Submission re Issues Paper 11 of the Royal Commission into Institutional Responses to Child Sexual Abuse

My name is David Collits, I have degrees in History (2005) and Law (Hons 1) (2009) from the University of Sydney, and have recently qualified to graduate with a Master of Arts (Theological Studies) from the University of Notre Dame, Australia (UNDA). I am currently on sabbatical studying a PhD in theology at UNDA. After working as a tipstaff for Justice MacFarlan of the New South Wales Supreme Court, Court of Appeal in 2010 and solicitor at Clayton Utz Lawyers, 2011-12, I was employed as the Private Secretary of Bishop Anthony Fisher OP, Bishop of Parramatta for a period of eighteen months. Thereafter I worked as his Research Officer at the Diocese of Parramatta and Archdiocese of Sydney until January 2016. I am a practising Catholic who attends Mass daily and am married with two small children. The issues detailed in Issues Paper 11 not only touch upon matters that I have encountered in work and study, but also affect me on a personal level as a laymen seeking to live out a Catholic life ‘on the ground’ as it were and as a father of young children. The views expressed in this submission are the author’s alone and do not express any official position of the Catholic Church or those with whom I have worked. Needless to say, I will only touch upon those issues about which I feel competent to discuss.

As a preliminary, as a Catholic I am deeply troubled by what has occurred at the hands of certain Catholic clergy, religious and laypeople, and leaders who failed to respond to allegations of child abuse justly and in a manner that protected vulnerable people. Speaking theologically and philosophically, evil runs through the heart of every human being. It manifested itself in these cases in the behaviour of individuals who responded to their weaknesses. Their acts touched in horrific ways innocent and vulnerable souls, involving breaches of trust and abuses of power. Leaders failed to act courageously and in the best interests of children and other vulnerable persons. This exacerbated the damage. I pray that those affected may experience peace, healing and justice. After (and I stress after) the survivors and their families, other Catholics are most affected by these moral and legal failures. Notwithstanding human weakness, we expect our leaders, clergy, religious and lay leaders to act with integrity and leadership. It has been disappointing, to say the least, to see such failure.
I would also mention, however, that the bishops and many priests I have encountered in my work and as a Mass-attending Catholic in a variety of parishes are men of decency and faith, seeking to live out the Gospel as best they can. The same goes for lay leaders. Like all of us, however, they are flawed and need understanding. To all appearances, the men and lay leaders that I have encountered are doing their best to respond this crisis, afford justice to the people concerned, facilitate healing in the survivors, and learn how to do better in future.

While members of the Church clearly failed in the past, in my experience, members of the Church are today at the forefront of efforts to eradicate this problem and build a Church and society that welcomes children and other vulnerable persons. The Church has a long history of following Christ’s instruction to “let the children come to me, and do not hinder them; for to such belongs the kingdom of heaven” (Mt 19:14; Lk 18:16). After the State, the Church is the largest provider of schooling in this country. The Church is one of the oldest providers of healthcare in the world, including the provision of neo-natal and ante-natal care. In a culture that is allergic to welcoming children, the Church has long opposed the destruction of embryos and children in the womb. The Church defends the rights of all children and vulnerable people. That of course makes the failures in this area all the more disappointing. Nevertheless, a balanced view will recognise the important work the Church does in this area.

With respect to the substantive discussion points issues listed in the Issues Paper, we would make the following observations. These comments are cast globally but are most relevant to (a), (e), (f) and (i).

The first discussion issue, l(a), seems to be predicated upon the assumption that Church theology and doctrine should somehow be subjected to standards that the State sets. The State has no competence to determine what the Church teaches or how its theologians interpret what, theologically speaking, has been revealed in Christ. The Church is independent of the State and predates the monolithic modern state. The separation of Church and State has been an important principle in Western history, even pre-dating the modern period, in which it became a fundamental constitutional principle. The “free exercise of a religion” protected in s116 of the Commonwealth Constitution surely entails the right to belong to an association.
that itself declares what it believes or does not believe regarding “a supernatural Being, Thing or Principle” and “acceptance of canons of conduct in order to give effect to that belief”. Where the State does have the competence and duty to act, however, is with respect to the forbidding of criminal activity (relevant to “canons of conduct”). Interestingly Mason ACJ and Brennan J in *Church of the New Faith* did not mention as an exception to the immunity doctrine or theology but only “canons of conduct”. The point is that it is conduct that ought to be subjected to criminal sanction when that conduct “offend[s] against the ordinary laws”. In my understanding, the Church’s canon law operates according to the principle that it is subject to the civil law. What the State has no right to do under our constitutional arrangements is tell people what they can and cannot believe, or compel them to act against a conscientiously held position, such as compelling a priest to reveal the contents of a confessional.

