

Witness Name: Philip Keith Hamlin

Statement No.: WITN0254001

Dated: 21 September 2020

ROYAL COMMISSION OF INQUIRY INTO ABUSE IN CARE

FIRST WITNESS STATEMENT OF PHILIP KEITH HAMLIN

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

Provided on the basis of provisional confidentiality: not for distribution

I, Philip Keith Hamlin, will say as follows: -

Introduction

1. My full name is Philip Keith Hamlin.
2. I am a criminal barrister with 38 years' experience, having previously been a partner at Meredith Connell, the Crown Solicitor's Office in Auckland. I was admitted to the bar in 1982. As a former prosecutor, I worked with victims and complainants of sexual violence for 25 years. As a defence lawyer, I work with alleged perpetrators and proven perpetrators of sexual violence.
3. I am the current Chair of the National Safeguarding and Professional Standards Committee (**NSPSC**). I have served on the NSPSC and its predecessor, the National Professional Standards Committee (**NPSC**), since the latter's establishment in 2004. Prior to then, I was a member of the Auckland Diocesan Protocol Committee. I am a practising Catholic.
4. My evidence explains the evolution of the National Office of Professional Standards (**NOPS**) after its creation in 2004, together with the work of the NSPSC. The scope of my evidence is informed by the scoping document into faith-based institutions' redress processes, issued by the Royal Commission on 4 August 2020.
5. I was not involved in all of the events referred to in this statement, and so I am relying at times on the material provided by *Te Rōpū Tautoko* (**Tautoko**), obtained from historical archives of the Church entities.

The history of redress relating to NOPS

The creation and initial role of NOPS

6. I understand Cardinal Dew's statement explains the creation of NOPS in 2004. Approved by the Mixed Commission, NOPS was established as a project office, with John Jamieson appointed as National Director. Mr Jamieson is a former Commissioner of Police and is not Catholic. At this time, Mr Jamieson was supported by one administrative assistant.
7. NOPS was initially envisaged to have a defined lifespan to assist diocesan and congregational Protocol Committees to respond to the increasing number of complaints of abuse, and to assist dioceses and congregations to establish processes to prevent sexual abuse.
8. A specific task for NOPS was to be the lead agency in independently supervising complaints handled by diocesan and congregational sexual abuse protocol committees where the outcome was disputed in some way. NOPS had no active role in the investigation of complaints. The investigations were the responsibility of various/numerous Sexual Abuse Protocol Committees set up by the dioceses and congregations. NOPS also had a general role in developing education and awareness about sexual abuse within the Catholic Church.
9. NOPS was also given a role in encouraging research and in reviewing the 2001 version of *Te Houhanga Rongo – A Path to Healing (APTH)*¹; APTH, the national protocol for dealing with complaints of sexual abuse and misconduct, was intended as a living document. This is the key document for the work of NOPS and is outlined in detail later in my statement.

¹ The creation of APTH is outlined in Cardinal Dew's statement.

10. The NOPS National Director also became invested with a review function when one party requested a review of the way an investigation had been carried out.

The National Professional Standards Committee (NPSC)

11. The NPSC was also established in 2004. Appointed by the Mixed Commission, the NPSC included three lay people, a congregational representative and a bishop representative, supported by NOPS staff. The NPSC's original Charter gave a wide mandate, including the oversight of NOPS and managing the process of complaints.²
12. The NPSC was intended to ensure complaints were referred to the correct protocol committee, with a focus on consistency. The NPSC also covered requests from complainants for reviews of complaint processes run by local Protocol Committees – it had policy and governance roles, compared to NOPS' operational function.
13. I was appointed to the NPSC at its inception. Our first meeting was on 21 October 2004.³ In accordance with the Charter, it was decided at that meeting that the NPSC was to be focussed on sexual abuse and sexual misconduct, rather than having an extended scope covering other types of abuse.
14. The NPSC typically met three to four times per year.

² NPSC Charter, 7 March 2005, [NOP.0001.0065].
³ NPSC meeting minutes, 21 October 2004, [NOP.0003.0001].

Revising A Path to Healing: 2005-2008

15. NOPS invited the various Sexual Abuse Protocol Committees to identify areas of *APTH* that were helpful and areas of concern. *APTH* was revised accordingly.⁴ By the end of 2005, the revisions were at the stage of being considered by the NPSC and were then sent to the Mixed Commission for approval.
16. The 2007 revision of *APTH* was approved by the Mixed Commission, and then published and widely distributed. While I am unsure, it may have been published on the internet for public viewing at this stage.
17. NOPS continued in its role of reviewing complaints. For example, the 2007 National Director's report for NOPS states that six reviews were conducted.⁵ Some took several months of full-time work. Nadja Tollemache, a former NPSC member and former Parliamentary and Banking Ombudsman, undertook this work alongside Mr Jamieson.
18. Over this time period, NOPS had the responsibility for the promotion of research into causes, effects and prevention of sexual abuse. A few examples are:
 - (a) Mr Jamieson attended the "Consultation on Sexual Misconduct and Abuse in Australian Churches" in Canberra from 8-10 September 2005. Many Australian denominations were present, and contacts were established with similar bodies to NOPS. The plenary sessions and workshops included investigations of abuse, child protection, and historical complaints.
 - (b) In 2006, Mr Jamieson and three members of the NSPC (including me) attended the Australia and New Zealand Association for the

4 NPSC Meeting Minutes, 29 Jul 2005, [NOP.0001.0007]; NOPS National Director's Report to Mixed Commission for period 1 January 2005 to 31 December 2005, [NOP.0001.0008].

