity to participate in the process and ensure that their voice is heard. Whilst presenting this information can be empowering, and helpful for some in their recovery, not all complainants may wish to engage in forming a victim impact statement.

Resolution Process

116 Pathways will give applicants the opportunity to engage in without-prejudice negotiations with representatives of the Church Authority through a resolution process facilitated by a mediator appointed by Pathways. This would be subject to the survivor wishing to so engage. If not, the application could be referred for adjudication by the Redress Panel at the election of the applicant. Each party's right to negotiate would need to be respected. The Church Authority would need to observe timeliness.³¹

117 If agreement is reached, in exchange for a deed of release the Church Authority would provide redress or other compensation in accordance with the agreement. The settlement sum agreed in mediation would not be restricted to the amount that may be awarded by the Redress Panel.

³¹Ibid., p40 -

Specific steps can be taken to foster a compassionate and just response. These include:

- ensuring an ongoing commitment that the process chosen will be completed as quickly as possible and avoid unreasonable delay;

³²Ibid., p39 -

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

- **applying a flexible “no wrong door” approach.** This means that regardless of the pathway(s) chosen by a person, Church Authorities and entities must clearly set out all available elements of response and help the person to access these.

³³The exception could be where the hearing is principally to determine the contribution between participating institutions

Choices available to the applicant

118 If the applicant is unwilling to participate in the resolution process, or if the resolution process is unsuccessful, the applicant would have choices³²-

- adjudication of redress by the Pathways Redress Panel; or
- apply to the National Redress Scheme
- civil litigation

Adjudication Process through Redress Panel

119 If the applicant chooses adjudication of their application under the Pathways Model, the Complaints and Redress Director would refer the application to the Redress Panel. The Complaints and Redress Director would be entitled to be heard on any application in a role assisting the panel.

The Redress Panel

120 The Redress Panel could be appointed from a pool of assessors by the convenor of the pool. Its presiding member would have appropriate legal qualifications and experience.

121 The Redress Panel -

- (a) would be obliged to observe the principles of natural justice and give the applicant and each Church Authority a reasonable opportunity if they wished to adduce any evidence or make any submission relevant to the application
- (b) would not be obliged to, and except in special cases, would not hold a hearing at which evidence is adduced or submissions heard orally and may proceed wholly or partly on the papers; however, a survivor's wish to tell their story in a hearing could be respected
- (c) would not be obliged to and, except in special cases, would not give an applicant or Church Authority any opportunity to examine or cross-examine witnesses³³
- (d) would be obliged to give reasons for any determination and recommendation, other than by way of directions in the course of an application, unless the determination is made by consent of the applicant, each Church Authority and the Complaints and Redress Director.

The applicable matrix for assessment

- 122 Pathways Redress Panels will use a publicly available matrix to set appropriate payments and would also include provision for care services and a direct personal response.

The elements of redress

- 123 The model would facilitate an adjudicated offer of redress by a participating institution comprising one or more of the following –
- (a) a redress payment; and
 - (b) a counselling and psychological component which, depending on where the person lives (as stated in the person's application for redress), consists of:
 - (i) access to counselling and psychological services provided under Pathways Victoria; or, if the Redress Panel so determined,
 - (ii) a payment to enable the person to access counselling and psychological services provided outside Pathways Victoria.
 - (c) a direct personal response from each of the Church Authorities that are determined to be responsible for the abuse of the person.³⁴

Apportionment of responsibility between participating institutions

- 124 Where more than one Church Authority is responsible for the alleged abuser having contact with the applicant and for any resulting redress, liability could be determined according to the extent of responsibility of each Church Authority, that is to say, a percentage determined by the Redress Panel.³⁵

Effect of a determination

- 125 A determination of the decision maker under the Pathways Redress Model would not be binding as against a Church Authority except for the purposes of the Church Authority providing Pathways redress to the applicant. It would not be binding as against the Church person alleged to have abused.

