

Closing submissions – 17 February 2022

Marylands Hearing

**Filed by Te Rōpū Tautoko on behalf of the Bishops and Congregational Leaders of the
Catholic Church of New Zealand**

Madam Chair, Commissioner Alofivae

1. Over the past seven days this Royal Commission of Inquiry has heard evidence from survivors and survivor advocates. All throughout, members of the Catholic Church have attended and have been listening to their experiences, and have reflected deeply on the evidence and their written statements.
2. Te Rōpū Tautoko, the group representing the Catholic Church in Aotearoa New Zealand in the Royal Commission, acknowledges the courage of the men and women who have shared their experiences and the experiences of those who have been harmed in Marylands, St Joseph's Orphanage, and the Hebron Trust.
3. The Brothers and the Church have heard your pain. They have heard your anger and your frustration.
4. Br Tim and Archbishop Paul have appeared in this hearing. I now echo their profound apologies to all who were hurt and harmed while in care at Marylands and the Hebron Trust. As they and the wider Church acknowledges, these places should have been places of nurture and safety for vulnerable young people. They were not.
5. That Marylands was a place of sexual, physical and psychological abuse is horrific. That Bernard McGrath was able to corrupt the Hebron service, intended to assist vulnerable homeless young people, is appalling.
6. The Church apologises to you, to your families, whanau, and to the hundreds of co-workers who served at these institutions. This harm should never have happened, and it is to the great shame and deep regret of the Church that it has.

Extent of abuse

7. It is clear, from previous Police investigations, the redress process and the evidence at this hearing that abuse at Marylands was widespread, and caused by many offenders. It is the darkest chapter of the Catholic Church's history in New Zealand.
8. The abuse involving the Brothers of St John of God in New Zealand accounts for 16% of all allegations of sexual abuse reported to the Catholic Church in New Zealand. One man, Bernard McGrath, accounts for approximately 5% of all sexual abuse allegations.

How was abuse able to continue for so long?

9. One of the more challenging questions for the Royal Commission will be to determine how harm at Marylands and Hebron was able to go undetected for such a significant length of time.
10. To modern eyes, with the extent of the harm revealed, it seems unfathomable that lay teachers, staff, social workers, government officials, parents and Church leaders were unable to detect and prevent this abuse from occurring.
11. There is no one simple answer to this question. Evidence given throughout the hearing shows that factors include the following:
 - (a) Historical societal attitude towards victims of abuse, belief of complainants and attitudes towards those in positions of authority; there has been evidence of boys not being believed by their families, and by Police when they sought to make complaints.
 - (b) This was an era of great respect for authority figures and for many, it was unthinkable that abuse could be taking place in care institutions. Trust was placed in the denials of adults, rather than the words of children. The Catholic Church acknowledges the dangers of clericalism and the role religion played in reinforcing some of the beliefs about the infallibility of priests and brothers.
 - (c) The lengths perpetrators went to hide their abuse; evening staff at Marylands who gave evidence had suspicions but did not see offending. At Hebron, it appears from the evidence at this hearing that McGrath sought to hide his offending from other young people and adults.
 - (d) The particular and distinct vulnerabilities of victims at Marylands and Hebron:

- (i) Most of the boys at Marylands were separated from family support, many with no families or dysfunctional homes; they had learning or developmental issues and were vulnerable to threats.
 - (ii) The young people at Hebron were on the margins of society, which had lead them to be on the streets.
- (e) Shame, fear and the barriers to the boys raising complaints – fear that they would not be believed or fear that they would be further harmed.
- (f) Systemic failings by regulators, social workers and Church authorities, including insufficient and incomplete investigation of complaints, or complaints not being followed up.
12. It is clear from the evidence given by survivor witnesses that for many children and young people at Marylands and Hebron were one part of a dysfunctional system of care which ultimately allowed abuse to foster and abusers to prosper. The Church takes responsibility for the failings of its part in that system.
13. The safeguarding processes within the Church during the Marylands period were rudimentary and insufficient. The evidence of Br Tim is that within the Order, during this period, complaints were brought to the Prior of the community. What is now clear from the record is that for periods in the history of Marylands, the Prior himself was an abuser.
14. Br Tim accepted in evidence that the evidence supports that there was a culture of systemic abuse at Marylands. The wider Church shares Br Tim's shame that this was the case.

