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# Practice what you preach: using restorative justice as an alternative to clergy abuse

Peter Condliffe

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## New applications for ADR principles

# Practice what you preach: using restorative justice as an alternative to clergy abuse

**Peter Condliffe**

On Saturday 19 July 2008 Pope Benedict XVI raised the issue of sexual abuse before 3400 people invited to attend the consecration of the altar of St Mary's Cathedral in Sydney. The Pontiff had been participating in World Youth Day activities. He said in his homily that he was 'deeply sorry' for the suffering of people who had been sexually abused by members of the clergy in Australia. 'Here I would like to pause to acknowledge the shame

which we have all felt as a result of the sexual abuse of minors by some clergy and religious in this country.'

The pontiff then moved from his original text to make the apology. 'I am deeply sorry for the pain and suffering the victims have endured and I assure them that, as their pastor, I too share in their suffering.' Such abuses were a source of shame and deserving of condemnation, and the perpetrators must be brought to justice. He

described the acts as 'evil'.

'These misdeeds, which constitute so grave a betrayal of trust, deserve unequivocal condemnation. They have caused great pain; they have damaged the church's witness.'

The issue of sex abuse had been prominent in the lead up to the youth festival. Sydney Archbishop Cardinal George Pell, the leader of the Catholic Church in Australia, was forced to defend his handling of a number of



historic allegations. Hopes for an apology were boosted after the Pope's visit to the United States in April. There he said he was 'deeply ashamed' of sex abuse committed by clergy and pledged he would do whatever was possible 'so this cannot happen again in the future'.

There has been extensive research on this problem and the potential remedies for it. Yet recent reported events in Melbourne and around Australia show that the 'church's witness' is still being considerably damaged. A report released in May this year in Ireland, after a long running investigation (the *Ferns Report*), demonstrated that the supervisory and management structures of the Church remain inadequate in many ways. A report issued by the Anglican Church in Australia around the same time echoes the findings of earlier studies in other Churches. It found that:

Unlike the patterns of abuse in the general population, three quarters of complainants were male and most were between the ages of 10 to 15 at the time of abuse.

Most accused persons were either clergy or were involved in some form of voluntary or paid youth work.

There were 27 accused persons with more than one allegation in the sample. These 27 people accounted for 43% of all cases.

Ongoing abuse lasting three years or more was significantly more common among male complainants.

Most of the alleged abuse episodes occurred in the accused person's home or on church premises. Almost a quarter of the episodes of abuse of girls occurred in the girl's own home, compared with 7% of male cases.

There were long delays in reporting offences to the church by the complainants, with an average delay of 23 years.

Just over half of the cases were treated as substantiated by the church and a third as inconclusive, with erroneous allegations by child complainants being rare.

A substantial number of Catholic priests have been jailed for sexual molestation in the US. Such is the case for Australia as well. Broken Rites Australia, a support organisation for victims of sexual abuse in churches,

recently reported 112 cases known to the organisation of Catholic priests and religious brothers who have been sentenced in Australian courts. A recent comprehensive study commissioned by the US Conference of Catholic Bishops found that 4% of all priests from 1950 to 2002 had allegations of child sexual abuse against them.

The so-called 'Melbourne Response', which has recently been the subject of comment in the *Melbourne Age*, exemplifies inadequate institutional responses to this problem. The Melbourne Response was introduced in 1996 by then Archbishop George Pell as the local Catholic Church's official mechanism for investigating abuse complaints and offering counselling and compensation to victims. When Church and clergy fail to respond with an explanation and apology, victims typically consider legal proceedings. To avoid the heavy financial burdens these proceedings would impose, the Church becomes less cooperative and more defensive.

The Melbourne Response is different to that of the Catholic Church in the rest of Australia. It has involved capped costs and minimised payouts and to some extent has been able to avoid bad publicity. It has appeared to have worked in the short term at least in a limited sense. However, its inherent weaknesses are becoming more exposed as victims feel increasingly empowered to question the Church's response to their needs.

There is a way to break this cycle. It would involve the Church and offending priests meeting with victims and addressing issues outside the judicial system in a way which is less inquisitorial than the Melbourne Response. Though victims could use any of a range of procedures, restorative justice conferencing is perhaps the most useful model. It is the process advocated by the victims' advocacy group In Good Faith and Associates as an alternative to the Melbourne Response. The local Church hierarchy still seem reluctant to embrace these ideas. Yet restorative justice may be a way beyond the current cruel standoff.

Restorative justice approaches predate our current formalised legal



systems. Restorative justice focuses on responsibility, compassion and forgiveness rather than punishment and ostracism. Many prominent religious leaders have advocated this approach throughout history. Today, curiously, few seem willing to embrace it and seem instead enthralled by legalistic and formulaic responses.

Professor John Braithwaite, a renowned Australian scholar, has noted that the Roman Catholic Church, 'laid the foundations for shifting criminal law away from its restorative framework' through 12th century canon law. Perhaps it is time for the Church to re-examine its own history.

Restorative justice programs, which began in Canada in the mid 1970s, now operate in many jurisdictions across the western world. Every Australian State has legislated restorative justice programs, albeit that most are aimed solely at juvenile offenders. These programs involve offenders, victims and their communities of care in a collective response to the problems created by offending behaviour.

Restorative justice programs have a number of advantages. They motivate victims and others to be involved in, rather than alienated from, the response to social harm. They provide for specific and general deterrence whilst maintaining the traditional deterrence frameworks. They confront offenders with the effects of their wrongdoing,

such that they cannot neutralise or rationalise their behaviour.

Programs can be tailored to the particular context and problems faced by a community. Many Victorian school communities, including the Catholic system, have embraced a wide range of restorative practices. Archbishop Desmond Tutu of South Africa viewed his Truth and Reconciliation Commission as a restorative justice process. These systems involve communities bringing the processes of justice within a framework that community members can understand and engage with. If the Church prides itself on caring for its community, its flock, there is perhaps a good fit here.