Putting aside to what extent the State may have the right to examine Catholic theology or doctrine, in my study and work I have not come across any Church doctrine or theological principle that would sanction the criminal sexual abuse of children or other vulnerable people, or the ‘covering-up’ of such crimes. There is no such doctrine or theological principle that would necessitate the response that was in fact offered by some Church leaders. The current efforts of most bishops and leaders to respond proactively and justly to the phenomenon of sexual abuse is more in line with the teaching of Christ, although of course learning and improvement can always be had in these areas. Some people might point to the hierarchical principle of the Church, in which the Church is structured so that the Pope and bishops (and through them priests and deacons) have governance and teaching responsibilities, as fostering a culture of abuse, denial and cover-up. In this regard Professor Parkinson describes within the Church a focus on the primacy of canon law resulting in the attitude that the Church was “A law unto itself” as well as a culture of clericalism in which

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1 *Church of the New Faith v Commissioner of Pay-roll Tax (Vic)* (1983) 154 CLR 120 at 136 per Mason ACJ and Brennan J.
2 C.f. Id.
3 Id.
4 Id.
5 C.f. Jeremy Sammut, “The Forgotten Freedom: Defending Religious Liberty against Aggressive Secularism,” *ABC Religion and Ethics*, 23 June 2014: [http://www.abc.net.au/religion/articles/2014/06/23/4031114.htm](http://www.abc.net.au/religion/articles/2014/06/23/4031114.htm), accessed on 24 June 2016: “Rather than delegitimating religion as a social and moral force, the real purpose of Section 116 was to prevent the state from restricting freedom to worship and practice one’s religion.”
the bishop-priest relationship is understood in sacramental, paternal terms, so justifying a position of not disclosing allegations of abuse at the hands of a 'priest-son'.

The Second Vatican Council taught in its definitive teaching regarding the nature of the Catholic Church that the holding of clerical positions does not grant the holder power to act with impunity or for selfish ends:

"The holders of office, who are invested with a sacred power, are, in fact, dedicated to promoting the interests of their brethren, so that all who belong to the People of God, and are consequently endowed with true Christian dignity, may, through their free and well-ordered efforts towards a common goal, attain to salvation."  

Bishops, clergy and other lay leaders who perpetrated or failed to stop the occurrence of sexual abuse are manifestly not acting in the "interests of their brethren". Moreover, they acted contrary to the sacred dignity given those who are baptised: it is Church teaching that each baptised Christian has been "endowed with true Christian dignity". Irrespective of office held, there is a fundamental 'equality' of baptised members of the Catholic Church: each human being bears imago Dei and each baptised is an heir in Christ of God's Kingdom, giving them an ineradicable worth that requires commensurate respect (Gen 1:27; Rom 8:17). Each baptised member shares in the mission of Christ's Body, the Church. St Gregory the Great of the sixth century captured the essence of the Christian leadership when he adopted as Pope the use of the phrase servus servorum Dei. He understood his role as pope as being to serve the bishops, who in turn serve the people who are entrusted to their care and have been given Christian dignity. In this he was following his Lord's mandatum, given to his apostles after he had washed their feet, to do as he had done and to "love one another; even as I have loved you" (Jn 13:14-15, 34). Christ had also commanded Peter to feed his little ones (Jn 21:15-17). The Second Vatican Council taught that clergy are to be "good shepherds" to their flock with virtues such as "goodness of heart, sincerity, strength and constancy of mind,

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11 Presbyterorum Ordo, §2.
12 See: http://www.newadvent.org/cathen/13737a.htm
careful attention to justice, courtesy”. In any healthy understanding of the Church, bishops, clergy, religious and lay leaders are to serve their people, build them up and protect them. They failed to do so here, paid insufficient attention to justice and failed to exhibit “goodness of heart”. They acted contrary to God’s will and Church teaching, not in furtherance of it. Notwithstanding the right of the Church to govern her internal affairs and the importance of a bishop’s paternal relationship with his priests, Church authorities may have been “misguided” in the past to the extent that they placed primacy on canon law at the expense of it being coordinated with the civil law, and building up a culture of clericalism. Criminal allegations should be reported to the police: this is certainly current practice in the Church in Australia.

