Royal Commission into Institutional Responses to Child Sexual Abuse

ISSUES PAPER 6 (*Released 23 April 2014)*

Redress Schemes

A SUBMISSION FROM CATHOLICS FOR RENEWAL INC[1]

Introduction

1. Catholics for Renewal is a group of Australian Catholics concerned that the institutional organisation of their Church is neither accountable nor transparent, demonstrated tragically in the Church's response to clerical sexual abuse of children involving injustice, cover-up and aggravation of the sexual abuse through protection of abusers, followed by strong resistance to public demands for transparency.

2. Catholics for Renewal expresses concerns shared by many Catholics, lay and clerical, regarding the dysfunctional governance of our Church. We suggest that the adequacy of protocols, whether for Redress Schemes or other purposes, can only be judged in the context of the reliability of auspicing organisations. The Catholic Church has a history of protection of the institutional Church and the covering up of the sexual abuse of children at the expense of child victims and any redress will be inadequate without addressing the cause of these offending behaviours, which we refer to in this submission as 'institutional abuse'.

3. Central to this submission is our view that '*institutional abuse*' occurs when a representative of an institution:

i) without due regard to the evidence, does not believe or denies a child victim's claim of sexual abuse brought against an employee or agent of the institution and places the protection of the institution and its reputation ahead of the interests of the child; or

ii) fails to act to protect a child where that representative of an institution

[1] This submission is directed specifically to the Commission's Issues Paper on Redress Schemes, but the concerns we express regarding the Church's dysfunctional governance are relevant to most aspects of the Commission's terms of reference and we would ask that this submission therefore be considered in the wider context as well. This submission draws in part on earlier submissions of Catholics for Renewal, e.g. in relation to the Commission's *'Towards Healing'* Issues Paper.

has knowledge or holds a reasonable suspicion that a child is being abused by an employee or agent of the institution, thus exposing that child and potentially other children to further abuse; or

iii) covers up sexual abuse of a child by an employee or agent of the institution by transferring abusers to another location (parish) or work thereby placing other children at risk of abuse; or

iv) fails on moral grounds to report the crime of sexual abuse of a minor to the relevant State or Territory police agency for investigation and prosecution, irrespective of whether there is a mandatory criminal reporting duty applying in the jurisdiction in which the offence occurred; or

v) otherwise fails to act in the best interests of any victim of sexual abuse by an agent or employee of the institution.

4. We make strong, evidenced statements regarding institutional abuse by the Catholic Church arising from the inadequacy of the Church's governance; we believe that the scandal of the sexual abuse of children by priests, religious and lay personnel of the Catholic Church has shown that the Church's Christian values have been eroded by its worldwide dysfunctional culture and governance; a culture that lacks accountability, transparency and inclusiveness in decision making, a culture that cannot be adequately countered just by new protocols and agreed schemes of redress, a culture that has resulted in institutional abuse of child victims of sexual abuse. Furthermore, that flawed system of ecclesiastical governance can only be adequately understood through an informed and thorough grasp of the Church's structure and culture, a matter that we attempt to address in this submission and a matter on which we would encourage the Commission to seek expert objective advice.

The Issues Paper

5. The Commission's Issues Paper refers to the requirement in its Terms of Reference to inquire into what institutions and governments should do to address, or alleviate the impact of, past and future child sexual abuse in institutional contexts. The Paper notes that '**redress**' *"means remedy or compensation, and it can include financial compensation, provision of services, recognition and apologies and the like*", and that '**redress schemes'** or processes have been "*established by governments or institutions to offer compensation and/or services to those who suffer child sexual abuse in institutional contexts."*

6. In addressing the Royal Commission's terms of reference, the focus of our submission is specifically on the Catholic Church in Australia and worldwide, particularly its scandalous failings in both the incidence of child sexual abuse by its priests, religious and lay personnel and in a second level of abuse, through the

manner in which it responded when it became aware of the abuse. Those failings include well-documented evidence of cover-ups facilitated by well-orchestrated and canonical processes designed to ensure institutional protection and damage control throughout the world. The result was further abuse of children by paedophiles protected by the Church.

7. Our submission shows that these failings reflect the dysfunctional governance of the Catholic Church in its unaccountable structures and practices in management and canon law, and a dangerous culture of clericalism antithetical to good governance and the Church's mission to propagate the teachings of Christ. This dysfunctionality has rendered the Church unable or unwilling to respond appropriately to the sexual abuse of children by its priests, religious and lay personnel, and will adversely affect the Church's capacity to accept and implement any redress scheme.

8. We have already strongly supported the need for adequate responses of a pastoral and financial nature to survivors of child sexual abuse.[2] We believe however that any process changes introduced by the Church in response to the Royal Commission will be ineffectual without specifically addressing the Church's role in institutional abuse of victims and the need for fundamental changes to its governance. Any system of redress must therefore include a real commitment by the Church to the highest standards of institutional governance. Present secular corporate standards of governance throughout the world would reject as totally inadequate the level of accountability and transparency currently displayed by the Catholic Church.

