

**ROYAL COMMISSION OF INQUIRY INTO ABUSE IN CARE**

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**SYNOPSIS OF ORAL CLOSING SUBMISSIONS**

**FILED ON BEHALF OF  
THE BISHOPS AND CONGREGATIONAL LEADERS OF THE  
CATHOLIC CHURCH IN AOTEAROA NEW ZEALAND**

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## **Introduction**

1. Madam Chair, Commissioners. Last week we heard extensive evidence of the redress provided by the Catholic Church in New Zealand. Today is an opportunity to summarise that evidence in the spirit of the Inquiry's focus: what has gone wrong for survivors in the redress process, and what can be done to make it right?
2. These submissions will broadly address the issues and themes set out in the Inquiry's scoping document regarding the investigation into redress processes.

## **A. INTRODUCTORY MATTERS**

### **Acknowledgements**

3. Before I begin the submissions, I want to offer words of thanks on behalf of the Church:
  - (a) First, to the survivors. Your evidence and experience is founded in abuse that should never have occurred. Your experience of harm, the resulting pain and your insights have been heard. Because of this, the Church will be a safer place, and these will be used to improve and inform redress going forward.
  - (b) Second, to the survivor networks and advocates who have given statements at this hearing. You, and other individual and collective advocates for survivors, have held the Church to account, and the Church thanks you for that.
  - (c) Third, to Dr Thomas Doyle and the witnesses for the Anglican Church and the Salvation Army. The leadership of the Catholic Church has been listening intently to the evidence and experiences you offer.
  - (d) Fourth, to counsel assisting and the Commissioners. This is a mammoth task, and the questions asked of our witnesses were thought-provoking and appropriately forward-focused.
4. The Church is seeking the same thing as the Inquiry: the best outcomes for survivors and the shaping of appropriate redress responses for survivors, noting that one size will not fit all.

## **Evidence regarding other issues outside of redress**

5. As a preliminary point, we note that there was considerable evidence presented to the Inquiry last week that discussed other areas, such as the nature of clericalism and possible causes of systemic issues within the Church. You have heard Cardinal John Dew agree with Dr Thomas Doyle that clericalism is a systemic issue within the global Church. It is true here in Aotearoa New Zealand.
6. To borrow a phrase from the leaders of the Salvation Army during this hearing, the Catholic Church's leaders in New Zealand are not going to "duck and weave" those issues – they can be, and should be, further explored as part of the wider investigation into the Catholic Church.
7. The Catholic bishops and congregational leaders anticipate that there will be a considerable volume of evidence filed for future hearings, and following other requests from the Inquiry to respond to these matters. A substantial volume of material has been provided to the Inquiry to date that is relevant to these issues.
8. In light of the ongoing Catholic Church investigation, which is scheduled to have its first public hearing later this year, the closing submissions today will focus on redress.

## **Response to the Church's apology**

9. There has been a significant response in the media to Cardinal John's apology last Friday for the harm which has been caused by the Church in New Zealand. It has been dismissed by some as a stunt, or as insincere.
10. As Cardinal John acknowledged in his apology, the Church is very aware that it has no right to forgiveness. It also acknowledges that it cannot expect that survivors will accept its contrition. The Church is concerned, however, that survivors listening to the media may think that this is the first time that the Catholic Church has acknowledged or apologised for the harm it has caused.

11. In 2002, the Bishops publicly expressed their deepest regret and made an apology.<sup>1</sup> Church leaders have done so on a number of occasions since then – and will continue to do so both collectively and individually. These apologies are made to all survivors and also made to individuals and their whānau as part of redress. The apologies have acknowledged the gravity of the harm which has been done.

## **B. LOOKING BACK: CHURCH'S APPROACH TO REDRESS TO 2020**

12. It is a sad fact that the Church has had extensive experience with disclosures of harm and the need for redress. The evidence of the last week has sought to provide a snapshot to the Inquiry of the key developments of the Catholic bishops and congregational leaders in responding to this harm since 1985.

### **Preliminary issues**

1. *The extent of the records held by Church authorities*

13. It is acknowledged that there is a lack of records of disclosures of harm prior to 1985.
14. While some records are held (and the details provided to the Inquiry), it is accepted that there would have been disclosures of harm prior to this for which there were not records kept, or where records have been destroyed. The early records that are held do not generally record requests for redress as it would be understood today.
15. Since 1985, the volume of records of disclosures of harm and requests for redress has increased. This has particularly been the case since the early 2000s. However, record keeping has historically been variable within Church authorities and between different parts of the Church. Extensive volumes of this data and material, and the associated policies have been disclosed to the Inquiry.

2. *Structure of the Catholic Church*

16. As the evidence has amply demonstrated, the Catholic Church is not a single entity. In New Zealand, the Catholic Church authorities represented at the Inquiry include 49 different authorities, of very differing geographical sizes, memberships, finances and organisational structures. It is also a global Church of more than a billion members,

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1 For example <https://www.catholic.org.nz/about-us/bishops-statements/pastoral-letter/> and <https://www.catholic.org.nz/about-us/bishops-statements/the-protection-of-children/>

spread throughout the world and headed by the Pope. There is both independence and interdependence.