5 NOPS National Director's Report to Mixed Commission for period 1 January 2007 to 31 December 2007, [NOP.0001.0014].

Treatment of Sexual Abuse Conference. This was an opportunity to acquire new information, with many of the workshops and presentations relevant to the work of NOPS – the four participants prepared papers on a dozen topics which were distributed to the Protocol Committees.⁶ Mr Jamieson began a literature search on the causes, effects and prevention of sexual abuse.⁷

- (c) A national training day was held for Protocol Committees on 17 May 2006, with the main presentation from "Safe Network" on "Understanding Child Sexual Abusers".
- (d) Annual training days became regular and significant events for protocol committees, investigators, clerics, religious and lay people, and would be attended by 30-50 people.

Other safeguarding developments: 2005-2007

- 19. There were other policies and procedures developed by the NPSC and NOPS during this time period, such as:
 - (a) A Memorandum of Understanding (**MOU**) was drafted in respect of a bishop/congregational leader and a returning priest/religious who had completed treatment after proven sexual abuse or sexual misconduct.⁸ This was based on a template from Australia,⁹ with the template being referred to Bishops and congregational leaders for their consideration. This was recommended by NOPS but not adopted by all Church entities at that time.

6 NOPS National Director's Report to Mixed Commission for period 1 January 2006 to 31 December 2006, [NOP.0001.0012].

7 NPSC Meeting Minutes, 24 February 2006, [NOP.0003.0006].

8 Template Document of Agreement, [NOP.0001.0067].

9 NPSC Meeting Minutes, 11 November 2005, [NOP.0003.0005].

- (b) At our 11 November 2005 meeting, the checking and screening of volunteers was discussed, noting it was essential to do so when people work with children/teenagers or vulnerable adults.¹⁰
20. NOPS also led the consideration of a draft document on standards for volunteers and employees in ministry, with the writing of the "Code of Ethics for Church Volunteers". The NZCBC later approved the *Standards for Volunteers and Employees in Ministry*.¹¹

Revising the role of NOPS

21. 2009 was originally intended to be the final year of NOPS. It was clear, however, that NOPS was serving an important function in the Church's approach to redress and offering advice and assistance to the various Church authorities.
22. Instead, the role of NOPS was expanded after approval by the Mixed Commission. This included NOPS providing oversight of *all* complaints of sexual abuse against priests and religious from 1 September 2009. All dioceses and congregations were to forward on copies of complaints to NOPS on receipt. NOPS was to work with local delegates/Protocol Committees to ensure an investigation was conducted thoroughly and, if necessary, to review the complaint after the Protocol Committee had finished its work and one party sought such a review.
23. The expanded role was, in my view, due to a concern that various Protocol Committees were not approaching *APTH* in the same manner or in a timely way. There were a series of inconsistencies – one of the main ones was timing (or delays), and that complaints were being dealt with at different speeds in different organisations.

10 NPSC Meeting Minutes, 11 November 2005, [NOP.0003.0005].

11 NPSC Meeting Minutes, 1 December 2006, [NOP.0003.0008]; Draft *Standards for Volunteers and Employees in Ministry*, [NZC.0001.0603].

24. Further developments in the Church's approach to redress occurred. A training day was held on 8 August 2009, featuring a presentation on the work of Wellstop's community treatment programme for sexual offenders.
25. There was further work on the MOU between a returning priest/religious and a bishop/congregational leader. On 21 September 2009, Mr Jamieson of NOPS sent the template MOU to the New Zealand Catholic Bishops' Conference (**NZCBC**) and to Congregation Leaders Conference of Aotearoa New Zealand (**CLCANZ**) for approval after approval by the Canon Law Commission. The MOU was intended to better protect children or vulnerable adults, and also to give the priest or religious assistance.¹²
26. The Mixed Commission approved further amendments to *APTH*,¹³ and the 2010 revision of *APTH* was published. There were only minor amendments made to the 2007 version – except to note the new role of NOPS in respect of complaints that must be forwarded to NOPS.¹⁴
27. The emphasis remained on ensuring that “a compassionate response is made to complainants”, while at the same time ensuring “the final outcome is fair, considerate and appropriate to all parties”.¹⁵

Other safeguarding developments: 2011-2012

28. NOPS published the 2011 edition of *Standards for Volunteers and Employees in Ministry*.¹⁶ This was created to “prevent any behaviour that would give rise to complaints, particularly of sexual abuse”¹⁷ from lay volunteers and lay employees of Church entities. This was largely the work of Mr Jamieson.

12 Email from NOPS to Archbishop John Dew, 21 September 2009, [NOP.0001.0066]; *Template Document of Agreement*, [NOP.0001.0067].

13 *A Path to Healing*, 2007 with amendments as at 2010, [NOP.0001.0018].