9. The Catholic Church's own proclaimed moral beliefs and values should demand the highest values in governance including accountability, transparency, respect for the person, the rights of the child, and inclusiveness, all guided by a Christ-like love of others. Where were these beliefs and values in the Church's institutional response to the criminal sexual abuse of children?

10. Having examined the breadth of the redress issues set out in the Commission's Issues Paper and in light of our particular focus, our submission will comment on:

a) the desirable features of redress schemes, and
b) the importance of Church governance reform as part of any redress scheme.

Redress Schemes

11. We support the Issues Paper regarding the nature and challenges of financial

[2] Catholics for Renewal, *Submission to The Royal Commission on Institutional Responses to Child Sexual Abuse in response to Issues Paper 2: Towards Healing*, August 2013.

compensation schemes, and in that regard also support the main principles in Recommendation 28.1 of the recent Victorian Parliamentary Inquiry, *The Betrayal of Trust,* advocating:

> *"…a specific scheme for victims of criminal child abuse that:*
>
> *• enables victims and families to obtain resolution of claims arising from criminal child abuse in non-government organisations*
>
> *• is established through consultation with relevant stakeholders, in particular victims*
>
> - - - (omitted – see * note below)
>
> *• ensures non-government organisations are responsible for the funding of compensation, needs and other supports at amounts agreed through the process."*

* Note: The recommendation also suggested that the proposed scheme should *"encourage(s) non-government organisations to* ***voluntarily*** *contribute a fee to administer the scheme" (bolding added).* We do not agree that financial support should be voluntary.

12. Catholics for Renewal suggests that a national redress scheme should be established with the following broad features:

a) Mandatory coverage of all institutions with responsibility for the care and oversight of children;

b) An independent statutory body with authority to investigate and determine appropriate redress, including compensation, for survivors of abuse;

c) Institutions with responsibility for the care and oversight of children be involved in the verification or contesting of claims for compensation;

d) The level of verification or standard of proof required in abuse claims be 'the balance of probabilities';

e) Administrative funding of the scheme primarily by involved institutions through a mandatory levy which takes into account, to the extent possible, the record of the institutions;

f) Any compensation awarded to be met by the relevant institution in which the abuse has occurred;

g) All claimants to be able to bring a redress claim regardless of when the abuse occurred;

h) All claimants to have legal and counselling costs met by the relevant institution against whom the claim is made, subject to any limits set by the independent redress body in particular cases;

i) Fairness, equity and consistency among victims of abuse across institutions require that compensation be assessed on the merits of each case, including the extent of any institutional abuse, and not on the institution's capacity to pay;

j) Survivors of abuse who have already received some financial compensation for their abuse, through any one or more existing schemes administered by institutions, be eligible to claim further redress through the national scheme, subject to the financial compensation already received, albeit nominal in some cases, being taken into account in any subsequent determination by the national body;
k) Redress to extend to considering compensation for lost earnings where a survivor is unable to work because of the abuse suffered as a child;
l) Where the claim is established and the facts demonstrate institutional abuse (failures of governance including any protection of an abuser or any attempt at a cover-up), redress should include an explicit acknowledgement of the systemic failure of governance as well as the perpetrator's criminal abuse;
m) Any access to a redress scheme will compliment but not replace a survivor's access to common law and civil litigation rights to bring a claim of damages against any institution and its agents for abuse alleged to have taken place;
n) Widespread governmental and community consultation on the design features of the redress scheme, including extensive consultation with survivors of abuse.

Governance of the Catholic Church

13. The Royal Commission's public hearings into the handling of child sexual abuse within the Catholic Church have demonstrated a lack of subsequent justice for many victims involving a second level of abuse that we have referred to as institutional abuse, effectively aggravating the trauma of the primary abuse. We believe that many survivors see redress as needing to include not only compensation for their own suffering but also governance reforms by the offending institutions to ensure that they become publicly accountable for their behaviour, and thus are no longer able to act with impunity in their own self-interest at the expense and suffering of innocent parties. Many survivors regard such reforms as a form of redress just as important as financial compensation.

14. While an apology from perpetrators and from the Church on behalf of perpetrators is important to most victims, many have expressed dismay that Church authorities have not accepted in their terms of apology any responsibility for systemic culpability related to the abuse, particularly through institutional cover-ups and immoral and un-Christian responses. Victims of clerics have been damaged not just by the sexual abuse of paedophiles holding positions of trust and spiritual leadership, but also by the governance failures of their Church, which subordinated their welfare and pastoral care to the protection of its own reputation, agents and interests.