17. This is significant for redress for a number of reasons, including:
- (a) Responses to disclosures around the world differ considerably. As Dr Doyle's evidence noted, for any financial component of redress to be secured from the church, victims and survivors in the United States must sue.<sup>2</sup> They do not have a "redress process" in America. That is very different to approach adopted in New Zealand.
  - (b) The size and sophistication of different Church authorities vary considerably, as do their administrative and organisational resources.
  - (c) The dioceses and congregations are all financially autonomous and independent. There are significant differences in the asset bases and annual financial resources of different authorities within the Catholic Church. This impacts on the resources available to respond to the financial aspects of redress.
  - (d) As noted in the evidence last week, canon law exists as a framework that guides the response to disclosures.<sup>3</sup> However, it is more relevant for disciplinary matters (particularly the discipline of priests), rather than for redress.<sup>4</sup>
  - (e) The extent of records of harm differ between authorities. A number of smaller congregations have no records of ever receiving a disclosure of sexual or physical harm or a request for redress. As a result, they typically do not have their own redress policies.
  - (f) There is a significant degree of coordination in the response to disclosures by the Catholic Church in New Zealand. A protocol (*Te Houhanga Rongo – A Path to Healing (APTH)*) being agreed between all the bishops and congregational leaders in a country is unusual within the Catholic Church globally.<sup>5</sup> This coordination has increased over time, with all bar one of the Church authorities also using the National Office for Professional Standards (**NOPS**) to coordinate investigations into allegations of sexual harm by clergy.

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2 Dr Thomas Doyle's evidence at 543. References to "evidence" in these submissions are to the draft transcripts provided by the Inquiry – references to the filed witness statements will be distinguished accordingly.

3 Dr Thomas Doyle's evidence at 536.

4 *Ibid.*

5 Cardinal John Dew's evidence at 805.

3. *Nature of evidence filed for public hearing*

18. In order to outline some of the experiences of church authorities in detail, evidence was filed from a small number of witnesses, intended to demonstrate some of the variety within the Church. In the time allotted for a public hearing, the briefs filed could only represent a small number of Church authorities. In addition, evidence was sought from other witnesses by the Inquiry, which was provided.
19. Four days of evidence, necessarily, cannot capture the full diversity of approaches taken by Catholic entities to responding to disclosures. As a result, a number of specific approaches have not been discussed. Nor could it cover all the relevant information in depth.
20. We note that, in addition to the briefs of evidence prepared for this hearing, there has been a significant volume of both historical policies and factual data provided to the Inquiry. This material demonstrates both the policies adopted (individually and collectively) and the approaches different Church authorities have actually taken in responding to disclosures.<sup>6</sup> It is highly relevant to the Inquiry's consideration of the Church's previous and current approach to redress.
21. We also note the Inquiry's intention that there will be panels of experts, hui and other fora in which these matters will be discussed. Te Rōpū Tautoko anticipates that the Catholic Church has expertise relevant to these discussions and it wishes to be an active participant in these processes. Equally, should the Inquiry request further information on key matters – such as Catholic engagement with the Māori and Pasifika communities – it can be provided.

### **Redress process**

22. There are two strands of the Catholic Church's response to a disclosure:
- (a) The response to the survivor or complainant.
  - (b) The actions taken in respect of the respondent:

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<sup>6</sup> For example, a number of the predominantly Australian-based congregations have had significantly different approaches to responding to disclosures. For an extended period, the Sisters of Nazareth used a support approach that they called "the Commitment". The Hospitaller Brothers of St John of God also had an early, and unique, redress process.

- (i) First, as a type of disciplinary process for the alleged offender/respondent (or, where deceased, the process of ensuring the correct identification of the individual, to the extent possible).
- (ii) Secondly, in terms of the ongoing responsibility a Church authority has towards the respondent.

23. Sitting alongside the response to a disclosure is safeguarding – for an individual respondent when they are accused or found to have harmed someone, and also to ensure the future safety within the Church.
24. This part of the submission seeks to succinctly summarise the evidence of these processes, and should be read in conjunction with the “Catholic Church Response to Complaints of Abuse: Overview” chronology.<sup>7</sup>

### ***Evolution of the Redress Process: APTH and NOPS***

#### *Responses before 1985*

25. As Cardinal John acknowledged and reported to the Anglophone Conference of Catholic Bishops in 2008,<sup>8</sup> his view was that the approach to redress and to cases of abuse before 1985 were not well handled. People were often not believed. Offending priests were transferred and offending continued, and the problem of offending was not well understood. As Cardinal John said, that was a terrible time and should never have happened.<sup>9</sup>
26. There was a lack of guidelines around redress, and any requests were likely dealt with on an ad hoc basis.

#### *First coordinated steps – from 1987*

27. The first coordinated steps in providing redress emerged in the late 1980s and early 1990s. In 1987, the New Zealand Catholic Bishops’ Conference (**NZCBC**) released a pastoral letter to priests about sexual misconduct. From 1990 to 1992, the NZCBC sought advice about a national protocol for responding to complaints of sexual abuse and sexual

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7 This was filed with the Inquiry on 31 July 2020 as part of Notice to Produce No. 2 and handed up during the opening statements. A summary of this document is available on the Tautoko website <https://tautoko.catholic.org.nz/wp-content/uploads/2020/12/Chronology-Catholic-Church-Response-to-Abuse.pdf>

8 Cardinal John Dew's first witness statement at [51].

9 Cardinal John's evidence at 799.

misconduct, and a “provisional protocol” was established in 1993.<sup>10</sup> Similarly, in 1995, the Congregation Leaders Conference of Aotearoa New Zealand (**CLCANZ**) developed congregational guidelines for cases involving sexual abuse.

- 28.** Diocesan and some congregational Protocol Committees were created, and there was a growing awareness within the Church of the need for appropriate redress measures.