14 *A Path to Healing*, 2007 with amendments as at 2010, [NOP.0001.0018], at [4.2.1].

15 *A Path to Healing*, 2007 with amendments as at 2010, [NOP.0001.0018], at 3.

16 Cover page of *Standards for Volunteers and Employees in Ministry*, 2011 version, [022.0001.0015]; *Draft Standards for Volunteers and Employees in Ministry*, [CLC.0001.0208].

17 NOPS update by John Jamieson for the information of people in dioceses, parishes and congregations, 6 May 2011, [NOP.0001.0069].

29. NOPS had fostered productive engagement with the Ministry of Social Development's (MSD) historic claims unit. This included sponsoring workshops for Protocol Committee members, facilitated by Dr Monica Applewhite (who held training days in 2011 and 2012 as well). MSD representatives attended these workshops.¹⁸
30. As is outlined in Cardinal Dew's statement, in 2011 the Congregation for the Doctrine of the Faith (CDF) in Rome sent a letter to the NZCBC instructing each conference to draw up guidelines for responding to sexual abuse.¹⁹ The then current version of *APTH* was submitted to the CDF as New Zealand's response.

The development of NOPS and the merging of Protocol Committees: 2013-2017

2013

31. In 2013, Bill Kilgallon took over from Mr Jamieson as National Director of NOPS following the latter's retirement. In a formal restructuring, NOPS became a registered charity, with its Charter as its governing document and the NPSC members as its trustees.²⁰
32. Some reconsideration had been given to the scope of NOPS' role. The NPSC and NOPS proposed to the Mixed Commission that NOPS develop a larger focus on preventive measures and policies – that was what was envisaged by *APTH*.
33. NOPS began to provide guidance to Protocol Committees regarding when to inform NOPS of a complaint, what material should be provided to NOPS once a complaint is received, and which documents should be sent to NOPS.

18 NOPS National Director's Report to Mixed Commission for period 1 January 2011 to 31 December 2011, [NOP.0001.0019].

19 Circular letter to assist Episcopal Conferences in developing guidelines for dealing with cases of sexual abuse of minors perpetrated by clerics, 3 May 2011, [NZC.0001.0606].

20 NOPS National Director's Report to Mixed Commission for period 1 January 2013 to 31 December 2013, [NOP.0001.0022].

2014

34. In 2014, NOPS attempted to collate an overall list of complaints it had received. This level of centralisation had been lacking and, in fact, is still to this day only a list of complaints that NOPS has had a part in. NOPS does not hold information, on this list or otherwise, regarding the outcomes of complaints, as those were (and still are) held by the relevant diocesan Bishop, leader of a religious congregation, or their authorised representative (**Church Authority**).
35. Notably, in 2014, the NZCBC and CLCANZ approved the NPSC's proposal that the six diocesan Protocol Committees be replaced with two: North, covering the dioceses of Auckland and Hamilton; and South, covering the dioceses of Palmerston North, Wellington, Christchurch and Dunedin. The Bishops were to appoint a delegate for each Protocol Committee. In my view, this was because of the desire for consistency, and that some Protocol Committees struggled to maintain their membership to a sufficient level.
36. In 2014, in his personal capacity, Bill Kilgallon was appointed to the Pontifical Commission, which was established by Pope Francis in December 2013.²¹
37. Additions were made to *APTH* to address the process relating to *Sacramentorium Sanctitatis Tutela (SST)*, as described in Cardinal Dew's statement. NOPS communicated these changes to the Bishops and congregational leaders.

21 As described in the statement of Cardinal John Dew.

38. NOPS also appointed a Safe Church Programme Coordinator.

2015

39. In 2015, NOPS created a new role of Professional Standards Officer. The NPSC agreed that a scheduled review of *APTH* should await the relevant work of the Pontifical Commission, the passing of the Vulnerable Children Act 2014 and the Health and Safety at Work Act 2015.²² The Pontifical Commission had drafted a template for guidelines for preventing and responding to sexual abuse in the Catholic Church.

The road to the current system of redress

40. In 2016, a need was identified for NOPS to take a more proactive role in redress.²³ The NPSC and NOPS:

- (a) Put forward "*Guidelines for the Prevention of and Response to Sexual Abuse in the Catholic Church in New Zealand*" for approval by the Mixed Commission. This was approved the next year, and named the National Safeguarding Guidelines.
- (b) Proposed that a National Catholic Safeguarding and Professional Standards Committee be established, to be an independent body formed by NZCBC and CLANZ. It was to oversee safeguarding policy development and audit responsibility, and to retain oversight of the complaints process and the work of the Protocol Committees.
- (c) Proposed to merge the two Sexual Abuse Protocol Committees into one Professional Standards Response Committee, which was to be responsible for receiving all complaints of abuse and following *APTH*.

²² NPSC Meeting Minutes, 6 March 2015, [NOP.0003.0036].

²³ NOPS National Director's Report to Mixed Commission for period 1 January 2016 to 31 December 2016, [NOP.0001.0026].

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- (d) Held a training day in August with three speakers from the Pontifical Commission.

