Submission to Royal Commission on Institutional Responses to Child Sexual Abuse — with Reference to the Catholic Church.

James M. Miller
30 June 2016

I make this submission in response to the invitation made by the Royal Commission into Institutional Responses to Child Sexual Abuse to make submissions about any factors which may have contributed to the occurrence of child sexual abuse in Catholic institutions, or affected the institutional response to child sexual abuse within the Catholic Church.

I specifically note the Royal Commission invites submissions “... on a number of factors identified through our work including canon law, mandatory celibacy ...” and to “... what extent these and other factors have contributed to the occurrence of child sexual abuse in Catholic institutions, or whether these issues have affected the institutional response to child sexual abuse...” (Commission Chief Executive Officer Philip Reed; 5 May 2016)

I am content for my submission to be publicly available.

By email: catholic@childabuseroyalcommission.gov.au.

A: INTRODUCTION

1. The scandal of child sexual abuse within institutions of the Catholic Church will continue until the important lessons of this global tragedy are recognised and decisively acted upon. For the future protection of children it is essential that this occur.

2. This submission is inspired by my desire that some good come from my personal experience. But, and so as not to be misunderstood, I wish to record that I retain respect for the Catholic Church as an institution.

3. In 1978 I was enrolled as a Year 10 student at a Catholic secondary college in an outer suburb of Newcastle; St Pius X, Adamstown. I remained at SPX until 1980, completing the NSW HSC. In 1978, I was sexually abused by the principal of SPX, Father Thomas Brennan. These events have had a significant impact on my life, recounted in my memoir, The Priests, which publishes on 1 August 20161.

1 See The Priests Finch Publishing (August 2016) www.finch.com.au
4. SPX has been described as an epicentre of the sexual abuse scandal. There, the notorious paedophile priest, John Denham, preyed upon dozens of boys numbers of whom met early death by suicide.2

5. In The Priests I address the question of why the prevalence of sexual abuse at SPX was so high. In my view, the greatest risk associated with the phenomenon of child sexual abuse arises within institutions in which paedophiles have access to children or adolescents and, so, opportunity to commit abuse. Research confirms this with institutional based serial paedophiles in the worst category of offenders; they are a uniquely dangerous type.

6. Although this is an area in which research faces formidable methodological challenges and measurement uncertainty, studies plausibly suggest that the worst of institutional offender abuses hundreds of victims before they are caught and almost all (more than 99%) of abusers are male. They may offend for as long as twenty years before being caught.

7. Overwhelmingly, this worst category of offender preys upon their victims within institutional settings such as sporting clubs and schools. Significant numbers chose their employment or involvement with child based institutions as a means of pursuing their deviant sexuality. Paedophiles within institutions in which they hold a position of authority are especially threatening. Denham, for instance, was head of SPX junior school discipline from which position he had full cover to meet privately with students who were already in ‘trouble’ and deal with them as he selfishly wished.

---

2 Most recently sentenced by Syme J, NSW District Court in January 2015. Denham is subject to an accumulated minimum sentence of 19 years and 5 months. Syme J found that Brennan had protected and even encouraged Denham’s conduct.

3 In this submission I use the term ‘paedophile’ in the general sense of adult abuse of a young person, including children and adolescents.

4 Many studies confirm this. See for example Richards K (2011) “Misperceptions about child sex offenders” Trends and Issues in Crime and Criminal Justice No 429 Australian Institute of Criminology and the various studies cited therein.

5 It has been suggested that the former Archbishop of Vienna, Cardinal Hans Hermann Wilhelm Groer (died 2003) may have abused as many as 2,000 children. Richards K (2011) suggests that the mean number of victims for institutional paedophiles is 150, with a median score of approximately 4. If these numbers are even approximately correct the strong statistical inference is for a significant numbers of serial paedophiles with abuse tallies in the hundreds.

8. Whereas membership of sporting clubs is voluntary, school attendance is mandated by law giving rise to a special responsibility upon the state to ensure that schools maintain a child safe environment. It follows that the state is obligated to do all that it reasonably can do to ensure child welfare within the school environment.

9. Key to this responsibility is that schools be organised in a way which ensures they are institutionally sound against corruption. Catholic schools are affected by a particular vulnerability in this respect.