### *A Path to Healing*

- 29.** As the evidence has shown, *APTH* is a living document. It has gone through a number of revisions since it was first formally adopted as the national protocol in 1998.<sup>11</sup> *APTH* and its amendments have sought to respond to feedback from survivors and their advocates, to different tensions within the redress process, and to legislation both civil and canonical.<sup>12</sup> The development has been iterative, seeking to incorporate best practice from faith-based and state responses from other jurisdictions, and incorporating a variety of expertise throughout the years of revision.

- 30.** It is submitted that it is to the Church’s credit that it has a public national protocol in place. For many years, this has provided a degree of clarity for survivors about the process that will be adopted and what they can expect. As Cardinal John explained, the level of consistency and co-ordination is a unique feature of the Catholic Church in Aotearoa.<sup>13</sup> Counsel for survivors have acknowledged the desirability of a written protocol.<sup>14</sup>

- 31.** The scope of *APTH* is limited to allegations of sexual harm against clergy and religious. However, as the material assembled in Tautoko Briefing Paper No 1 demonstrates,<sup>15</sup> many of the Church authorities model their non-sexual complaint responses on *APTH*.

### *National Office for Professional Standards*

- 32.** Recognising that the structure of the Church can be a barrier for survivors, NOPS provides a central coordination point for allegations of sexual harm against clergy and religious. The evidence and Redress Chronology chart the development and evolution of the NOPS office.

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10 Cardinal John Dew's first witness statement at [59].

11 CTH0002007.

12 For example the most recent proposed additions and amendments to *APTH*: EXT0015647; Virginia Noonan's witness statement at [43] to [51].

13 Cardinal John Dew's evidence at 805.

14 See ANG0004744, letter from Cooper Legal to Reverend Michael Hughes at 2; and Sonja Cooper's witness statement dated 1 March 2021 at [12] approving of the process in *APTH* 2020.

15 EXT0015579.

33. NOPS is administered by an office that is separate and independent from any particular Church authority. For many years, it has also provided a review process for the decisions of Church authorities.<sup>16</sup>
34. Of particular significance, in 2016, all dioceses and congregations represented by the Mixed Commission (with the exception of the Society of Mary) agreed to have investigations into allegations conducted through NOPS. In doing this, it replaced investigations being undertaken on a more ad hoc basis through dioceses' or congregations' protocol committees.
35. Reflecting a number of the tensions in play in the redress process, some of the changes made to the NOPS processes, including those suggested by some survivors, have not been universally welcomed.
36. For example, NOPS introduced independent investigation of allegations (responding to the criticism that the Church should not be seen to "investigate itself"). Contractors with investigative and/or Police experience are presently used to conduct these investigations – an approach that Dr Doyle agreed was appropriate.<sup>17</sup> However, it is acknowledged that some survivors now find this approach to be too investigative.

#### *Decisions on specific redress responses*

37. The final decision about the response rests with a Church authority – the bishop or congregational leader.
38. Over time, there have been increasing amounts of independent input. Broadly, there has increasingly been a committee considering the complaint (and increasingly, the independent investigation of the complaint) and making a recommendation to the decision maker. These were typically called protocol committees and over time, the committees have consolidated into regional groupings. Some of these committees have had survivor representatives on them, to provide a survivor's view.<sup>18</sup>
39. The present committee reviewing complaints and investigation reports (for all entities bar the Society of Mary) is Complaints Assessment Committee. It recommends whether a

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16 Given the enhanced role of NOPS in 2017, this was adjusted to provide a more independent review process via the NSPSC.

17 Dr Thomas Doyle's evidence at 545.

18 For example, previous Wellington and Auckland Protocol Committees.

complaint should be upheld or not. It makes recommendations regarding redress options. Options for forms or types of redress are usually discussed with survivors during the process.

### ***Response to the respondent***

40. Historically, much of the Church's approach to allegations against priests and religious was inappropriate. It has been acknowledged in evidence that in the past, offenders were removed from parishes or districts and transferred between postings following complaints. This is both acknowledged and deeply regretted.<sup>19</sup>
41. In more recent times, when a complaint of harm has been made against a living respondent, a risk assessment is undertaken. In addition, there was evidence from the Archdiocese of Wellington and the Society of Mary that where the allegations are serious, the individual is usually stood down from ministry during the investigation.<sup>20</sup>
42. Where a complaint is upheld, there are a number of options available to Church authorities. The details of these, and the names used to describe them, vary between entities and on the religious status of the individual.
- (a) For a diocesan priest, the evidence from the Archdiocese of Wellington is that they will be removed from ministry, akin to being removed or dismissed from employment.<sup>21</sup> Priests can also be "dismissed" from the clerical state.<sup>22</sup> In other situations, a priest can ask to be "dispensed from the obligations of celibacy", sometimes called being laicised. Dismissal and any dispensation can be requested by a bishop; however, the decision is made by the Holy See.<sup>23</sup>
- (b) Similar approaches are taken in congregations. Where a complaint of sexual misconduct against a minor is upheld, the Society of Mary removes a member from ministry.<sup>24</sup> It was Fr Duckworth's evidence that the Society does not remove known or convicted offenders from the Society itself however. It is his strong opinion that it is safer for the community, and for the offender, that he be kept within the Society of Mary and closely supervised by that community.<sup>25</sup>

### ***Safeguarding***

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19 See Cardinal John Dew's evidence at 797; Br Peter Horide's evidence at 565.