15. Catholic Church authorities in Australia and elsewhere have until recently failed to acknowledge any institutional abuse through the actions of the Church authorities covering up the criminal sexual abuse of children by priests, religious and lay personnel. The protection of the institution and damage control have too often seemed to trump concern for victims. There still remains a reluctance to acknowledge that this institutional abuse involving cover-ups and the protection of paedophiles has been worldwide, sometimes with the direct involvement including direction, of the Holy See. Evidence of the gradual revelation of the criminal sexual abuse of children by priests, religious and lay personnel across the world suggests that the extent of its occurrence is still to be revealed in some countries, particularly in those countries where the laity still look to clergy with an artificial and unreal sense of a God-like status.

16. Church authorities have still not publicly accepted the ultimate accountability of the Holy See for this failure in the Church's governance and the nature of the international governance dysfunctionality, both cultural and structural, which have facilitated the worldwide institutional betrayal of trust. This is not to suggest that there are not many good men, albeit apparently lacking in an understanding of accountability, in the hierarchy of the Catholic Church. Otherwise good leaders of institutions can become accustomed to and accepting of inadequate governance structures and its associated deficient culture even to this extent of institutional abuse, particularly when strict autocratic controls have institutionalised poor governance practices and unquestioning obedience.

17. Too many Church leaders have become captives of this culture, apparently unable to engage effectively with the people of the Church - a situation that could be described as a wilful institutional autism in the face of public evidence of the grave damage done to innocent children. Australian Catholic social commentator, jurist, academic, and Jesuit priest, Father Frank Brennan SJ, has observed regarding sexual abuse and the Church:

> *"Clearly, the Church itself cannot be left alone to get its house in order. That would be a wrongful invocation of freedom of religion in a pluralist, democratic society."*[3]

Cardinal Carlo Maria Martini recorded the following trenchant critique of the Church's governance just weeks before his death on 29 August 2012[4]:

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[3] Father Frank Brennan SJ, Law and Justice Oration, at the Law and Justice Foundation 2012 Justice Awards Dinner, Wednesday 31 October 2012, Parliament House, Sydney, sourced May 2014 at http://www.eurekastreet.com.au/article.aspx?aeid=33917

[4] Belfast Telegraph, 3 Sep. 2012, *Vatican is rocked by Cardinal Martini's damning words from beyond the grave,* sourced May 2014 at http://www.belfasttelegraph.co.uk/news/world-news/vatican-is-

> *"The church must recognize its errors and follow a radical path of change, beginning with the pope and the bishops. The pedophilia scandals compel us to take up a path of conversion."* and
> *"The church is 200 years behind the times."*[5]

18. Any protocols of the Catholic Church for responding to allegations of sexual abuse and participating fully in schemes of redress must recognise the incidence of both the primary sexual abuse of children and the secondary institutional abuse. Such protocols must be assessed in the context of the Church's overall governance, recognising that the institution is in fact centrally governed from the Holy See on these matters, despite a very complex and ambiguous form of decentralised administration. In April 2010, Fr Hans Kung, an eminent Catholic theologian, wrote an open letter to all Catholic bishops entitled *'Church in worst credibility crisis since Reformation*' in which he stated[6]:

> *"There is no denying the fact that the worldwide system of covering up cases of sexual crimes committed by clerics was engineered by the Roman Congregation for the Doctrine of the Faith under Cardinal Ratzinger (1981-2005). . . Ratzinger himself, on May 18th, 2001, sent a solemn document(7) to all the bishops dealing with severe crimes . . . , in which cases of abuse were sealed under the "secretum pontificium", the violation of which could entail grave ecclesiastical penalties."*

19. This direction from Cardinal Ratzinger, to ensure secrecy regarding criminal offences involving the abuse of children, is particularly disturbing. Later, as Pope Benedict XVI, he asserted that the *"entire activity of the Church is an expression of a love that seeks the integral good of man"*[8]. That '*expression of love'* was regrettably absent in the Church's approach to the clerical sexual abuse of children, a tragic example of mission goal displacement by an institution committed to the teachings of Christ. Church authorities should have acted immediately to protect children, and

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rocked-by-cardinal-martinis-damning-words-from-beyond-the-grave-16205822.html - ixzz2G73QteH0

[5] Cardinal Carlo Maria Martini SJ, 8 August 2012, interview in National Catholic Reporter, 4 Sep 2012, sourced May 2014 at http://ncronline.org/blogs/ncr-today/translated-final-interview-martini

[6] Hans Kung, The Irish Times, Fri. 4 April 2010, sourced May 2014 at http://www.irishtimes.com/newspaper/opinion/2010/0416/1224268443283.html and at http://www.associationofcatholicpriests.ie/2012/05/hans-kungs-letter-to-bishops-is-worth-re-reading-chris-mcdonnell/