B: INSTITUTION OFFENDERS AND CATHOLIC SCHOOLS

10. It is conservatively estimated that 2% of Catholic clergy have paedophilic tendencies. On the other hand, Richard Sipe8 suggests the number may be 6%. This range, 2%-6%, is generally agreed to be equivalent to the number of paedophiles in the broad community.

11. Given there are approximately 4,000 Australian Catholic clergy9, it would appear there presently are somewhere between 80 and 240 paedophiles within the Church. Not all act upon these tendencies but all are in positions of variably significant authority within the Church arranged, as it is, across 1,344 primary administrative divisions (parishes) and 33 aggregated divisions (dioceses and archdioceses).

12. The authority of Australian Catholic clergy is further supported by state educational laws and the prevalence of Catholic schools, which fall under the control of the clergy. There are presently more than 1,700 Catholic schools in

8 Pope Francis quoted in BBC News Online, 13 July 2014: “Among the 2% who are paedophiles are priests, bishops and cardinals. Others, more numerous know, buy they keep quiet. They punish without giving reason.” Pope Francis was quoted as saying, “I find this state of affairs into intolerable.” http://www.bbc.com/news/world-europe-28282050

9 See, Richard Sipe (1995) Sex, Priests, and Power: anatomy of a crisis Routledge Mental Health. Sipe puts the number at 6%. One proxy for the number of paedophiles in the Church is the proportion of clergy against whom credible child sexual abuse claims are made. In The Nature and Scope of the Problem of Sexual Abuse of Minors by Catholic Priests and Deacons in the United States (2004) (“The John Jay Report”) that number is estimated at 3%-6%, p4. The Australian body which coordinates the response of the Church to the Royal Commission into Institutional Responses to Child Sexual abuse, the Truth, Justice and Healing Council estimates that 4% of clergy are paedophiles; see comments by Francis Sullivan, ABC News Online (15 July 2014) http://www.abc.net.au/news/2014-07-14/church-body-says-4pc-of-clergy-have-been-paedophiles/5596540

Submission: Royal Commission into Institutional Responses to Child Sexual Assault: Catholic Church

June 2016

Australia catering to 1/5th of all Australian primary and secondary school students, being about 760,000 students in total number.

13. Only 20% of paedophiles will have a criminal record\(^1\). As such, 80% of these will pass a criminal record check and could obtain a working with children certificate, making them eligible for employment as a teacher subject to being professionally qualified.

14. There are approximately 19,000\(^1\) male teachers within the Australian Catholic school system. From a hypothesised 2%-6% of these who are paedophiles a 20% reduction applies for the filtering effect of the requirement for a working with children check (paedophiles with a criminal record are highly unlikely to apply and would be rejected if they did) leaving a probable paedophile population of between 300 and 900 paedophiles in the Australian Catholic school system. The same figuring would apply to Australian government schools and other non-government schools.

15. The primary safeguard against sexual abuse of children and adolescents attending Australian schools is, therefore, not the gate keeping but what occurs within the gate. In general terms what is required is a strong child-safe culture based upon zero tolerance, encouragement to report suspicion of child sexual abuse, a sense of duty to so report and a mandatory system of report\(^1\).

16. In the assurance of a child safe environment the integrity of school leadership is paramount. This is required to support and assiduously maintain the required culture together with effective policies and procedures. This must be a mandatory and non-negotiable element upon which state registration of the right to operate a school hinges.

17. It is generally accepted in professional education circles (and soundly supported by cognate academic disciplines such as organisational behaviour), that a safe school environment is assured by a hierarchy of elements the first three of which are:\(^1\)

**Element 1: Leadership commitment to a safe school.**

---


\(^1\) Derived from ABS 4221.0 Schools Australia, 2011

\(^1\) Properly implemented and supported, mandatory reporting is considered highly effective, see Walsh K (2015) Addressing Child Sex Abuse in Primary and Secondary Schools RC Limits Paper 9

\(^1\) See National Safe Schools Framework (2009)
Element Two: Supportive and connected school culture.

Element Three: Policies and procedures.

18. In addition to these organisational principles (which are well understood in professional education circles) the registration and operation of a non-government school in Australia is subject to considerable regulatory oversight by bodies such as the NSW Board of Studies and Educational Standards (BOSTES), backed up by a plethora of legislation and regulations.