41. At the same time a review of *APTH* was underway, discussing:²⁴

- (a) The scope of the document and whether it should extend to beyond clergy, religious and seminarians.
- (b) The definition of sexual abuse, with the NPSC agreeing it should extend to include developments in canon law and New Zealand law (in respect of internet, social media, grooming and exploitation by visual images). It was also resolved that “sexual misconduct” be defined as “any conduct of a sexual nature that is inconsistent with a witness to chastity or a breach of professional standards”, as documented in *Integrity in Ministry* (discussed further below). I note that this definition was actually included in the 2020 revision of *APTH*.
- (c) Reporting abuse to civil authorities (i.e. Police). It was agreed that there should not be a policy requiring abuse to be reported to Police where the complainant was an adult at the time of the complaint - it was felt that it was important to ensure the victim had the right to determine whether to report to Police, otherwise there was a risk of re-traumatising victims.

42. The NZCBC approved the proposal for a single Professional Standards Response Committee.²⁵ This became known as the Complaints Assessment Committee (**CAC**). It also approved the renaming and change of focus of the NSPC, to be called the National Safeguarding and Professional Standards Committee (**NSPSC**).²⁶ The change in name reflected a change in focus to

24 NPSC Meeting Minutes, 3 August 2016, [NOP.0003.0042].

25 Extract of NZCBC Meeting Minutes, October 2016, [NZC.0001.0160].

26 Extract of NZCBC Meeting Minutes, October 2016, [NZC.0001.0160]; Letter from Bishop Charles Drennan to Bill Kilgallon, 21 November 2016, [NOP.0003.0065].

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one of developing safeguarding practices in the Church. The new bodies were confirmed by the Mixed Commission in 2017.²⁷

43. Again, a key reason for the changes was a concern that approaches to redress were not consistent. I also note there has often been a struggle to fill vacancies on the NSPSC and the various Protocol Committees.
44. In 2018, Virginia Noonan was appointed as National Director of NOPS, replacing the retiring National Director, Bill Kilgallon.
45. Numerous policies on safeguarding and redress were published in 2018 which are still in force – these are outlined later in my statement. I also note that NOPS developed the website www.safeguarding.catholic.org.nz in 2018, which provided safeguarding policies and contact details for anyone wishing to register a complaint of abuse.
46. *APTH* was on the NZCBC website for many years as well. An 0800 number for NOPS was also set up.

Finalising APTH 2020

47. In 2019, NOPS continued to revise *APTH*. This included changes required from Pope Francis' *Vos estis lux mundi*²⁸ released in 2019, as described by Cardinal Dew.
48. The current version *APTH* was approved by the Mixed Commission and published online in February 2020.
49. Further work in this area is ongoing, including:
 - (a) The appointment to NOPS of a Safeguarding National Lead to further develop the Office's work in safeguarding and preventing harm.

²⁷ Sr Jane O'Carroll, *Mixed Commission Conference 2017 Report and Summary*, 14 March 2017, [CLC.0001.0227].
²⁸ Apostolic Letter issued Motu Proprio, *Vos Estis Lux Mundi*, 7 May 2019, [001.0002.0114].

- (b) The piloting of an auditing framework, described more fully later in this statement.
- (c) In 2020, the Mixed Commission adopted the national testimonial documents for clergy and religious.²⁹ These require a superior/congregational leader to verify that an overseas clergy/religious member coming to minister in New Zealand is in good standing before being able to minister in another congregation.
- (d) Templates for Safety Plans have been developed when an at-risk person is identified.
- (e) NOPS is currently considering the recently issued CDF handbook *Vademecum*,³⁰ which addresses points of procedure in treating cases of sexual abuse of minors committed by a cleric.

Current approach to redress – how claims are addressed or resolved

A Path to Healing – 2020

- 50. I have outlined the key steps of *APTH* below. I note *APTH* covers more than criminal wrongs. "Sexual misconduct" falls within *APTH* – it is defined as "any conduct of a sexual nature that is inconsistent with a witness to chastity or a breach of professional standards".
- 51. There is a useful flowchart available on the www.safeguarding.catholic.org.nz website that describes the Church's safeguarding structure. This is appended to my witness statement.

29 Template Testimonial for religious Sisters and Brothers, [NOP.0001.0053].

30 Congregation for the Doctrine of the Faith, *Vademecum*, 16 July 2020, [VAT.0001.0017].

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The commencement of a complaint

52. First, NOPS will talk with the complainant to see if the complaint involves a priest or religious and falls within the definition in *APTH* of sexual abuse or sexual misconduct. If, in the opinion of NOPS, the complaint does come within the definition of sexual abuse or sexual misconduct, NOPS will appoint an Independent Investigator. If, in the opinion of NOPS, the complaint does not come within the definition of sexual abuse or sexual misconduct, with the complainant's consent, the complaint will be referred to the relevant Church Authority to respond to the complaint.
53. If the complainant is under 18 at the time of making the complaint, NOPS will refer the complaint to Police (after assisting and advising the complainant to do so).
54. The respondent will be notified by NOPS of the complaint as soon as practicable once the substance of the complaint has been confirmed. If NOPS considers that there may be a risk of harm to any person, or reputational harm to the Church Authority or Church body, a recommendation will be made to the Church Authority for the respondent to take leave from their position or ministry or be directed into non-contact duties until it is ascertained that there is no risk.
55. NOPS will also receive complaints where the complainant is not the victim – for example, a complainant may be a family member of someone who they believe was abused. These can be investigated under *APTH*, as can complaints where a respondent is deceased.