The offer of redress

- 126 If an offer of redress is made to the applicant and accepted by them, the Church Authority would provide the applicant with a direct personal response if included in the offer of redress. Acceptance of the offer would give rise to a deed of release and a legally enforceable contract between the applicant and the applicable participating institution.

Review

- 127 Applicants and Church Authorities will have the right to an independent review of Redress Panel adjudications.

Legal costs

- 128 There would be a tariff of an acceptable legal costs payable under the model to an applicant's legal representatives when the application for redress was successful.³⁶

Confidentiality

- 129 No confidentiality provisions would apply to survivors. However, Church Authorities would respect survivors' privacy and confidentiality. Information about Pathways complaints and outcomes would only be available for child protection and professional standards purposes.

³⁴This is consistent with the National Redress Scheme for Institutional Child Sexual Abuse Act 2018, s16(1), and the National Response Protocol, version 4, October 2020, p38 - 39, The elements of response.

³⁵This is provided that, by the agreement of those Church Authorities, the hearing of any question of apportionment would not delay the making of a determination and resultant offer of redress in favour of the applicant.

³⁶Ibid., p39 –

Church Authorities must ensure that people seeking a response receive independent advice, including legal advice, and support about their options and the processes involved.

6. Care Coordination

- 130 A success of the Melbourne Response has been its commitment, through Carelink, to support survivors. A service modelled on Carelink will be available to coordinate ongoing funded psychological care when clinically identified for survivors whose complaint is upheld through Pathways, and for others who are referred to it by a Church Authority.
- 131 The provision of Care Coordination services would be integrated into the Pathways model and underpin the way in which victims and survivors engage in the model.
- 132 Services could be provided up to a specified limit or higher with the consent of the participating entity. Care Coordination would also be available to non-member institutions who may wish to utilise this as a fee for service.
- 133 From the first contact with Pathways, a Care Coordinator would be appointed to accompany a complainant who has suffered abuse and to arrange support during the process and beyond as needed, subject to the consent of the participating entity. The coordinator would promote the complainant's recovery and wellbeing by coordinating the provision of care treatment and support to them. From the point of engagement, the Care Coordinator would help their client to engage with the Pathways process and coordinate referrals to external health service practitioners under an interim care and assistance program. This service would be at the expense of the relevant Church Authority.
- 134 The Care Coordinator would be a regular and frequent point of contact for the complainant during all stages of the Pathways process. At key stages, the Complaints & Redress Director would also liaise with the complainant, particularly in relation to communications about the complaints or redress process.
- 135 The Care Coordinator would normally be given a copy of the disclosure report and, if the complainant agrees, could liaise on the complainant's behalf with the Complaints & Redress Director. In this case, the Director could send a copy of all the complainant's notices and letters to the Care Coordinator so that the latter receives them in time to give the complainant support when they receive them. The Director could also copy the complainant's support person with those notices and letters.
- 136 Holistic care integrates a positive practice approach based on providing assistance and support to clients in their individual healing and personal recovery. The process of healing involves building personal capabilities and strengths to construct a valued and meaningful life. The areas of human need associated with a purposeful and valued life include forming connections and meaningful relationships, finding a sense of belonging and community, building self-efficacy through learning and personal development, and feeling in control of one's own life and future, inner peace and spirituality.

Support person for the complainant

- 137 The Director would also encourage the complainant to appoint a support person to act for them during the process. This may be a friend or colleague in whom the complainant can place trust and confidence.³⁷

Support person for the respondent

- 138 The Director would encourage the respondent to appoint a support person to act for them during the process. This may be a friend or colleague in whom the respondent can place trust and confidence. The respondent's support person is not expected to act and should not act as the respondent's legal adviser or advocate in the matter. Depending on the matter, the respondent Church person should not act for themselves. In their own best interests, they should seek legal representation.

Within the Church, good governance will rest on clear structures and accountabilities, a commitment to ecclesial and civil governance principles, a supporting ethical culture, effective communication, right relationships, consequences for wrong actions and good leadership.