20 Cardinal John Dew's oral evidence at 807; Fr Timothy Duckworth's evidence at 741.

21 Cardinal John Dew's evidence at 806.

22 Cardinal John Dew's evidence at 817. This is sometimes incorrectly referred to as being "defrocked".

23 Cardinal John Dew's evidence at 806.

24 Fr Timothy Duckworth's evidence at 742.

25 Fr Timothy Duckworth's evidence at 743.

**43.** The safeguarding work of NOPS, currently led by Virginia Noonan, has been extensive and is continually under review:

- (a) The National Safeguarding Guidelines were adopted in 2017.<sup>26</sup> These Guidelines set out the expectations of Church leadership in responding to complaints of abuse and preventive measures to ensure a safe Church. They provide a guide to the Catholic community about how they can develop a safeguarding culture. Ms Noonan has referred to these Guidelines as her de facto job description.<sup>27</sup>
- (b) A national safeguarding policy was approved in 2018, which is the foundation of the Safeguarding Culture Standards.<sup>28</sup>
- (c) A self-review tool has been developed to assist all Catholic entities, large or small, to undertake self-assessments of their own safeguarding practices. The tool is deliberately simple to assist entities to begin identifying safeguarding risks, and the measures that are needed to isolate or eliminate those risks.<sup>29</sup>
- (d) Another important recent aspect of safeguarding that has recently been approved by the National Safeguarding and Professional Standards Committee (**NSPSC**) is a safeguarding review framework.<sup>30</sup> This follows a pilot of a review framework carried out in 2020. The review process provides for NOPS to assess the implementation of the safeguarding practices endorsed by NOPS, and to provide support and advice where needed. The intention of the review framework is also to identify any barriers or obstacles to the successful implementation of safeguarding practices and ultimately a safeguarding culture.

#### **Key features of Catholic Church redress responses**

**44.** There has been considerable evidence provided regarding the types of response Catholic Authorities have provided to survivors. As requested, the Inquiry has been provided with the presently known data regarding the responses to all known disclosures of abuse.

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26 EXT0000228  
27 Virginia Noonan's witness statement dated 29 January 2021 at [10].  
28 Ibid at [11] and [12].  
29 At [13]; CTH0002053.  
30 EXT0015648.

45. A number of general comments can be made:

- (a) The experience of Church authorities is that survivors wish to be listened to and to ensure that what has happened to them does not happen again.<sup>31</sup> Some survivors want nothing more than this.<sup>32</sup>
- (b) It is important that the bishop or congregational leader apologises to the survivor.<sup>33</sup> This is done face-to-face, where that is what a survivor wants. Often, it is also provided in writing.
- (c) It is important that counselling is offered, and it has been commonly provided to survivors where they have wanted to pursue it.<sup>34</sup>
- (d) Pastoral support is often provided. This takes a wide range of forms, as outlined in the evidence of Fr Duckworth, Cardinal John and Sr Sue France.<sup>35</sup> This may be emotional or spiritual support. It can be practical support.<sup>36</sup> It often takes the form of additional payments for specific activities or services.<sup>37</sup> Typically, the Church authorities' records do not record these as expressions of payment or record the value of the services.
- (e) The Inquiry suggested to Cardinal John that the Church's own Catholic Social Services could be a source of therapeutic and practical support in this regard.<sup>38</sup> This will be considered.

46. Financial redress is often provided. Seeking a financial payment has become increasingly common over time.<sup>39</sup> The known records show considerable variation between sums paid. The unique circumstances of each complaint, the harm caused and Church entity involved make comparisons difficult. However, it is clear from the data and evidence that approaches taken to payments differ between Church authorities and across time:

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31 For example, Cardinal John Dew's evidence at 803 and Fr Timothy Duckworth's evidence at 734 and 783.

32 Cardinal John Dew's first witness statement at [133]; Sr Susan France's first witness statement at [56].

33 Cardinal John Dew's evidence at 823; Fr Timothy Duckworth's evidence at 735.

34 Cardinal John Dew's first statement at [114].

35 Cardinal John Dew's second witness statement at [55] to [65]; Sr Susan France's second witness statement at [37] to [42]; Fr Timothy Duckworth's second witness statement at [3] to [28].

36 See for example Fr Timothy Duckworth's second witness statement at [25](a), describing specific pastoral redress given to an elderly complainant; and Br Peter Horide's evidence at 621.

37 See Cardinal John Dew's evidence at 822 about providing a new bathroom for a survivor: "it was something that he needed and I saw it was a way of us doing something for him"; Sr Susan France's second witness statement at [16].

38 Cardinal John Dew's evidence at 873.

39 Cardinal John Dew's evidence at 821.

- (a) As the evidence showed, in the early 2000s, there was discussion involving bishops and some congregational leaders about what an appropriate payment might be. Expert advice was sought. These discussions were not binding on any of the participants and the subsequent actions of the participants varied; some Church authorities adopted this approach for some time and did not increase their payments significantly.<sup>40</sup> Others did increase their level of payments.<sup>41</sup> Other Authorities have, on occasions, provided significantly greater financial redress.
- (b) Prior to preparation for the Inquiry, the details of the financial redress made by Church authorities were not known to each other.<sup>42</sup>
- (c) Church authorities see the payments as “ex gratia” rather than compensation. It is acknowledged that it is not possible to compensate someone for the harm done in any fundamental sense. Payments were made as an acknowledgement of harm, or as a contribution towards the individual’s healing in a pastoral gesture.<sup>43</sup>
- (d) Approaches to assessing the sum to be offered differ. In 2002, the Society of Mary considered a range of factors to be taken into account and set out “rough bands” of payments to be considered.<sup>44</sup> The Marist Brothers had a form of cap.<sup>45</sup> Others entities assessed each case on a case-by-case basis. It was acknowledged by Cardinal John that while the details are recorded, he has not kept a comparative record of previous payments he has made.<sup>46</sup>

**47.** The engagement of lawyers by Church authorities in the redress process is relatively limited:

- (a) The historical documents record Church authorities using lawyers in less than 25% of known disclosures.