[7] *Epistula ad totius Catholicae Ecclesiae Episcopos aliosque Ordinarios et Hierarchas interesse habentes de delictis gravioribus eidem Congregationi pro Doctrina Fidei reservatis*, The Vatican, May 18, 2001. (Congregation for The Doctrine of the Faith, *'Letter sent to Bishops of the entire Catholic Church and other Ordinaries and Hierarchs having an Interest Regarding The More Serious Offenses reserved to the Congregation for the Doctrine of the Faith')* sourced May 2014 at http://www.bishop-accountability.org/resources/resource-files/churchdocs/EpistulaEnglish.htm

[8] Pope Benedict XVI, 'Deus Caritas Est - On Christian Love', para 19, 2006.

should have required that all evidence of child abuse be reported promptly to the civil authorities. Cardinal William Levada, Cardinal Ratzinger's successor as Prefect of the Congregation for the Doctrine of the Faith, subsequently and belatedly issued a global direction on 3 May 2011 stating, inter alia, *". . . the prescriptions of civil law regarding the reporting of (crimes of sexual abuse of minors) to the designated authorities should always be followed."*[9] That direction amazingly did not require reporting as a moral imperative; its efficacy depends on local civil law requiring mandatory criminal reporting (not currently legislated in most of Australia).

20. This very limited attitude to mandatory criminal reporting is reflected in Australia in the Church's differing approaches to the administration of *Towards Healing*: on the one hand, acceptance in New South Wales where mandatory criminal reporting applies, and on the other hand, opposition in Victoria up until the Government decided to legislate mandatory criminal reporting following its Parliamentary Inquiry. Further, the Catholic Church's submissions to this Royal Commission (the Truth Justice and Healing Council's submission on the Commission's Towards Healing Issues Paper) have formally not supported the introduction nationally of mandatory criminal reporting. This is a worldwide phenomenon, as illustrated by the recent guidance to the bishops of Italy by the Italian Catholic Bishops Conference, in which it encouraged its members *"to cooperate with civil authorities in cases of clerical sexual abuse, but said the bishops have no legal obligation to report abuse allegations to the police or other civil authorities*."[10] It further noted that *"bishops are exonerated from the obligation to turn in or show documents concerning what they knew or that are in their possession"* due to provisions in the Lateran Pacts, a treaty between Italy and the Holy See.[11]

21. Pope John-Paul II, predecessor to Pope Benedict XVI, also adopted a defensive position of damage control in dealing with child sexual abuse, revealing in the words of one commentator, *"the very dark side of the institutional church."*[12]

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[9] Congregatio Pro Doctrina Fidei, Circular Letter to assist Episcopal Conferences in Developing Guidelines for dealing with cases of Sexual abuses of Minors perpetrated by Clerics, issued by Cardinal Levada, Prefect, 3 May 2011

[10] Carol Glatz of Catholic News Service, *No mandatory reporting in Italian norms for handling abuse allegations,* National Catholic Reporter, Apr. 29, 2014, sourced 6 May 2014 at http://ncronline.org/news/accountability/no-mandatory-reporting-italian-norms-handling-abuse-allegations

[11] Ibid.

[12] Thomas P. Doyle, *Records show that John Paul II could have intervened in abuse crisis - but didn't,* National Catholic Reporter, Apr. 25, 2014, sourced April 2014 at http://ncronline.org/news/accountability/records-show-john-paul-ii-could-have-intervened-abuse-crisis-didnt

22. Pope Francis, now a year into his pontificate, is reported to have instructed the Prefect of the Congregation for the Doctrine of the Faith in April 2013 to "*act decisively with regard to cases of sexual abuse*"[13] and has indicated some recognition of governance failures in the Church and criticised the clericalist culture. However, he has not recognised the facts of the Church's institutional abuse nor the Church's need for governance reforms to ensure accountability, transparency and inclusiveness in decision-making throughout the Church, let alone in cases of clerical child sexual abuse. The American publication, *National Catholic Reporter*, recently commented in August 2013,

> *"Many observers believe one test will be whether Francis extends the tough accountability the church now has for priests who abuse also to bishops who mismanage abuse complaints."*[14]

In other words, the Church has only acted on primary abuse, not the Church's institutional abuse, which has greatly exacerbated the impact of abuse, leaving victims feeling subordinated to the Church's own self-interest, too often unjustly compensated, and perpetrators at large to further abuse.

23. The messages of Pope Francis on this issue are mixed and confusing. On the one hand, he has apologised for the criminal sexual abuse that was perpetrated; but on the other hand, he has adopted the Church tactic of defending the Church's governance and ignoring institutional abuses:

"The Catholic church is maybe the only public institution to have moved with transparency and responsibility," . . . "No one else has done more. Yet the church is the only one to be attacked."[15]

This statement is demonstrably false and pays no regard to institutional abuse. Pope Francis is clearly very poorly informed. The Church is still far from coming to grips with the gravity of its governance failures in responding to the crimes of sexual abuse of children.