An independent investigation

56. NOPS will appoint an independent person to conduct the investigation. NOPS may also appoint an assistant to the Independent Investigator. NOPS will

provide the Independent Investigator with a scope for the investigation and reporting requirements.

57. The Independent Investigator (and assistant, if appointed) will arrange to interview the complainant, who will be invited to have a support person present. The Independent Investigator will ask the complainant to nominate any person that they consider has knowledge or information that will help in the investigation of their complaint. These may include family members, friends or others in whom the complainant has confided.
58. The Independent Investigator may make further enquiries in order to corroborate or clarify the substance of the complaint. This may include making enquiries of diocesan or religious orders' archives. The Independent Investigator will discuss with the complainant the names of people and agencies who the Independent Investigator wishes to approach.

Interviewing the respondent

59. The Independent Investigator (and assistant, if appointed) will arrange to interview the respondent, who will be invited to have a support person (which may include legal counsel) present at the interview. The respondent has a right to know the identity of the complainant and details of what has been alleged.
60. If the respondent admits the truth of the allegations contained in the complaint, or part/some of the allegations, the Independent Investigator will convey the admission to the CAC as part of their report. If the respondent denies the allegation, they will be offered the opportunity to provide corroboration or support for that position. The respondent may nominate other persons to be interviewed who may corroborate or support the respondent's testimony. The respondent shall not contact such persons without consent from the Independent Investigator as this may influence the evidence they will give to

the Independent Investigation. Any decision to interview a witness is at the discretion of the Independent Investigator.

Disclosure of documents

61. The complainant's statement or a statement of any witness to the investigation will be made available to the respondent for viewing only. This means that the statement will be provided to the respondent to read while in the presence of the Independent Investigator. If this is not possible, the Church Authority (or delegate) or respondent's solicitor may be provided with the statement (by secure means) and they will be asked to facilitate the respondent being able to view the statement. As much time as necessary is to be provided for the respondent to view and consider the statement. Before the statement is provided to the respondent's solicitor or Church Authority, an undertaking must be provided to NOPS that an electronic or physical copy will not be provided to the respondent or any third party and that the document(s) will be securely destroyed or deleted when they are no longer required for the inquiry.
62. A copy of the respondent's statement or any other witness to the investigation may be made available to the complainant for viewing only.
63. Given the sensitivity of the material, these protections are in place to preserve the rights of privacy and confidentiality.

Deceased respondents

64. If the respondent is deceased, an investigation can still be undertaken. There will be some occasions where no conclusions are able to be drawn. On other occasions, it will be possible to make a determination. Matters to consider include:
 - (a) the credibility of the complainant and any witnesses;

- (b) whether or not there have been other similar complaints against the respondent;
- (c) corroboration from any source, e.g. medical records, witnesses who saw the alleged offence or events immediately before or after the alleged offence or can provide other relevant information; and
- (d) Church or other records which may show whether the respondent was ministering in the locality at the time.

Investigation report

- 65. On completion of the investigation, the Independent Investigator will prepare a draft written report.
- 66. The report should include, amongst other things:
 - (a) the strengths and weaknesses of the evidence;
 - (b) the existence or otherwise of corroboration;
 - (c) an assessment of the credibility and reliability of the complainant;
 - (d) an assessment of the credibility and reliability of the respondent and other witnesses;
 - (e) documentary evidence; and
 - (f) any other aspects of the evidence the Independent Investigator considers relevant.
- 67. The Independent Investigator is *not* asked to determine if the complaint is proven. The investigation process undertaken by the Independent Investigator

should be discussed with the complainant and the respondent for their final feedback to ensure anticipated lines of inquiry have been considered. The draft report should then be provided to the Professional Standards Officer at NOPS to identify any areas that may require further investigation or clarification before the report is finalised.

68. When any outstanding matters have been completed, a final report is sent to the Professional Standards Officer at NOPS. The final report shall remain confidential to the parties and their support people.

Complaints Assessment Committee – recommendations

69. The CAC is separate from NOPS and the NSPSC. It comprises six members appointed by the NZCBC following consultation with the National Director of NOPS. The CAC members are lay people with proven expertise in a relevant field, together with one priest adviser.³¹
70. The CAC must consider all the material received from the Independent Investigator contained in their report, and come to a conclusion, on the balance of probabilities, as to whether or not the complaint should be upheld. The CAC then must make a recommendation in writing to the Bishop/congregational leader whether the complaint should be upheld on the balance of probabilities.
71. The CAC may make recommendations to the Church Authority with regard to the resolution of the complaint, including:
- (a) whether the complaint is upheld on the balance of probabilities;
 - (b) a suitable way of acknowledging and/or apologising for an upheld complaint;

³¹ CAC Terms of Reference, [NOP.0004.0002].