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40 Br Peter Horide's evidence at 574.

41 Fr Timothy Duckworth's evidence at 750.

42 Br Peter Horide's evidence at 575.

43 Cardinal John Dew's evidence at 822.

44 CTH0001749 "Calculating the quantum of settlement payments"; Fr Timothy Duckworth's evidence at 736.

45 Br Peter Horide's evidence at 574.

46 Cardinal John Dew's evidence at 825; Br Peter Horide's evidence at 574.

- (b) The records show that some authorities usually use lawyers to respond to matters; others typically do not. Others use lawyers to respond when they are approached by lawyers.<sup>47</sup>
- (c) Some entities have changed their approach over time. Fr Duckworth's evidence was that the Society of Mary used lawyers early in the process and he did not consider that this had been helpful.<sup>48</sup>

## Legal influences on Catholic Church redress process

### *The role of the Holy See and Canon Law*

- 48. The redress processes of the Catholic Church in New Zealand are necessarily informed by canon law and the Holy See. Recent developments in canon law have enhanced reporting requirements – Pope Francis' "*Vos estis lux mundi*" was explored in evidence with Cardinal John and his recent implementation of it.<sup>49</sup> This document established new norms for the global church to combat sexual abuse and to ensure bishops and religious superiors are held accountable for their actions and inaction.<sup>50</sup>
- 49. *Vos estis lux mundi* and other Vatican directives must be adhered to by the Catholic Church in Aotearoa, and *APTH* has been updated (and will be further updated) to comply with these directives.

### *Legal framework considered for claims for financial redress*

- 50. The documents outline that when a increasing number of claims for financial redress began to be made, a number of church authorities sought legal advice.<sup>51</sup> This typically set out the legal framework relevant to historic claims of this nature. The role and impact of the Limitation Act and Accident Compensation Corporation (ACC) scheme were outlined.
- 51. The evidence shows that legal structures had some influence in determining the money that might be offered to a survivor as an ex gratia payment.<sup>52</sup> Church authorities were aware that it was unlikely that successful litigation could be brought against them, given the time between the events alleged and the complaint coming forward and the ACC bar. This appears to have influenced the ex gratia quantum.

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47 Br Peter Horide's witness statement at [38].

48 Fr Timothy Duckworth's evidence at 753.

49 CTH0001458.

50 Cardinal John Dew's evidence at 809; Cardinal John Dew's second witness statement at [78].

51 CTH0001383

52 CTH0001469

52. It does not appear that these legal mechanisms were used to prevent access to financial redress. There are some references to these legal mechanisms in correspondence between lawyers, in context of negotiations over redress amounts.<sup>53</sup> However, there is limited evidence that claims were rejected or declined due to limitation issues. Nor do the documents demonstrate any form of coordinated litigation strategy to prevent financial redress being received by survivors.
53. Indeed, it appears that there has rarely been litigation in relation to historical abuse. There appears to be fewer than 15 claims filed in court involving Catholic Church entities.<sup>54</sup> In one case, the litigation brought by the survivor was unsuccessful and subsequently the Church authority made an offer in any event, providing support to the survivor.<sup>55</sup>

### **C. THEMES AND ACKNOWLEDGEMENTS REGARDING CURRENT REDRESS PROCESS**

54. This section of the submission responds to areas of focus in Counsel Assisting's questions and records the acknowledgements where there are areas for reflection and improvement.

#### ***Barriers to accessing redress***

55. There was frank acknowledgement from the Church's witnesses that there have been – and remain – significant barriers to redress within the Catholic Church.
56. It has been acknowledged by the Pope and Church leaders in Aotearoa that clericalism creates barriers to accessing redress and healing.<sup>56</sup> This can be more profound in some cultural groups, especially when combined with other taboos around sexual matters in those cultures. It was acknowledged by Cardinal John that such issues may exist in the Pasifika communities present in Aotearoa and that they need to be addressed.<sup>57</sup>
57. There are other barriers to Māori, Pasifika peoples and persons with disabilities. There are significant Māori and Pasifika Catholic communities and Cardinal John acknowledged in his evidence that more should be done to engage with them. Cardinal John committed to placing an agenda item on the timetable for the next NZCBC meeting to discuss how the Church can do better for Māori survivors, as a first step to explore this further.<sup>58</sup> He

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53 See e.g. the letter CTH0003348 that was put to Br Peter Horide during his evidence at 609.

54 Submission No. 5 in response to Notice to Produce No. 2, 22 July 2020, at Appendix A.

55 Sr Susan France's first witness statement dated 18 September 2020 at [64] to [71].

56 <https://www.catholic.org.nz/resources/statement-from-nzcbc-president-on-papal-letter-on-abuse/>

57 Cardinal John Dew's evidence at 863.

58 Cardinal John Dew's evidence at 866.

also committed to further work for Pasifika peoples and people with disabilities. Cardinal John noted that Tautoko has ongoing research being undertaken on experiences of abuse suffered by Māori and people with disabilities in Catholic settings.<sup>59</sup>

58. *APTH* is flexible with regards to matters of cultural practice. It allows for *ifoga*, as Fr Duckworth described, and for other cultural practices of healing. However, more concrete engagement is needed. Ms Noonan also confirmed that cultural responsiveness needs to be improved.