Opportunities to prevent abuse were missed

15. What is clear from this hearing is that opportunities to prevent abuse were missed.
16. In 1977, an anonymous complaint was made by an adult about Bernard McGrath and Roger Moloney. It did not name the children alleged harm or detail the behaviour. And tragically in hindsight - Br O'Donnell did not believe this allegation.
17. The assumptions made about these letters, the decisions about how to respond to them – and to destroy the letters – would never be made today. In 2003, when the extent of

McGrath's offending was becoming clear, Br O'Donnell, who destroyed the documents, acknowledge that he should not have dismissed the allegations.¹

18. Both Br Timothy Graham and Archbishop Paul Martin have expressed deep regret at some of the decisions of their predecessors.
19. There remains some debate about what the historical record shows about who knew what within the leadership of the Order, and when. The detail of the scant historical record – and what inferences should be drawn from it - will be addressed in formal closing written submissions to the Commission.
 - (a) From these records, the actions of the Order's leadership in August 1992, when the further allegations were made against McGrath in 1992, suggest that the leadership at that time was not seeking to cover up his offending.
 - (b) For the Diocese, we are not aware of records that show any Bishop of Christchurch was aware of any allegations against Bernard McGrath prior to him being prosecuted in 1992 and 1993. The Diocese records record knowledge of allegations relating to Bernard McGrath in 1992, when allegations of offending at Hebron began. The first complaint directly to a Diocese or Bishop was after the prosecutions.
20. The historical records do amply demonstrate two things:
 - (a) During the time at Marylands was operating, good records were not kept of allegations and responses to allegations of harm. Br O'Donnell acknowledged in 2016 that his practice had been to not record these matters.²
 - (b) There was a lack of knowledge between generations of leaders within a congregation or diocese, as well as between different parts of the Church. This created risks that patterns of behaviour and warning signs were not identified.
21. This has allowed abuse to go undetected for far longer than it should have, and for that, the Catholic Church deeply and sincerely apologises.
22. Our modern culture and understanding of abuse has changed. Church authorities in New Zealand have since the 1990s collectively implemented and followed A Path to

¹ NZP0027743-0008.

² CTH 0018408-0005.

Healing which lays down the policies and processes for reporting abuse and implementing safeguarding (the Australian equivalent is called Towards Healing). The National Office for Professional Standards has been implemented and allows survivors to participate in an independent complaints process. The professional capacity of this organisation continues to grow.

23. Many Church authorities also implement their own additional policies and processes around abuse and safeguarding. The redress process continues to shift towards being survivor-focused, and modern record-keeping is comprehensive and detailed. Survivors are encouraged to report abuse to police, but in line with common practice, institutions do not approach the police without consent, unless the abuse involves a minor.
24. For many it has not changed enough, and this Royal Commission will go some way to install further change. There is still work to do.

Effective redress

25. Commissioners, in our opening we proposed some key themes for this hearing to explore. One of those themes was effective redress, and what that looks like for survivors.
26. We heard a substantial amount of evidence from survivors regarding the adequacy of redress. They explored issues both with the quantity and quality of redress provided by the St John of God Brothers.
27. Many of the challenges the Church – and other institutions – face in providing effective redress were highlighted in evidence at this hearing.

What form should support and redress take?

28. Some survivors sought a closer and supportive relationship with the Order. There was evidence about what Br Peter Burke had discussed with them and evidence that they later felt let down. Dr Mulvihill described this as a “second injury”.
29. There are other survivors who have a deep mistrust of the Order, and the Church. We heard evidence from Br Timothy Graham about how often survivors want no ongoing relationship at all. For others, what they want from the Order and the Church changes as they progress through their lives.

30. Against this, there is a call for consistency. There was evidence in this hearing where survivors were comparing settlements and responses.
31. These tensions make implementing a flexible, fair, and effective model of redress very challenging.

How should redress be provided to vulnerable survivors?