- (c) support and assistance as sought by the complainant and their family or friends or otherwise;
- (d) what penalty is recommended for the respondent, if appropriate;
- (e) what form of restitution may be recommended for healing;
- (f) what treatment or rehabilitation is recommended that the respondent be directed to undertake;
- (g) identification of any shortcomings in Church structures or procedures which the case has revealed and which should be remedied to help avoid further offences; and
- (h) any other matter relevant to the complaint.

The Church Authority's decision

72. The Church Authority receives the recommendation from the CAC following an investigation. It will consider the final report on the complaint and any recommendations made, and decide whether to accept the recommendations or to seek further information from the CAC.
73. Once the Church Authority has accepted the recommendations, it will implement them. It may seek legal advice on a recommendation for an ex-gratia payment. It may write a letter of apology which could include an offer of an ex gratia payment, offer to meet with the complainant and offer to pay for counselling.
74. The agreement on the ex gratia payment may be negotiated. The acceptance of the ex-gratia payment will normally be concluded prior to the meeting between the Church Authority and the complainant. The meeting with the

Church Authority is a pastoral meeting and is not generally a place to negotiate any payments.

75. If the complaint is not upheld, the Church Authority will write to the complainant to inform them of the decision and they will be made aware of their right to seek a review of the process to check whether the principles and procedures of *APTH* were followed.
76. If the CAC upholds the complaint the Church Authority will consider what actions need to be taken with the respondent. This may include removing them from public ministry, laicisation, requiring them to undertake a course of treatment/counselling before being able to return to public ministry, and requiring them to have professional supervision or alternative options recorded in a safety plan. The Church Authority will monitor the implementation of the actions.
77. Throughout the evolution of NOPS, the ultimate decisions on redress have always remained with the relevant responsible Church Authority.

APTH 2020

78. In my view, *APTH 2020* is significantly different to the previous editions:
 - (a) It is much more concise, reducing the 57-page 2010 edition to 28 pages.
 - (b) The amended introduction notes Jesus' vision and an acknowledgement of wrongdoing:

...it is with deep sadness and much regret that the bishops and leaders of religious congregations of the Catholic Church in Aotearoa New Zealand acknowledge a number of clergy and religious have sexually abused children, adolescents and adults who have been in their pastoral care. To these victims we offer

our sincere apology. We acknowledge the wrong doing and that victims have been betrayed and harmed.

- (c) The 2020 version references the National Safeguarding Guidelines adopted in 2017.
 - (d) "Sexual abuse" is defined with more specificity to distinguish it from sexual misconduct.³²
 - (e) There is added detail about what NOPS will do if a complaint does not come within the definition of sexual abuse or sexual misconduct. With the complainant's consent, the complaint will be referred to the relevant Bishop or congregational leader to respond.
 - (f) Steps are outlined if a complaint was upheld or admitted.³³
 - (g) Steps are outlined when a complaint was made of sexual abuse or sexual misconduct by a Bishop or superior of a congregation (or a failure of these persons to act on a complaint of sexual abuse). The complaint must be referred to the Metropolitan (the archbishop), the Congregation for the Doctrine of the Faith (CDF) and NOPS.³⁴
 - (h) The Professional Standards Response Committee was approved by the Mixed Commission, renamed as the Complaints Assessment Committee. It reviews complaints received by or passed to NOPS, not including complaints relating to members of the Society of Mary.³⁵
79. I consider the procedures now in place have significantly improved the overall approach to redress within the Catholic Church. The procedures have become fairer and have also maintained an emphasis on a pastoral approach. I do not believe there is a tension between a pastoral approach and the approach

32 *A Path to Healing*, February 2020, [NOP.0001.0033], at [3.7].

33 *A Path to Healing*, February 2020, [NOP.0001.0033], at [3.64]-[3.79].

34 *A Path to Healing*, February 2020, [NOP.0001.0033], at [3.95]-[3.105].

35 Safeguarding structure flowchart, [NOP.0003.0068].

prescribed by *APTH*. NOPS has, for example, recently recommended that each diocese appoint a pastoral companion to assist a complainant after making a complaint. In my view, a big issue was the lack of consistency in each entity adopting separate approaches to redress. In some respect, this is the product of each entity being independent, with differing resources and approaches. Greater consistency has been achieved through the work of NOPS and the NSPSC.

80. I also note that the framework of *APTH* can be applied to allegations that fall outside its scope. If there is a pastoral response that can deal with such allegations outside a formal process, then that may be more appropriate depending on the circumstances (such as historic physical abuse where a respondent is deceased).

Going forward

81. The approach to redress has been an ongoing evolution for NOPS and the NSPSC. In my view, the current process has allowed for a speedier, more consistent and transparent approach to redress.
82. In my (personal) view, I consider areas of improvement may include the following:
- (a) Written Safety Plans for returning priests and religious should be required, so there is not an opportunity for re-offending. As I have explained earlier in my statement, there have been many discussions about a potential MOU for such persons. I consider a Safety Plan should be in place, whether or not allegations are actually proven. There are existing safeguarding policies – outlined below – but I consider that a precise and monitored Safety Plan should be required. I note NOPS is developing templates for Safety Plans for use when persons are identified as a risk, and that Safety Plans are being promoted and used by NOPS and Church Authorities.