Self-evidently, members of the Church can fail to live up to the high ideals to which Christ calls them. Unfortunately, this can manifest itself not just in individual behaviour but in the development of unhealthy sub-cultures. One of these may well be a clericalism in which there is a distorted emphasis on the status and prerogatives of the clerical class. Such an emphasis is not consistent with the ideals of Christ’s Church. As a relatively young person, I have not been exposed to much evidence of clericalism and I cannot speak to its prevalence at the height of the occurrence of these crimes. From what I gather however there may well have been an undue reverence given to bishops, priests and religious qua bishops, priests and religious, when a realistic view of human nature would have seen these people, as all are, as flawed. A distinction should have been drawn between the office as such and the person holding it.

Attached to such clericalism may also have been an erroneous desire to protect the reputation of the Church, as if how the Church is esteemed is more important than acting according to Christ’s dictates of charity and justice. Pope Francis emphatically has said:

“I prefer a Church which is bruised, hurting and dirty because it has been out on the streets, rather than a Church which is unhealthy from being confined and from clinging to its own security.”

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13 Presbyterorum Ordinis, §2. Translation from Flannery, Vatican Council II.
14 C.F. Parkinson, “A story of moral failure”.
A Church focused on defending its reputation has its priorities wrong. To the extent that clericalism and a misplaced desire to protect the Church’s reputation contributed to the phenomenon of child sexual abuse, they ought to be condemned.

It is convenient to point to mandatory clerical celibacy and the seal attaching to the sacrament of confession as being causes of the sexual abuse crisis (c.f. 1(f) and (i)). Unfortunately the phenomenon of child sexual abuse is not limited to one or two institutions (or indeed institutions as such; sadly sexual abuse is prevalent in families and other contexts). The Royal Commission has emphatically shown that members of the Catholic Church are not the only ones who are guilty in this area. This is not to deny the failings of Church members. The phenomenon is, however, much more complex and variegated than a simple, reductionist explanation that places blame at the feet of Catholic sacramental doctrine and discipline would be.

With respect to clerical celibacy, it is important to note is that the vast majority of Catholic priests do not engage in sexual abuse of minors and vulnerable people. As American theologian George Weigel has pointed out in respect of the phenomenon of child sexual abuse at the hands of Catholic clergy in the United States, it was not celibate priests faithful to their ordination vows that caused the crisis, but those who failed to remain faithful to their vows: to blame sexual abuse on the vow of celibacy is akin to blaming adultery on the wedding vow. In response to the suggestion that clerics engaged in this behaviour because they were “maladjusted psychologically” and needed to release pent up sexual tension, Weigel points to the fact that it is married men who frequently commit sexual abuse and criticised the implicit suggestion that marriage should be characterised as a “crime-prevention

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ap_20131124_evangelli-gaudium.html#V.%E2%80%82A_mother_with_an_open_heart accessed on 24 June 2016.

17 Patrick Parkinson, Kim Oates, Amanda Jayakody, "Breaking the Long Silence: Reports of Child Sexual Abuse in the Anglican Church of Australia," The University of Sydney, Sydney Law School, Legal Studies Research Paper No. 10/82, August 2010, 4, accessed 27 June 2016, [http://ssrn.com/abstract=1666566](http://ssrn.com/abstract=1666566): “Churches have in the past had a poor record of dealing with alleged child sexual abuse. They are far from unique in that, of course. Most other organisations working with children have had similar failures.” See also Parkinson, “A story of moral failure?”: “The tendency of men (and in a few cases women) to sexually abuse children crosses all sectors of the population and includes people with a great variety of beliefs - and no belief. It is not surprising then, that churches have a problem with child sexual abuse. It would be surprising if they did not. Churches are as vulnerable to the problem of sexual abuse as any other group in society".

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program” because it allowed for sexual release. As he says, a “man given to sexual predation is unlikely to be restrained by marriage” (it might be added that a man given to sexual predation is unlikely to be loyal to a vow of celibacy: hence the importance of appropriate screening, psychological testing and so on in the selection of candidates for the priesthood: c.f. 1(g)).

The reputable study into the phenomenon of child sexual abuse in the Catholic Church in the United States of America between 1950-2002, which the John Jay College of Criminal Justice at the City University of New York conducted (the ‘John Jay Report’), concluded that 4.3% of diocesan priests and 2.5% of religious priests had allegations of sexual abuse and that the rates of alleged abuse across different regions in the United States ranged between 3% and 6%. In other words, an overwhelming proportion of priests do not breach their ordination vows of celibacy by abusing children. To tar members of the Catholic priesthood who remain loyal to their vows of celibacy, by suggesting that such a vow contributes to sexual abuse, is unjust to them.