24. Pope Francis has brought many strengths to the papacy; he has criticised clericalism and careerism in the Church insisting on a clear commitment to genuine and humble service. He has sought forgiveness for the "evil" committed by priests

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[13] Zenit 'The world seen from Rome" 5 April 2013: http://www.zenit.org/en/articles/francis-signals-continued-toughness-in-sex-abuse-scandal

[14] John L. Allen Jr., *Looking toward the 'Francis revolution' still to come*, National Catholic Reporter, Aug. 12, 2013 sourced August 2013 at http://ncronline.org/news/vatican/stage-set-looking-toward-francis-revolution-still-come

[15] Joshua J. McElwee, *Francis marks anniversary with interview on sex abuse, women, contraception,* National Catholic Reporter, *Mar. 5, 2014* sourced April 2014 at http://ncronline.org/blogs/ncr-today/francis-marks-anniversary-interview-family-women-contraception

who molested children[16] (but again no mention of institutional abuse). He has appointed a Pontifical Commission for the Protection of Minors[17], which is to "*propose initiatives to encourage local responsibility around the world and the mutual sharing of 'best practices' for the protection of all minors, including programs for training, education, formation and responses to abuse.*"[18].

25. The head of the Commission for the Protection of Minors, Cardinal Sean O'Malley, recently lamented that "*Many don't see (clerical sexual abuse) as a problem of the universal church . . . The church has to face it is everywhere in the world. There is so much denial. The church has to respond to make the church safe for children.*"[19] There is no indication however, that the Commission will examine the widespread institutional abuse by the Church due to its own dysfunctional governance.

26. Fr Thomas Doyle, an expert witness/consultant on clergy sex abuse cases since 1989 involving several hundred separate cases in the United States, Canada, the U.K., Ireland, New Zealand, Australia and Israel, has noted that the Church's own canon law proscribes intentional negligence in dealing with priests who commit the crime of abuse of a minor.[20] Doyle records that bishops have failed to respond when given information or reports about specific instances of sexual abuse, and they have re-assigned priests whom they knew to have committed abuse, a violation of canon law which amounts to complicity in the crime and neglect of office. Yet there is no known instance of any bishop or Curial official in Rome being investigated, charged and prosecuted by the Vatican for this violation.[21]

27. The Archbishop of Melbourne, Denis Hart, admitted to the Victorian Parliamentary Inquiry that his ability to prosecute the laicisation of clerical paedophiles was seriously constrained by the need for Holy See approval. In a case discussed before that Inquiry, the archbishop advised that, until the issuing of the

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[16] Josephine McKenna - Religion News Service, *Cardinal Sean O'Malley on sexual abuse crisis: 'There is so much denial'* in America, 7 May 2014, sourced 8 May 2014 at http://americamagazine.org/issue/cardinal-sean-o'malley-sexual-abuse-crisis-'there-so-much-denial'

[17] CatholicCulture.org, *Pope Francis institutes Pontifical Commission for the Protection of Minors*, Catholic World News - March 24, 2014, sourced 8 May 2014 at http://www.catholicculture.org/news/headlines/index.cfm?storyid=20869

[18] Josephine McKenna - Religion News Service

[19] Ibid.

[20] Fr. Thomas Doyle, J.C.D., C.A.D.C. Annex C to Shadow Report Prepared for 52nd Session of the UN Committee Against Torture in Connection with its Review of the Holy See, Submitted by the Center for Constitutional Rights on behalf of the Survivors Network of those Abused by Priests, April 2014.
Expert Declaration of – sourced 26 April 2014 at
http://www.ccrjustice.org/pdf/CCR_SNAP_Shadow_Report_apr2014.pdf

[21] Ibid.

document *Sacramentorum Sanctitatis Tutela* in 2002, there were serious impediments to any bishop petitioning the Holy See for the removal from the clerical state (involuntary laicisation) of a cleric found guilty of child sexual abuse in a civil court.[22] Although the priest concerned had his faculties withdrawn in 1993, it was not until 2011 that the Holy See authorised his laicisation.

28. Cardinal George Pell has provided this view of the autocratic governance of the Catholic Church:

> *"Under Christ Our Lord, the papacy is at the head of the world-wide communion of faith, hope and love, a system where bishops promise obedience to the Pope and priests promise obedience to their bishops.*
> *For us the papacy is . . . the longest surviving monarchy in the world . . ."*[23]

That promise of obedience in a monarchical system, non-accountably autocratic, is reinforced in the oath that Church officials are required to take. It includes these words:

> *"With Christian obedience I shall associate myself with what is expressed by the holy shepherds as authentic doctors and teachers of the faith or established by them as rulers of the church."*[24]

Paul Collins, a Church historian, has stated: "notions of the pope as lord and absolute monarch of the church need to be jettisoned."[25] Bishops should in our view take a values-based oath, pledging to respect the moral standards of society and the teachings of Christ, to do everything they can to protect children and vulnerable people, to report any inappropriate behaviour by clerics to the legal authorities, to assist and care for those who have suffered abuse, and to ensure they receive just and compassionate compensation.