— *The Light from the Southern Cross, Promoting Co-Responsible Governance in the Catholic Church in Australia, 2020*

- 139 If the respondent agrees, their support person can liaise with the Director on their behalf and be given a copy of the complaint. The Director would send a copy of all notices and letters that they send to the respondent to the respondent's support person so that the latter receives them in time to give the respondent support when they receive them.

Care for the respondent

- 140 The Pathways model does not provide Care Coordination or therapeutic supports to the respondent.

We are exploring how the model of Ministry to Priests in the Archdiocese of Melbourne and like models in the other dioceses in Victoria might be deployed to ensure this care and support to clergy and others during the process. The National Response Protocol calls for the Church Authority to ensure that –

the respondent is provided with access to and the options of appropriate support, advice and supervision from the time of the notification.

- 141 The Complaints and Redress Director may, as circumstances require, refer a respondent to a body such as Ministry of Priests for them to arrange care and support for the respondent during the process.

³⁷NRP, p21

Transparency in relation to its own members is almost non-existent in terms of accountability to the members of the Catholic Church even at parish level or diocesan level, other than a financial account from time to time. A fundamental question as to culture that we've seen in other institutions, be they faith based or not, has been an acceptance of transparency both in terms of decision making and in terms of outcomes and what's happening. Is it too harsh a comment to say that the Catholic Church in Australia has yet to embrace the notion of transparency as a matter of good practice for a faith-based organisation in the context of Australian society?

- Robert Fitzgerald, Royal Commissioner, 6 February 2017

7. Governance

142 Mission-led governance is at the heart of the governance entity.

143 Consideration must be given to an entity that operates autonomously and reports back to the members. It is proposed that Pathways Victoria operates as a functionally independent entity and that the governance structure includes diverse lay men and women with professional expertise in areas such as governance, law, education, child protection, human services, safeguarding, finance and regulation. The proposed entity would meet with the member representatives twice a year.

144 Consideration will be given to a not-for-profit company, limited by guarantee, to be formed with its own board of directors and functional independence from the Church.

Pathways membership of the operating entity

145 Membership of Pathways will be open to Victorian dioceses and Catholic Religious Australia members.

146 The operating entity will be governed in accordance with its Constitution.

147 Pathways services will be available to all Catholic entities and, by mutual agreement, to other entities operating in Victoria.

Pathways terms of reference

148 The Pathways Model and its process for resolution and complaints will be underpinned by a framework with publicly available policies and internal operating protocols.

8. Conclusion

149 This document provides a summary of a proposal for consideration by the Provincial Working Group members to implement the National Response Protocol and replace the current models of the Melbourne Response and Towards Healing for managing complaints and redress. The new Pathways Model maintains elements of both models that are of value.

“It will take time for Church leadership to gain the trust of people. Anger towards leadership is palpable, not only evidenced at the Royal Commission but also more generally in the community. Heartening to see the commitment made by leaders to take seriously the recommendations made by the Royal Commission regarding governance and the inclusion of more women in decision-making.”

– Sr Maree Marsh csb 2017, *Reflections from the Royal Commission into Institutional Child Sexual Abuse*

150 **It is proposed that:**

- Care Coordination services be integrated into the Pathways Model and underpin the way in which victims and survivors engage in the scheme with Carelink services continuing for existing clients.
- The complaints process outlined above be adopted.
- The Pathways Model operate for a term of three years with a review before the end of the third year of operation or earlier if required.
- The Pathways Model operate as an autonomous entity, that the governance structure include diverse lay men and women with professional expertise in governance, law, education, child protection, human services, safeguarding, finance and regulation, and that a company limited by guarantee be considered.
- An independent Assessment Panel be established within the Pathways Model to adjudicate on complaints referred to it from the Pathways Complaints Committee.
- There will be occasions when the Commissioner for Children and Young People will need a particular investigation to satisfy requirements under its legislation.