Professor Parkinson, in suggesting that there is a higher proportion of clergy offenders in the Catholic Church than other churches and asking whether clerical celibacy, alone a practice in the Catholic Church, is a possible causal factor in this, comments that the:

“loneliness and difficulty of a celibate life with all the demands of the priesthood may lead other men to seek out teenagers to meet their needs without them being paedophiles. Indeed, sexual attraction to post-pubescent teenagers may be, biologically speaking, within the boundaries of normal adult sexuality.”

He argued that celibacy is unlikely to account for “paedophilic sexual attraction” but that many of those men who commit abuse are not necessarily paedophiles. The implication is that mandatory celibacy may have accounted for sexual abuse, or at least that it is no answer

19 Ibid, 38.
21 Parkinson, “A story of moral failure?”
22 Ibid.
to point out that celibacy does not cause paedophilia. Professor Parkinson also suggests weaknesses in the argument of the John Jay Report that there was a spike in child sexual abuse in the 1960s and 1970s compared to a decline from the 1980s and that, as such, celibacy was constant in this period and so could not be the cause of the spike. He suggests that the disclosure of abuse does not necessarily coincide with incidence, and that a propensity to abuse does not coincide with opportunity. Abuse from the 1980s onwards may not yet have been reported and opportunities to offend may have lessened, while the propensity to offend remains constant. Mandatory celibacy may still be on the hook (Professor Parkinson does not appear to conclude definitively that mandatory celibacy is a causal factor, although he seems to point to it being so).23

Even if the proportion of clerics with allegations of child sexual abuse is higher in the Catholic Church, this is not sufficient of itself to prove a causal relationship: correlation does not equal causation. Moreover, while one would not cavil at the suggestion that the celibate life is challenging, it would be wrong to suggest that a person must engage in sexual activity to be fulfilled or feel his needs are met. There is not anything intrinsic to a celibate life that creates such loneliness as to cause celibate men to seek solace in sexual activity with teenage boys. Healthy fraternity among priests without recourse to sexual activity is possible to alleviate loneliness, as well as healthy, busy, dedicated service to God and His Church. Perhaps greater support is needed for priests in the exercise of their ministries. Discrediting their life-choice to commit to celibacy is, however, unlikely to achieve this. Celibacy is a long-cherished practice of the Catholic Church and embodies “a self-sacrificial way of life [involving] a complete gift of self to Christ and the Church”.24 Moreover, even if Professor Parkinson’s cogent arguments regarding the John Jay Report are accepted, this still does not amount to proof that there is a causal connection between mandatory celibacy and child sexual abuse. At most it discredits the John Jay Report’s suggestions that there is no causal link. Nor do Professor Parkinson’s suggestions that priests may have rationalised their abusive behaviour as not being breaches of the vows of celibacy (because not involving women) prove that it is the vow of celibacy itself which caused them to offend.25

23 Ibid.
24 Weigel, *Courage to be Catholic*, 42.
25 Parkinson, “A story of moral failure?”
It is also misleading to point to the operation of the sacrament of confession, including presumably the seal of the confessional, as being a causal factor in the incidence of child sexual abuse or the failure of Church leaders to respond adequately to it. It may be that a child abuser is unlikely to confess this sin in the confessional. Moreover, a priest can refuse to hear a confession or give absolution if a penitent is abusing the sacrament. He can bid criminals to turn themselves in and rebuke those whose sins are grave.\textsuperscript{26}

Any suggestion that the scope of confidentiality attaching to the sacrament of confession be limited must also be firmly resisted. At the level of civil law, s127 of the Evidence Act 1995 makes clear that religious confessions are privileged communications: a clergy member cannot be compelled to divulge the fact of a religious confession or its contents. Moreover, it is a deeply enshrined practice of the Catholic Church that the confessional is confidential. Like the policy attaching to privileged communications between client and lawyer in which the privilege is designed to enable clients to seek legal advice free from the fear of prejudicial treatment, the seal of the confessional enables penitents to seek forgiveness for their sins, no matter what they have done, free from the fear of social stigmatisation. The principle upholding the privilege of client-lawyer communication is heightened when it is borne in mind that, in Catholic belief, a confession is a communication between God and penitent, in which the priest is an intermediary. The confession is a sacred space in which the soul is touched by God. This fundamental principle of Catholic practice and dogma would suffer derogation if there were legal exceptions to the seal of confidence attaching to the sacrament of confession. Needless to say, most if not all priests would rather be penalised under the criminal law than break the seal of confession.

I thank the Royal Commission for the opportunity to prepare this submission.

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