### **Concerns regarding NOPS**

#### *The need for an investigation*

59. A frequent line of questioning focused on the level of investigation required for redress within *APTH*. It was asked by Counsel Assisting why an investigation was necessary at all, and whether the principle of truth in *APTH* was in fact the correct focus. Some survivors have been left with the impression that the investigation has been an inquisition.
60. The Church notes that there are competing factors to balance here and sets these out below.
61. It is acknowledged that it is important for an individual to be believed. As Fr Duckworth said, if someone comes forward to disclose harm, they will have been hurt by someone.<sup>60</sup>
62. One of the reasons for requiring an investigation to determine *who* has harmed the survivor is the disciplinary process that must be prompted for the living member of the Church when an allegation is made against them. Those individuals also have rights of natural justice that must be respected.
63. It is also vital from a safeguarding perspective that, as much as possible, the correct individual is identified. In order to ensure that a person will not offend against anyone else, that person and the circumstances that allowed the abuse to occur must be identified. In cases of respondents that are alive and in active ministry, some level of investigation is absolutely necessary in order to safeguard against future harm.

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59 Cardinal John Dew's evidence at 874.

60 Fr Timothy Duckworth's evidence at 735.

- 64.** Where the respondent is deceased, a level of investigation is still required to ensure that the correct person is identified. This is for a number of reasons, including safeguarding. Identifying the individual may also outline the level of knowledge the Church authority had at the time about any offending. This is an important part of the Church's understanding of its own flaws. The Holy See now also requires any potential cover ups to be reported for investigation. Tautoko notes that Dr Doyle spoke of the need to obtain corroborating information to get a full picture of what happened, including where the perpetrator was deceased.<sup>61</sup>
- 65.** Failure to identify the respondent is not a barrier to redress. The Church's historical records show that on a significant number of occasions, the respondent might not be identified by name. The records show many of these survivors have been provided with forms of redress.
- 66.** Eligibility for a claim in the Australian National redress scheme is one of "reasonable likelihood". This is defined as "the chance of the person being eligible for the scheme's outcomes is real, and is not fanciful or remote and is more than merely plausible". This threshold requires some level of verification of a claim – noting the language of "verification" used by the Salvation Army may be more appropriate.
- 67.** As Ms Noonan stated last week, investigations are undertaken sensitively and with care – where the Church has failed to meet that standard, it apologises.<sup>62</sup>

#### *Options for redress processes*

- 68.** It is acknowledged that the involvement of whānau and support people in the *APTH* process needs promotion, and additional consideration is needed around how to make the process more accessible for complainants.

#### *Pausing for a Police investigation*

- 69.** There was some criticism of the *APTH* process pausing while a Police investigation takes place.
- 70.** Tautoko understands that this policy was adopted in conjunction with Police, who proposed it. Church authorities encourage individuals to approach the Police with allegations and are very concerned not to jeopardise a prosecution.

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61 Dr Thomas Doyle's evidence at 545.

62 Virginia Noonan's evidence at 656.

71. More information can be provided in relation to these discussions with Police if that would assist. Tautoko encourages the Inquiry to engage with Police on this matter, and of course, welcomes any recommendations and guidance.

#### *Provision of information*

72. Survivors gave evidence of their frustration when they asked for the investigation report but were not provided with all the information.
73. This frustration is acknowledged. NOPS tries to err on the side of disclosure.<sup>63</sup> However, there is personal information in these reports about the respondent, other individuals and potentially other survivors. In some cases, this is intensely personal information relating to individuals who are not the respondent. Personal information is governed by Privacy Act obligations to protect personal information, and these are binding on NOPS and Church authorities.
74. It is also acknowledged that there are frustrations from some survivors that it may be that they are not told about the outcomes for the respondents or told in detail.
75. The Church welcomes recommendations to government and guidance from the Inquiry on this topic, noting the different interests involved.

#### ***Concerns regarding Church authorities***

76. Delays in redress, lack of coordination, and variance in quality of communication to survivors were all mentioned in the survivor evidence as issues experienced, especially following the provision of the recommendation from the Complaints Assessment Committee to a Church authority. This was acknowledged by Br Peter Horide in relation to the Marist Brothers and he expressed his regret that there had been considerable delays in recent times.<sup>64</sup> The Brothers have taken steps to improve the resourcing of their Professional Standards team to improve response times.
77. As the evidence has shown, the financial redress made by the dioceses and congregations has varied.

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63 Virginia Noonan's evidence at 642.

64 Br Peter Horide's evidence at 576.

- (a) As result of this Inquiry, there is now a body of information on the previous approach of Church authorities and thought is being given to how this can be used in the future to improve consistency of approach.<sup>65</sup> It is acknowledged that there may be limits on this, reflecting the differing financial positions of the Church authorities.
- (b) The Ministry of Social Development's guidelines or "bands" for redress is not something that has been a feature for the Catholic Church at a general level. As noted, some congregations use a form of matrix.<sup>66</sup> Br Peter Horide, who had considered many overseas examples, said that a "matrix" or banding system has a lot to offer.<sup>67</sup> The Church welcomes guidance on this.

**78.** The role and responsibility of the bishop within his diocese was something that was explored in much detail last week. Lines of accountability are complex and are affected by canon law and other directives from the Vatican, together with New Zealand legislation and the interaction with the education sector. In addition, local practice in New Zealand has shown a more collaborative approach between bishops and congregations. Many dioceses rely on congregations for much of the pastoral work of the diocese and have done so for much of their history. This is an area which invites reflection from the Church, as it acknowledges that it has not been easy for survivors to navigate.