29. Dr Marie Keenan's comprehensive 2012 study of clerical child sexual abuse in Ireland[26] locates the crisis of sexual abuse within the very cultural fabric of the priesthood and the governance structures and practices of the Church. Keenan suggests that the 'clerical culture' (often referred to as 'clericalism') imposes *"an iron law of denial and silence on priests that contributes to many of the problems in*

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[22] Archbishop Denis Hart in Evidence provided to the Victorian Parliamentary Inquiry, 20 May 2013, pp8-9.

[23] Cardinal George Pell, Speech Of Welcome at Opening Of *Domus Australia*, Rome, by His Holiness, Pope Benedict XVI , 21/10/2011, sourced August 2013 at http://www.parra.catholic.org.au/news---events/latest-news/latest-news.aspx/domus-australia-opening--cardinal-s-speech.aspxopening--cardinal-s-speech.aspx

[24] John M. Swomley 'Infallibility in Ethical Perspective' in *Christian Ethics Today*, Issue 14, (Updated: 12/27/2010), 26 sourced 8 May 2014 at http://www.christianethicstoday.com/cetart/index.cfm?fuseaction=Articles.main&ArtID=204

[25] Paul Collins: *Papal Power. A proposal for change in Catholicism's third millennium*, London: Harper Collins, 1997.

[26] Marie Keenan, *Child Sexual Abuse and the Catholic Church: Gender, Power and Organizational Culture*, Oxford University Press, New York, 2012.

the priesthood today" [27] ('*Priests*' includes bishops). Keenan suggests that the problem appears rooted in the attitudes inculcated in the seminary system that creates a closed, secretive, clerical world, and in a hierarchy that is responsible and answerable only to itself, and sees itself as beyond the reach of the state's legal system. Sexual abuse was, and may still be, common in that closed, secretive, clerical world, particularly in those societies where the laity still look to clergy with an artificial and unreal sense of a God-like status.

30. Keenan points out that the superiority claimed through clericalism is inconsistent with the Vatican Council's understanding of the Church as the People of God. Keenan observes that the effect of clericalism on clergy was:

> *"the belief that they were not only set apart and set above the laypeople, but they were also thought to be above the civil or criminal law."*

and

> *"Clericalism may also help to explain why the institutional Church reacted to reports of abuse in the way that it did and why some secular institutions deferred to the institutional Church when dealing with sex abuse cases (Murphy Report, 2009; Ryan Report, 2009)."*

31. This culture of clericalism promotes deference to the Church and its officials, sometimes to an unhealthy level as shown in many cases of child sexual abuse. This question of deference may even impact on the Royal Commission's dealings with the institutional Church, for normally the Church's contribution to society is highly valued and State intervention in its internal governance affairs is minimal. However when Churches breach societal standards, the State and its agencies must intervene to bring that situation to public attention and seek to ensure that the Church becomes a good corporate citizen.

32. The failure of the Holy See, the ultimate Church authority, to publicly discipline bishops involved in improper protection of sexual abusers and the continued exposure of children to abuse, not only illustrates the Church's lack of accountability but also supports the view that bishops were acting in accordance with directions, explicit and/or implied. The case of Cardinal Bernard Law is illustrative. Cardinal Law resigned as Archbishop of Boston in 2002 after church documents were found showing that he had covered up child sexual abuse committed by priests in his archdiocese. However, Pope John Paul II subsequently appointed Law as Archpriest of the Basilica of St Mary Major in Rome in 2004.[28] Following his retirement in 2011 we understand that he continues to live in an apartment within the basilica.

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[27] Keenan, op.cit. P.41

[28] Wikipedia, sourced August 2013 at: http://en.wikipedia.org/wiki/Bernard_Francis_Law.

33. The Cummins Report on Protecting Victoria's Vulnerable Children observed:

> *"a good organisational approach to risk management of child abuse would incorporate an understanding of . . . how* ***theological beliefs and church structures that engender and maintain patriarchal views*** *can operate to undermine the ability of a victim to speak up, and to expect that appropriate criminal action can take place."*[29] *(*our emphasis*)*

Any redress scheme, to be effective, must be able to deal with an institution which "*engender(s) and maintain(s) patriarchal views"* which can "*undermine the ability of a victim to speak up, and to expect that appropriate criminal action can take place",* and, worse, an institution which has aggravated primary abuses with institutional abuse.