32. The vulnerability of survivors through the redress process itself was clear in the evidence this week.
33. Some of the survivors who gave evidence shared their recollections of the redress process and their understandings of what had occurred. One was distressed that he had not received an apology – when the record shows that he did and does not recall. The Church moved quickly to re-provide that document to him. Other survivors did not have the same understanding of the processes as the Order did, and this led to raised expectations, then confusion and in some cases, significant and understandable anger.
34. Learning lessons about how to keep survivors safe as they engage in these processes is of vital interest to the Church.
35. There is also a question of how best to provide financial redress.
36. There was extensive evidence at this hearing about the ineffectiveness of financial redress. This is particularly striking here, as the amounts paid by the Order are the highest of any organisation in New Zealand.
37. Dr Mulvihill spoke of the dilemma faced in the redress process of how to ensure payments made to survivors are delivered in the best way possible for them. The Church endorses her view that there is a tough balance to be struck between ensuring individuals have the autonomy and freedom to use monetary compensation in a manner they see fit, and ensuring redress is effective in providing long term support. Many witnesses gave rueful evidence about how they had chosen to spend their redress funds and in most cases, little if anything remained from these funds.
38. Evidence in other Royal Commission hearings demonstrates the difficulties and misunderstandings that can arise when attempts are made to control how redress is delivered and what it is spent on.

A lack of trust

39. It is clear from the evidence of survivors that the harm caused to them, both the abuse suffered, and the secondary injuries, has caused them to lose trust in institutions such as the Church. The destruction of trust then extends to other institutions, such as concerns that the Police are controlled by the Catholic Church and impacts on efforts to improve.
40. This presents a real challenge in engaging survivors in genuine redress.
41. The Church acknowledges that the trust for these people has been fractured by the actions of Church members and that rebuilding it may take generations of work. But this work must start now.
42. The Church encourages the Inquiry to recommend external measures for the Church and other institutions. These will assist the Church in demonstrating progress to survivors in a way which is independent and genuine. It is clear that a system of redress entirely internal to institutions is no longer a realistic way forward. Indeed the Commission's redress report highlights that.
43. The Church urges the Commission to continue investigating what effective redress would look like from a survivor perspective. There has not been enough time in this hearing to fully explore what survivors want and need from the redress process, and the Church will continue to engage collaboratively on this process.

Looking forward

44. Commissioners, much of what we have learned during this hearing has rightfully and properly focused on what has happened in the past, and the findings we can draw from this evidence. We must now shift our focus to looking forward, and determining what lessons we can take from this hearing, and how they can be applied to the modern Catholic Church.
45. The Church is focused on safeguarding for all and participating in the creation of a system of redress for those seeking to heal from harm. The Church will continue to address and remove barriers for survivors reporting abuse.
46. Te Rōpū Tautoko are meeting with what is known as the "Mixed Commission" next week, which is a combined meeting of the Bishops and Congregational Leaders in New Zealand. They will be discussing this hearing and reflecting on those key themes

referred to in our opening statement, as well as other key themes to have emerged in the past week. These leaders are deeply concerned and hopeful that the work of the Royal Commission translates into concrete actions that they can take as a result.

47. The Church, through TRT, has steps already underway, and the Commission's redress report and this hearing are key moments to solidify these actions in concrete ways.

Supplementary evidence and clarifications

48. Commissioners, there was some evidence produced during the hearing which needs to be re-examined against the documentary record and information held by Te Rōpū Tautoko and the St John of God Brothers. An additional brief of evidence will be provided by Br Timothy Graham as indicated last week.
49. This clarification is an important part of the inquisitorial process this Royal Commission is undertaking.
50. The Church is not seeking to challenge the stories or evidence of survivors. Where we hold additional information that survivors may not have access to, we are able to provide that to assist with their understanding of their own journey and process. We have done this informally through Counsel Assisting this week, where we felt it could assist. Where some facts, figures, or dates are inconsistent, we will help the Inquiry ensure that information is updated for its report.

Conclusion

51. As we conclude this part of the Royal Commission, we acknowledge the work of Commissioners and their staff for bringing us together in these toughest of times. The Catholic Church will continue to engage with, and work with, the Royal Commission, the Crown, and other faith-based groups, towards a just resolution for survivors of harm in New Zealand. Of critical importance is the desire to work with survivors and their advocates on this path.
52. But the Church acknowledges we need more. Much evidence has been heard in this hearing on what best practice has or should have been in the past. We now need to work collaboratively towards what best practice is today and in the future.
53. None of us presently know what that looks like. Our society, and the Church as part of society, need to get it to a better place, which will require the expertise, knowledge, wisdom and experience of all of us in this room and watching the livestream.

54. To close, we ask that all of us, survivors, Church leaders, the state, advocates and professionals, to join together and collaboratively determine a better practice for now and for the future.