Sexual offences — especially against children — involve special consideration. Offenders have used power to commit and cover up their crime. Mediation, which emphasises equality in bargaining, is often not appropriate in these instances. However, a restorative model of dialogue, with the appropriate safeguards, is now being used in a number of jurisdictions to address this sort of case.

Restorative justice processes allow the support networks for victim and offender to be brought together. This does not mean that traditional legal remedies should be done away with. Rather, we should seek a more flexible response and more positive outcomes

than are presently available.

Law Professor Marci Hamilton of Yeshiva University in the US argues that revelations of systemic and long-standing clergy abuse reveal problems not only in the churches but in the capacity of our system of justice to protect children. Until these issues are addressed, victims will continue to question the responses established by church hierarchies. These responses should supposedly help victims. More commonly, they leave them further aggrieved.

The traditional legal system provides enormous psychological, evidentiary and resource challenges to victims, offenders and the Church itself. However, the Church has considerable resources. It can bring great legal pressure upon victims who pursue legal claims. So could the Church, instead, cede power to a third party restorative program? It might then go some way to towards following its own teachings of forgiveness and reconciliation rather than confrontation and denial. As the Church lurches from crisis to crisis, it could try restorative justice. The best solutions often come when you practice what you preach. ●

*Peter Condliffe is a Melbourne Barrister and President of the Victorian Association for Restorative Justice. He can be contacted at <[pc@vicbar.com.au](mailto:pc@vicbar.com.au)>.*

## Book Announcement

# Dispute resolution in Australia

**David Spencer and  
Samantha Hardy**

***Dispute resolution in Australia  
Cases, commentary and  
materials, 2nd Edition***

The second edition of *Dispute resolution in Australia: Cases, commentary and materials* reflects the dynamic growth of dispute resolution not only in Australia, but worldwide. In recent times, dispute resolution has undergone a considered analysis of

its role in society at the community, commercial, political and legal levels. Added to this is its increasing relevance to, and its impact on, other disciplines such as counselling, psychology and the law.

Taking account of these developments in dispute resolution, this new edition brings the law up to date and features:

- a new chapter, 'The future of dispute resolution';
- an expanded chapter, 'Ethics, standards and dispute resolution';

- insight into the new National Mediation Accreditation System;
- incorporation of recent family law developments;
- new material on recently emerged hybrid forms of dispute resolution, such as collaborative law; and
- commentary on the vanishing trial phenomenon.

*Dispute resolution in Australia: Cases, commentary and materials, 2nd edition* will be in valuable to both students and practitioners alike for its practical guidance and analysis of this ever-growing area of the law. ●

*This book will be reviewed in a future edition of the ADR Bulletin.*



## ADR Diary • ADR Diary

- LEADR is holding a **Mediation Workshop** in Adelaide on 16–20 March; 31 August–4 September; in Alice Springs on 31 August–4 September; Brisbane on 9–13 March; Canberra on 4–8 May; Darwin on 11–15 May; Hobart on 25–29 May; Melbourne 19–23 April, 1–5 June and 11–15 October; Perth on 18–22 May and 26–30 October; and Sydney on 15–19 February, 19–23 April, 21–25 June, 16–20 August, and 18–22 October. They will also be running **CINERGY Conflict Coaching Workshops** in Sydney on 22–25 February and in Melbourne on 2–5 March. For further information go to <[www.leadr.com.au/training.htm](http://www.leadr.com.au/training.htm)>.
- ACDC is offering **Mediation Training** in Sydney on 22–26 February, 24–28 May, 9–13 August, 18–22 October. **Accreditation** dates include 3 March, 3 June, 17 August and 27 October. For further information, visit <[www.acdcltd.com.au](http://www.acdcltd.com.au)>.
- **The 5th Asia-Pacific Mediation Forum Conference will be held in India** from 21–27 November 2010. For further information go to <[www.apmec.unisa.edu.au/apmf](http://www.apmec.unisa.edu.au/apmf)>.
- **National Mediation Conference** will be held in Adelaide on 7–9 September 2010. For further information go to <[www.mediationconference.com.au/](http://www.mediationconference.com.au/)>.
- **The Bond University Dispute Resolution Centre** has upcoming courses including **Basic Mediation** on 18–21 March on the Gold Coast; **Family Dispute Resolution (Legislation and Skills)** in Sydney from 20–24 April; **Mediator Assessment** course on Gold Coast 12–13 February; **Global Negotiation Course** in Lyon, France on 30 August to 4 September. For more information email <[drc@bond.edu.au](mailto:drc@bond.edu.au)> or visit <[www.bond.edu.au/law/centres](http://www.bond.edu.au/law/centres)>.
- **Non-Adversarial Justice: Implications for the Legal System and Society Conference**, Melbourne, 4–7 May 2010. Further information, including details about abstract submission can be found at <[www.law.monash.edu.au/nonadvj](http://www.law.monash.edu.au/nonadvj)>. The full conference flyer can be found at: <[www.ajja.org.au/NAJ%202010/NAJ10%20Infolyer&Reg.pdf](http://www.ajja.org.au/NAJ%202010/NAJ10%20Infolyer&Reg.pdf)>.
- **Mediator Style Training** is running **Mediating Personality Workshops** on 29 August and 7 November in Perth; 8 August and 3 October in Sydney; 25 July and 17 October in Melbourne; 22 August in Adelaide; 12 September and 31 October in Brisbane; 28 November in Townsville; 19 September in Canberra.

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Inquiries should be addressed to [adrbulletin@bond.edu.au](mailto:adrbulletin@bond.edu.au)

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