- (b) Complaints are not currently referred to the NSPSC. Our Committee would only see that a complaint has been made, but not who is involved. This information is provided to NOPS, but not to our Committee. I consider there should be a more robust central register of complaints held by NOPS.
- (c) I consider there should be a national protocol for allegations of abuse that fall outside *APTH*.

Other safeguarding policies in place

- 83. *APTH* is the primary document in respect of redress. There are other relevant policies published on the NOPS website, outlined below.

*National Safeguarding Guidelines*³⁶

- 84. These Guidelines were promulgated by the NZCBC and the CLCANZ in February 2017, and apply to all dioceses, religious congregations and Catholic organisations in New Zealand. The Guidelines cite the Church's commitment to honour the United Nations Convention on the Rights of the Child.
- 85. The Guidelines are the foundation of the Church's commitment to respond with compassion to those who have suffered abuse, and to ensure policies and practices are in place in dioceses and Catholic organisations to provide a safe and nurturing environment for all.
- 86. There is a Safeguarding Self-review Tool, which is to be undertaken annually by each Church entity to evaluate the effectiveness of safeguarding practices.

³⁶ NOPS *National Safeguarding Guidelines*, February 2017, [NOP.0004.0001].

*Safeguarding Policy*³⁷

87. The Safeguarding Policy was developed by NOPS and is intended to give practical effect to the National Safeguarding Guidelines. It commits the Church entities to:
- (a) implement safe recruitment, selection and induction practices for all Church personnel who work with children and vulnerable adults;
 - (b) require all clergy and religious to commit to *Integrity in Ministry* (referred to below);
 - (c) require all Church personnel (paid or unpaid) to commit to the *Code of Conduct for Employees and Volunteers* (referred to below) which sets out clear expectations regarding behaviour;
 - (d) implement procedures to appropriately respond to concerns, allegations and disclosures of abuse involving any child or vulnerable adult; and
 - (e) require Church personnel to complete safeguarding education and training about creating safe environments for children and vulnerable adult.

*Processes for Volunteers*³⁸

88. This document provides that a volunteer must:
- (a) be subject to safety checking and Police vetting;

³⁷ NOPS *Safeguarding Policy*, May 2019, [NOP.0001.0030].
³⁸ NOPS *Processes for Volunteers*, [NOP.0001.0051].

- (b) sign a Volunteer Agreement, which also requires the volunteer to view the Safeguarding Policy; and
- (c) read, understand and sign the *Code of Conduct for Employees and Volunteers*.³⁹

89. This is used for each volunteer within Catholic organisations. As the role of the volunteer in the Church has grown, it is all the more important to have a guide setting out expectations and boundaries and to train the volunteers accordingly.

*Procedure for Initial Management of Allegations of Harm or Potential Harm*⁴⁰

90. This Policy provides guidance to those who are alerted to an allegation of harm, both in respect of children and of vulnerable adults.

*Integrity in Ministry*⁴¹

91. Based on an Australian document, *Integrity in Ministry* was created in May 2000 and approved by the NZCBC as professional standards for clergy. A key document for the Church, revisions to *Integrity in Ministry* have been approved by the NSPSC earlier this year and will be sent to the Mixed Commission for approval.

*Standards for Creating and Maintaining a Safeguarding Culture*⁴²

92. The NSPSC designed these Standards to ensure the Catholic Church entities implement 'best practice' in all aspects of safeguarding in the creation and maintenance of safe environments for our children and vulnerable adults.

39 NOPS *Code of Conduct for Employees and Volunteers in the Catholic Church in Aotearoa New Zealand*, October 2018, [NOP.0001.0028].

40 NOPS *Procedure for Initial Management of Allegations of Harm or Potential Harm*, [NOP.0001.0050].

41 NZCBC *Integrity in Ministry*, May 2000, [0001.0002.0003].

42 NOPS *Standards for Creating and Maintaining a Safeguarding Culture*, August 2019, [NOP.0001.0031].

Confidential information: not for distribution

93. The five standards are:
- (a) Communicating the Church's Safeguarding Message;
 - (b) Safe Practices;
 - (c) Responding to concerns or allegations;
 - (d) Monitoring Compliance with National Policy; and
 - (e) Formation and Training.

Auditing compliance with national policy

94. NOPS is currently piloting a review/audit framework. External safeguarding reviews in accordance with the National Safeguarding Guidelines (s 11) are seen as an important component of the Church's safeguarding strategy. The review structure has been designed to confirm the practices that a Church entity has in place, and to support the development of practices where needed.

The institutions' legal strategies and use of legal defences

95. The Royal Commission's scoping document refers to "the institutions' legal strategies and use of legal defences".
96. To the best of my knowledge, no civil proceedings have been filed against the NSPSC or NOPS.
97. In my capacity as Chair of the NSPSC (and of the NPSC prior to 2017), I am not aware of any legal strategies or defences adopted as a general rule. I confirm that legal advice was sought by the Committee when *APTH* was revised in 2020, and that legal advice may be sought from time to time on

particular claims by the relevant Church Authority. Legal advice was also sought in the development of privacy policies for NOPS.