34. The Catholic Church in the 21st century remains an assertively patriarchal organisation. Despite welcome suggestions by Pope Francis that women should be involved in more responsible roles, the Church still generally excludes women from the exercise of high-level authority, not only in the clerical orders but also in the most senior executive and curial positions. The ban on women's ordination, which is not accepted by many Catholics, has been used as a rationalisation for wider gender discrimination in most areas of executive Church authority, excluding women from positions that do not require priestly ordination, such as the heads of the Vatican dicasteries (departments). The best-managed and most successful institutions throughout the world have long accepted the importance of gender diversity – optimally gender balance - in organisational direction. Despite the Cummins observation and the widely accepted importance of diversity in ensuring good governance and high performance, we know of no evidence of Church authorities examining the discriminatory practices, structures and culture *"that engender and maintain patriarchal views*". Further, many committed clergy, religious and lay people believe that unless the Church tackles head-on the patriarchal policies of compulsory celibacy and sexism, the clerical culture that produces abuse will continue. The Church has a responsibility for the impact of its patriarchal policies on the status of women worldwide and the impacts on violence to both women and children.

35. To summarise, the Catholic Church's system of governance involves considerable centralised and global control, with complex systems of authority through diocesan bishops and religious superiors. The Church's ultimate central controlling authority, the Holy See, has a propensity to exercise that control in an autocratic manner, fails its own espoused 'principle of subsidiarity'[30], lacks accountability at every level, and

[29] Cummins report, Report of the Protecting Victoria's Vulnerable Children Inquiry, Jan. 2012, 14.5.2
[30] The principle of subsidiarity was first formally developed in the encyclical *Rerum Novarum* of 1891 by Pope Leo XIII, and can be stated as: "an organizing principle that matters ought to be handled by

has no commitment to transparency or to inclusiveness in its decision making. Moreover, the Church has institutionalised gender bias, and persists with an inappropriate and anachronistic culture and structure that insists on a pre-eminent concern for protection of the institution. It maintains an exclusively male, clerical and hierarchical structure of autocratic and sexist governance, exercised through celibate bishops, disproportionately aged and often socially isolated, with limited engagement with the membership, subject to the supreme control of a papal monarch. It is a thoroughly out-dated and unaccountable system of governance that does not even approach modern standards of good secular governance (or established Australian values) that routinely require transparency, inclusivity, fairness, and accountability.

36. Catholics for Renewal would argue that the Church's governance structure and culture militate against its decision makers being able to effectively understand, respond to, and learn from the social and spiritual experiences of the people of the Church and society, ignoring its own governance requirement to discern the "sense of the faithful" (*sensus fidelium*). In the case of the sexual abuse scandal, Church decision makers have also resisted their accountability to civil society.

37. Australian bishops have not openly consulted with the laity on the sexual abuse scandal and have long been averse to an open and adult dialogue with the people of the Church. Every Pope since the Second Vatican Council has publicly supported the Council's recommendation that synods should 'flourish', particularly Pope Francis. Synods are the means of discerning directions with the involvement of all the people of the Church, but these means of participation and dialogue have found no support among the overwhelming majority of the bishops in Australia.[31]

38. Only five bishops have convened a diocesan synod since the Vatican Council ended in 1965. The Melbourne Archdiocese has not had a synod since 1916, the Sydney Archdiocese since 1951. The last National Synod or Plenary Council was held in 1937. Church synods are the oldest and most traditional forums for collegial discussion, debate, and decision-making on matters of doctrine, morals and discipline. Under the 1983 Revised Code of Canon Law synods allow for the consultative participation of laywomen and laymen. The Australian bishops could have convened a synod or synods to discuss openly with their people the issue of clerical sexual abuse at an early stage, and the safeguarding of children in the development and review of *Towards Healing* and *The Melbourne Response*, or the Church's response to this Royal Commission. But they chose not to.

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the smallest, lowest or least centralized competent authority. Political decisions should be taken at a local level if possible, rather than by a central authority". cf Wikipedia sourced April 2014 at: http://en.wikipedia.org/wiki/Subsidiarity_(Catholicism)

[31]Wilkinson, Peter J., *Catholic Synods in Australia: 1844-2011,* (Unpublished, December 2011, sourced August 2013 at: http://www.catholicsforrenewal.org/News Items/P Wilkinson Synods April 2012x.pdf

39. In our view, the Royal Commission should recommend the global reform of the Church's inadequate governance, culture and practices which resulted in institutional abuse that aggravated the horrors of clerical sexual abuse of children, and which have prevented an early and strong response to all cases of abuse. It is imperative that the Catholic Church reform its governance structures to ensure accountability and exposure of wrongdoing, ensuring that its culture and structure support accountable and transparent decision making informed by the knowledge and experience of the Church's people. The Church must therefore adopt clear and unambiguous modern governance structures, policy and practice including:

- Informed, accountable, transparent and inclusive decision making,
- Reporting evidence of criminal offences, particularly child abuse, to civil authorities,
- Gender balance and inclusion in decision making structures and practices,
- Consistent Australia-wide practices for responding to allegations of child sexual abuse, particularly in committing to a national redress scheme, regardless of the canon law directions of the international Church.