#### **D. LOOKING FORWARD: THE FUTURE OF REDRESS IN THE CATHOLIC CHURCH**

- 79.** Looking forward, the Church is committed to change.
- 80.** Increased knowledge in trauma-informed responses will continue to be a priority for everyone engaging with survivors. As is clear from the evidence, our witnesses and the wider Church have been engaging with the recommendations of the Australian Royal Commission, and welcomes the guidance and recommendations made by this Inquiry.
- 81.** Should there be hui and roundtables held by the Inquiry throughout this year before the Inquiry issues its report on redress, the Church seeks to participate in those.

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65 Cardinal John Dew's evidence at 825; Virginia Noonan's evidence at 677-678.

66 Fr Timothy Duckworth's evidence at 736.

67 Br Peter Horide's evidence at 575.

### ***Independent redress scheme***

- 82.** Many of the questions posed by Counsel Assisting and the Commissioners related to the merits of an independent redress scheme. The Inquiry will be aware that Australia has established a national redress scheme, and that the Australian Catholic Church has joined that scheme. The scheme, we understand, is subject to a “second anniversary” review.
- 83.** This is something that will invite careful consideration by Tautoko and the wider Church in Aotearoa. A proposal from the Survivor Network is being considered by the bishops and congregational leaders in relation to their respective processes.
- 84.** At this point, Tautoko would like to highlight a number of factors for consideration in such a proposal.

### ***Benefits of independence***

- 85.** The Church has heard the call of survivors, including from the Survivor Network and SNAP in their opening statements, for some form of independent body with the authority to receive, verify, and investigate complaints of abuse from survivors, refer them for prosecutions where appropriate, access records, and determine appropriate and consistent redress.
- 86.** The Survivor Network’s proposal also seeks that the independent body be responsible for audit and oversight of institutions who care for children, ensuring that they have policies and procedures in place to protect children from harm. The body would investigate and hold institutions accountable where they fail and provide a public audit report to Government.
- 87.** The Church acknowledges the strength of having a body independent of the Church handling these processes. All of the witnesses who gave evidence on behalf of the Church had given some thought to the idea, with the key benefit being for survivors to feel more comfortable in seeking redress from a separate entity to the one that has harmed them:

- (a) Br Peter Horide acknowledged that the survivor witness “John’s” example of seeking redress from the Marist Brothers was a very compelling example of someone who may feel far more at home with an independent redress scheme.<sup>68</sup>
- (b) Fr Duckworth spoke powerfully of the moral reasons why the Society of Mary has chosen to handle redress themselves and why they choose not to “outsource” the process. However, he reflected on a question from Commissioner Erueti and acknowledged there may be times where the Society of Mary taking responsibility for redress may be contrary to a survivor’s aspirations and desires.<sup>69</sup>
- (c) Cardinal John said he had heard the call from victims and survivors for an independent body, noting the perception of an “in-house” investigation and that a survivor could see it as beneficial that it is not someone within the Church they are dealing with straight away. Similarly, he acknowledged it may, at times, be a quicker process for a survivor.<sup>70</sup>

*Parity and consistency*

- 88.** Another theme is a desire to increase consistency. It is acknowledged that survivors have found the lack of consistency within the Church to be difficult, and frustrating. As the evidence and data provided by Tautoko shows, dioceses and congregations vary in their approaches to financial and other forms of redress.
- 89.** Part of that is because, as Cardinal John has stated, everyone who disclosed harm is different and unique, as is the circumstances of that harm. Each survivor is approached by him and other Church leaders on that basis. He gave the pastoral example of providing the funds to renovate a person’s home, as that what was most needed by that person at the time. Another reason is a recurring theme of the Church: it is not one entity, but many different entities under the same umbrella.
- 90.** These are tensions inherent within the Church, and these have been a difficult balancing act. The Church acknowledges that an independent redress scheme should provide for consistency for each survivor, regardless of what faith they are or where they grew up.

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68 Br Peter Horide's evidence at 613.

69 Fr Timothy Duckworth's evidence at 733 and 781.

70 Cardinal John Dew's evidence at 817 and 868.

*What role for faith-based institutions?*

- 91.** However, it is important to the Church that an independent redress scheme does not result in a 'one size fits all' approach.
- 92.** A possible downside of independence is distance from the realities of the harm caused and a potential lack of accountability. The Church does not want to "outsource" this accountability to an independent body.<sup>71</sup> It wants to acknowledge the harm and take steps to change it – this requires a level of engagement in the details and a deep acknowledgement of the harm caused.
- 93.** Dr Doyle spoke of the unique concept of spiritual damage, or harm. That concept was powerfully echoed by Fr Duckworth in his evidence. There is a risk that spiritual harm may not be fully considered in a secular state-based redress scheme. However, this must be taken into account when talking about harm. As Dr Doyle said:<sup>72</sup>

It is the one on one compassionate contact between the leader of the diocese or the religious order and the victims. It takes time, it takes effort, it's very, very painful, but these should be the most important people in the church at that time.

- 94.** In addition, and separate to questions of spirituality, a number of survivors seek connection or reconnection with the Church as part of their healing. If there is to be an independent redress scheme, how this dimension of healing can be fostered and sustained needs to be considered.
- 95.** There is a deep moral responsibility for the harm caused and the Church does not want to shirk these responsibilities. That was a key feature of Fr Duckworth's evidence:<sup>73</sup>

I don't want to say go out there you know, some extraordinary well skilled group will deal with you and we'll walk away and say how do we...what do we care, you get dealt with by this independent authority. We have to go there, we have to say we got it wrong, we didn't supervise you as well as you should have been supervised and we allowed terrible to do very bad things to you on behalf of our men, we are deeply shamed by this and we're very sorry for what's happened to you, because they have to be told that, they have to have that pastoral care, they have to be listened to and believed and understood and wrapped around and looked after.