98. The NSPSC has discussed whether a uniform policy should be adopted in respect of contributing to a complainant's legal fees. Ultimately, it was resolved that this should be left for each diocese and congregation to consider. We will also await any recommendations from the Royal Commission in this regard.

The institutions' criteria for monetary and non-monetary redress and whether these were applied consistently and transparently

99. Consistency of payments and redress has been a topic of discussion for the NPSC/NSPSC. It was discussed at an October 2004 meeting of the NPSC, for example.⁴³
100. On 15 April 2005 I attended a meeting held in Hamilton.⁴⁴ This was to discuss the basis and quantum of payments for settlements. Bishops and representatives of congregations also attended. In brief:
- (a) The basis of payments was discussed – i.e. whether they should be treated as ex-gratia or more akin to compensation.
 - (b) The quantum of payments was discussed. This was in light of settlements being made by Australian entities that were far higher than what was being discussed in the New Zealand context. An analogy was used with what sort of criteria may be adopted by a Court in assessing a complaint, being:
 - (i) the age of the victim;

43 NPSC Meeting Minutes, 21 October 2004, [NOP.0003.0001].

44 Record of meeting held at the Cathedral Centre Hamilton, 15 April 2005, [NZC.0001.0108].

- (ii) the context of the abuse e.g. was the offender *in loco parentis*; and
- (iii) the extent and scale of the abuse.
- (c) ACC payments for sexual abuse were also recorded as a potential guide to quantum.
- (d) It was generally agreed that dioceses and orders should not be including confidentiality clauses in settlement agreements.
- (e) The respondent had a right to know if an allegation had made against them, and whether an ex gratia payment had been made in respect of allegations that they denied. If a respondent was still working with children, they should be stood down immediately, with the Protocol Committee having a duty to inform the Bishop.
- (f) It was noted that the Protocol Committee's role was limited to resolving a case on a pastoral (not legal) basis, and had the role of advising the Bishop/appropriate Church Authority. The level of payments made was a matter for the Church Authority. NOPS' role was to review the process of the Protocol Committee in dealing with the complaint, but not the level of any payment made by the Church Authority.
- (g) It was noted that diocesan autonomy meant that a formal agreement about quantum could not be achieved, but that informal sharing of information would assist consistency.

101. At a recent NSPSC meeting, I raised the analysis carried out by MSD in respect of quanta of financial settlements, with the view of the Church

undertaking a similar analysis for consistency.⁴⁵ I understand that the MSD “bands” were not publicly available until recently.

102. NOPS does not hold records of the total costs of monetary and non-monetary settlements for claims made against the Church entities. As I have noted, one problem has been a lack of centralised record of outcomes.

The extent to which the principles of Te Tiriti o Waitangi/tikanga Māori were and are incorporated into institutions’ redress processes

103. When signing the *Code of Conduct for Employees and Volunteers*,⁴⁶ an employee/volunteer within the Catholic Church agrees to honour the principles of Te Tiriti o Waitangi.
104. Furthermore, the *Standards for Creating and Maintaining a Safeguarding Culture*⁴⁷ state that “[W]e are committed to honouring the principles of Te Tiriti o Waitangi by working with tangata whenua in the development and implementation of safeguarding practices”.
105. I acknowledge these are recent developments, and we welcome any guidance that the Royal Commission can offer.

45 NSPSC Meeting Minutes, 22 November 2019, [NOP.0003.0058].

46 NOPS *Code of Conduct for Employees and Volunteers in the Catholic Church in Aotearoa New Zealand*, October 2018, [NOP.0001.0028].

47 NOPS *Standards for Creating and Maintaining a Safeguarding Culture*, August 2019, [NOP.0001.0031].

Access to information

106. There is a Privacy Policy in place for NOPS.⁴⁸ Complainants can access their personal information in accordance with the Privacy Act. NOPS maintains a record of complaints received and reviewed – but it does not hold a record of the recommendations made by the Church Authorities.
107. The 2020 *APTH* refers to the Privacy Policy, and that a copy of it will be made available to the complainant and respondent for their information. All NOPS complaint files are to be held securely for 50 years. Prior versions of *APTH* also referred to the Privacy Act in respect of accessing personal information.

Conclusion

108. Fundamentally, a successful redress system within a faith-based institution is one that promotes an acknowledgement of offending, a willingness to apologise and set things right, and an assurance that an offender will not be able to offend again in the Church context. Such a system will help protect the most vulnerable.
109. In my view, the current *APTH* can be seen as a robust and fair alternative dispute resolution mechanism, with an emphasis on a pastoral (and not a legal) approach. It aims to support complainants and respondents throughout the process. This is assisted by the other areas of safeguarding that continue to be developed within the Church on a national level.

48 NOPS Privacy Policy, [NOP.0001.0049].

110. NOPS and the NSPSC continue to strive to improve the redress and safeguarding that has been undertaken within the Church over recent times. We welcome any recommendations by the Royal Commission regarding a redress process that enhances recovery for victims and survivors.

Statement of Truth

This statement is true to the best of my knowledge and belief and was made by me knowing that it may be used as evidence by the Royal Commission of Inquiry into Abuse in Care.

Signed:

GRO-C

P K Hamlin

Dated: 23 September 2020

SAFEGUARDING STRUCTURE

