

**An investigation into the
Catholic Commission for
Employment Relations'
systems for reporting and
responding to child abuse
allegations against employees
April 2004**

1. Introduction

This document outlines the NSW Ombudsman's findings and recommendations in relation to an investigation into the conduct of the Catholic Commission for Employment Relations (CCER) and its systems for reporting and responding to child abuse allegations and convictions against its employees under Part 3A of the *Ombudsman Act 1974* (the Act). The Act empowers the Ombudsman to keep under scrutiny the systems employed by designated agencies for preventing child abuse and for responding to allegations of child abuse against employees.

4.2.2 The information given to Father Fletcher

BI informed Bishop Malone that the child abuse allegations made by AH would be reported to the police. Bishop Malone informed us that he told Father Fletcher of the child abuse allegations and did this prior to discussing his actions with police. He said that he did this because the *Towards Healing* protocol indicated he should let the subject of the allegation know about such allegations as soon as possible.

Section 38.5 of the protocol stated that the 'accused' should be informed of the nature of the complaint. However, the procedures in section 38 apply to complaints that are not being investigated by the police. Section 37.4 indicated a church investigation should not interfere with the processes of criminal or civil law. It would appear that Bishop Malone misinterpreted the *Towards Healing* protocol. The complaint by AH did concern a criminal matter and Bishop Malone did have information that the child abuse allegations had been or were to be investigated by the police.

4.2.3 Comment

We do not know whether Bishop Malone's actions have adversely impacted on the police investigation. There was, however, a possibility that his actions could prejudice the criminal investigation and subsequent hearing through the possible contamination of witnesses' evidence and through the possible destruction of physical evidence.

Whilst Bishop Malone had been party to discussions about child protection matters at the Bishops' Conference, it is apparent that he had not received adequate training such that he could respond appropriately in this situation. Nevertheless, it is reasonable to expect that due to his awareness of the public's concern about the Church's past handling of these matters, Bishop Malone would have informed himself of, and followed, the CCER's policies, and adhere to the *Towards Healing* protocol.

We are particularly concerned about Bishop Malone's understanding of the scope of the concept of the 'presumption of innocence'. The 'presumption of innocence' is a fundamental principle of Australian law. It means that a person has to be proven to have committed a wrong before they can be penalised for the wrongdoing. In criminal law, the presumption of innocence is linked to the 'right to silence'. In a criminal proceeding the accused person need not say anything in their own defence, but may simply stay silent and require the prosecution to prove its case.

It is sometimes argued that any action contrary to an employee's wishes or interests cannot be taken until an investigation has been completed and a decision that an employee has done something wrong. **This is not correct.** In both criminal and civil matters a risk assessment should be made as to whether the person alleged to have committed a wrong poses a risk that needs to be managed. In criminal matters this can be through bail conditions or in civil matters by such means as placing a restriction upon that person, including suspending that person from their normal duties.

We are also concerned about his comment to us that he would, in similar circumstances, inform a priest the subject of criminal allegations of the allegations even though a police investigation was possible. This demonstrates a fundamental failure to understand and follow the *Towards Healing* protocol.

When Bishop Malone discussed the possibility of Father Fletcher standing down from his duties, Father Fletcher indicated that he did not wish to do this. Whilst the wishes of an employee should be considered, it is ultimately the employer who has the responsibility for deciding whether or not an employee should remain in their usual position during an investigation.

We recognise that Bishop Malone had limited information about the nature of the child abuse allegations against Father Fletcher. However we are concerned that Bishop Malone minimised Detective Fox's concerns about Father Fletcher remaining in his parish duties. Detective Fox reported that he told Bishop Malone on 20 June 2002 that '*serious*' child abuse allegations had been made against Father Fletcher. We would expect that if the police were concerned about the risk posed to children by an employee remaining in his/her position, an employer would take that advice into consideration.

5. Findings and adverse comments

In summary, I am making the following findings pursuant to section 26 (1) (g) of the *Ombudsman Act* as well as the following adverse comments:

It was these failures that caused or contributed to :

- (2) Bishop Malone's failure to appropriately manage the child abuse allegations against Father Fletcher. In particular, that Bishop Malone:
- failed to follow the *Towards Healing* protocol;
 - failed to notify the CCER about the child abuse allegations against Father Fletcher;

- informed Father Fletcher of the child abuse allegations against him, knowing that the matter was intended to be or had been reported to the police and before seeking advice from police about his actions; and
- failed to adequately assess or address the risks to children as evidenced by his failure to give due consideration to the advice of police to remove Father Fletcher from his contact with children; by permitting Father Fletcher to continue in his parish duties as Parish Priest of Branxton during the course of the police investigation; and by failing to document the inquiries he made and advice he received, including any information he claims to have received from Mr Callinan, Mr Davoren and Mr Bowman.

Chris Wheeler
Deputy Ombudsman
17 March 2004