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71 Fr Timothy Duckworth's evidence at 734.  
72 Page 530 of the transcript.  
73 Page 730 of the transcript.

- 96.** It is important to Fr Duckworth and other Church leaders that the responsibility and accountability is not outsourced, and that it remains an option for survivors to engage with their faith and their Church when seeking redress. Cardinal John said that if the Church has hurt these people, then the Church needs to be there to listen and be involved.<sup>74</sup> That same point was made earlier by the Salvation Army and the Anglican witnesses. No one wants to pass off responsibility or accountability.
- 97.** On a more pragmatic level, to make sense of the Church, an independent body needs a level of knowledge of the Church. Ms Noonan, the current director of NOPS, noted that her team was very open to exploring the discussion of an independent body. She considered that there would be real strength in faith-based institutions having a role in the design of such a scheme, given the institutional knowledge needed.<sup>75</sup>

*The consequences for respondents*

- 98.** One key issue to consider is how an independent redress scheme is connected with or interacts with decisions made about respondents. We have heard extensive evidence about the safeguarding policies now in place in the Church for individuals and on a national scale. How would an independent scheme interact with these criminal, canonical and disciplinary processes?
- 99.** As Anglican Archbishop Richardson said in his witness statement, it seems unlikely to be appropriate for such a body to be making decisions about a respondent.<sup>76</sup> Tautoko agrees with that, noting the ongoing pastoral obligations and responsibilities that the Church has to both survivors and respondents, and the particular canon structures that govern this.
- 100.** There is also a key questions regarding whether the threshold for claiming redress in an independent scheme would remain connected to the threshold for taking disciplinary action against the respondent. If the evidential threshold in the independent scheme is very low, with little or no investigation: what additional action needs to be taken for respondents who are still alive and in active ministry?
- 101.** Proper safeguarding must still be implemented and natural justice is required. These processes require some level of investigation or verification.

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<sup>74</sup> Cardinal John Dew's evidence at 817.

<sup>75</sup> Virginia Noonan's evidence at 714.

<sup>76</sup> WITN0265001 at [134] to [136].

- 102.** The relationship between any independent redress scheme and the consequences for respondents is a complicated area. It is one where the Church welcomes the Inquiry's thoughts.

*Scope of redress scheme*

- 103.** The scope of any independent redress scheme must also be carefully considered. The Australian Redress Scheme is confined to those who have experienced institutional child sexual abuse before 1 July 2018.
- 104.** The New Zealand Inquiry is much broader in its definition of abuse. *APTH* goes further still and allows for redress to be claimed for sexual misconduct or, for want of a better term, "celibacy and professional boundary violations". This includes acts that are not criminal in any way. It seems unlikely that an independent redress scheme should encompass breaches of religious vows or promises where it involves consenting adults.
- 105.** Again, the scope of any scheme will be a key matter for the Inquiry to consider.

*Concluding comment on an independent scheme*

- 106.** To conclude here, Tautoko notes that the tensions and considerations outlined above in these sections of the submissions echo the same tensions outlined in the opening submissions:
- (a) balancing a desire for consistency in the processes used, and the need for flexibility to respond to the needs of an individual;
  - (b) the need for independence and robustness in the processes, and a desire from many complainants for connection with the organisation and personal engagement with Church leadership;
  - (c) how to balance independence and accountability;
  - (d) ensuring consistency and enabling compassion for the individual; and
  - (e) responsibilities of bishops and congregational leaders to the priests and members of congregations and the need for accountability and safeguarding within the Church.

- 107.** When the Inquiry engages with the question of any independent redress scheme, Tautoko asks that the Inquiry considers these issues.
- 108.** Madam Chair, you indicated the Commissioners would welcome the bishops and congregational leaders engaging and discussing how any independent redress scheme might work, and they welcome that as well. Church leaders will give deep thought to these matters and the discussion will continue within the Church.

## **E. NEXT STEPS**

- 109.** While welcoming any recommendations that the Inquiry gives at any time, the Church is not waiting. Barriers to accessing redress and healing must be removed. The Church acknowledges that that can start now.
- 110.** Tautoko has identified the key themes from the survivor hearing. Reflections on these themes have been provided to NOPS and the NSPSC. In the meantime, a substantial proposal document has been prepared by Tautoko that reflects on the key issues and identifies areas for immediate change and improvement, while also looking forward to the Inquiry's recommendations. Immediately following the conclusion of today's hearing, the paper will be circulated with the intention it is reviewed by the bishops, congregational leaders and other advisors.
- 111.** Tautoko wishes to reiterate the Church's commitment to this Inquiry and welcomes the Inquiry's ongoing engagement. It also wants the Commissioners to know that Tautoko is working very hard towards change, as well as looking forward to hearing the Inquiry's recommendations.

## **F. CONCLUSION**

- 112.** Lastly, Commissioners, it is appropriate to conclude by going back to the beginning of this redress hearing: the survivor hearing last year.

**113.** The Church has heard those survivors' voices, and acknowledges that the harm caused and the ways in which the redress process has not assisted some survivors. It is committed to action.

**Signed:**

A handwritten signature in blue ink, consisting of several loops and strokes, positioned above a horizontal line.

Sally McKechnie/Alex Winsley

Counsel for the Bishops and Congregational Leaders of the  
Catholic Church in Aotearoa New Zealand

**Dated:**           **29 March 2021**