40. It would seem that the Catholic Church requires the Royal Commission's special attention in these matters having regard to the Church's lack of accountability, an established global culture of clericalism which militates against good governance practices, and apparent conflicts between the Church's international canon law and prevailing civil law in various States throughout the world.[32]

41. With the recent establishment of the Commission for the Protection of Minors, albeit with an unclear brief, the Church may now be in a much better position to receive and accept advice regarding the role of institutional abuse - unaccountability, clericalist culture, and inappropriate provisions of canon law - in the child sexual abuse scandal, from an expert body such as the Australian Royal Commission into Institutional Responses to Child Sexual Abuse.

Conclusion

42. Catholics for Renewal strongly supports the importance of a national approach to redress schemes to offer compensation and/or services to those who have suffered abuse in institutional contexts, including both sexual abuse from predators and institutional abuse from authorities. In addressing the Royal Commission's terms of reference, our focus is specifically on the Catholic Church but our concerns are based

[32] For a detailed discussion of the impact of conflicts between the Church's international canon law and prevailing civil laws on the Church's handling of clerical child sexual abuse, see Tapsell, Kieran, *Potiphar's Wife: The Vatican's Secret and Child Sexual Abuse,* ATF Press, Adelaide, 2014.

on principles that are applicable more generally, particularly with regard to the importance of organisations dealing with children having proper standards of accountability, not only for their employees and agents, but for their own organisational governance.

43. We submit that without accountable governance, an organisation's commitments are of little value, and that therefore any schemes of redress must be based on a confidence that the institutions involved will be committed to an accountable and transparent governance regimen. We have set out our grave concerns regarding the inadequacies, indeed the dysfunctionality, of the worldwide governance of the Catholic Church that has too often resulted in failures to respond to the desperate needs of abused children, and has then aggravated that abuse with institutional abuse through inadequate responses to individuals and the protection of paedophiles enabling them to abuse more children.

44. Catholics for Renewal submits that a national scheme of redress holding accountable all institutions with responsibility for the care and oversight of children is a necessary development, and we have set out what we see as desirable features of such a scheme. However, dysfunctional governance within those institutions could undermine any scheme's efficacy. This caveat applies particularly to the Catholic Church where the criminal sexual abuse of children must be seen in the context of the Church's worldwide failure to respond responsibly to this insidious crime with further institutional abuse. Any action by the Royal Commission, in our view, must address the worldwide governance deficits of the Catholic Church, and the impact of that worldwide dysfunctional governance on any commitment by the Church to support a redress scheme in Australia.

Key issues

45. The key issues identified in our submission are:

i. We support the establishment of a national scheme of redress for victims of child sexual abuse that:
   a. enables victims and families to obtain resolution of claims arising from criminal child abuse in institutions,
   b. is established through consultation with relevant stakeholders, in particular victims, and
   c. ensures institutions are responsible for the funding of compensation, needs and other supports at amounts decided on through the process.

ii. The Catholic Church has a history of protecting itself and its reputation and of covering up the criminal sexual abuse of children by priests, religious and lay

personnel of the Catholic Church. Any redress, therefore, will be inadequate without addressing the cause of these offending behaviours, which we refer to in this submission as institutional abuse.

iii. The Church's flawed system of ecclesiastical governance can only be adequately understood through an informed and thorough grasp of the Church's structure and culture, a matter on which we would encourage the Commission to seek expert objective advice.

iv. When churches breach societal standards, the State and its agencies have a role to bring that situation to public attention and seek to ensure that the Church becomes a good corporate citizen.

v. The Royal Commission should recommend global reform of the Church's inadequate governance, culture, and practices that have resulted in institutional abuse being added to the sexual abuse of children, and have prevented an early and strong response to the original abuse.

vi. The Church should adopt clear and unambiguous modern governance structures, policy and practice including:

a. Informed, accountable, transparent and inclusive decision making,
b. Reporting evidence of criminal offences, particularly child sexual abuse, to civil authorities,
c. Gender balance and inclusion in decision making structures and practices,
d. Consistent Australia-wide practices for responding to allegations of child sexual abuse, particularly in committing to a national redress scheme, regardless of the canon law directions of the international Church.

vii. Catholics for Renewal strongly supports the importance of an effective national approach to redress schemes to offer compensation and/or services to those who have suffered abuse in institutional contexts, both direct abuse and institutional abuse.

viii. With the recent establishment of the Commission for the Protection of Minors, albeit with an unclear brief, the Church may now be more likely to receive and accept advice regarding the role of institutional abuse from an expert body such as the Australian Royal Commission into Institutional Responses to Child Sexual Abuse.

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