19. Probity is a key element of all Australian school compliance regimes. So, for instance, all high managerial agents of a non-government school in NSW (principal executive officer, principal, school board members, company directors if applicable) must make fit and proper person declarations. They are obligated to make continuing disclosure of any relevant change in circumstance.

20. BOSTES (which is nationally representative) audits non-government schools in NSW on a recurrent basis. Registration is temporally limited, having to be renewed with due diligence satisfied at least every five years or so often as key metrics may suggest that earlier review is warranted.

21. In the case of Catholic schools the prevailing governance model¹⁴ places clergy in positions of ultimate power and control. This is so because to be authentically Catholic governance of a Catholic school must conform to Canon Law, the relevant aspects of which lead to the following dictums:

   a) Within each diocese the bishop has the authority of an ‘ordinary’, meaning he has power to make law for the diocese. The bishop is also the ultimate employer of all engaged by the Church within his diocese.

   b) Within each parish the parish priest is the canonical administrator.

   c) With respect to each Catholic school the bishop and his parish priest(s) have power to appoint/approve/remove members of each school board and each principal, approve or reject each school budget.

   22. Clearly, in the case of Catholic schools the clergy are in control. But they are also fundamentally compromised by rules of the Church which demand celibacy for all clergy.

---

C: MANDATORY CELIBACY

23. The Canon Law of the Catholic Church mandates celibacy for all clergy in Canon 277, the material parts of which provide as follows:

*Canon 277(1)* Clerics are obliged to observe perfect and perpetual continence...

*Canon 277(3)* The diocesan bishop is competent to establish more specific norms concerning this matter and to pass judgement in particular cases concerning the observance of this obligation.

24. There is dispute in competing accounts of the history of the Church both as to when the rule requiring celibacy became mandatory and from when it was effectively enforced. There seems to be general consensus that no church-wide rule appeared until 300 or more years after the death of Christ.

25. There is no scriptural requirement for mandatory celibacy; so much seems abundantly clear. After all, and in at least four New Testament passages\(^{15}\), St Peter is recorded as being married. Other historical accounts attest to him having become a father\(^{16}\). Of course, it is St Peter whom Christ identifies as The Rock of My Church\(^{17}\). As founder of the Church in Rome, St Peter was the first Pope until martyrdom by crucifixion (circa AD 64/68) under Emperor Nero. All subsequent 265 Popes acquired their authority through Apostolic Succession from St Peter, who is traditionally referred to as “Chief of the Apostles”.

26. The present Cannon 277 seems to originate from the Second Lateran Council conducted in the year 1139 AD, but may not have been uniformly enforced until the 1350’s. A wealth of historical account attests to the fact that celibacy has been unevenly observed if not roundly ignored throughout the history of the Church\(^{18}\). For instance, it is incontestably established that Pope Alexander VI (died 1503) maintained mistresses and may have fathered as many as eleven children, four of whom he acknowledged during his lifetime.

27. Some recent studies suggest that 50% of Catholic Clergy have broken the vow of celibacy\(^{19}\), whilst others put that number as high as 60% with 50% maintaining

---

\(^{15}\) Matthew 8:14-15; Luke 4:38; Mark 1:29-31; 1 Corinthians: 9:5. Indeed most of the 12 Apostles were married men. The text of what became the New Testament was famously contested, and took hundreds of years to settle. It is telling that references to married Apostles was left in

\(^{16}\) Eusebius of Caesarea (circa 326) *Church History Book III* states: “For Peter and Philip beget children…”

\(^{17}\) Matthew 16:18

\(^{18}\) There is a useful summary here: [https://www.futurechurch.org/brief-history-of-celibacy-in-catholic-church](https://www.futurechurch.org/brief-history-of-celibacy-in-catholic-church)

\(^{19}\) Sipe R (1995)
ongoing mistresses and at least 40% of all clergy sexually active at any time. 20
Whilst the methodological difficulties in measuring actual adherence to celibacy are acknowledged the Church itself does not contest that many clergy have or do break their vows.

28. When the full implication of Canon 277(1) is understood (clergy must wholly abstain from the entire range of human sexuality, including fantasy and masturbation) it is no surprise that many break their vow. A rule prohibiting individuals from acting in any manner in response to such a primal human desire stands on shaky ground. 21

29. The practical problem with all of this is simple: to break the vow of celibacy is a sacksing offence. This is confirmed by the highest Church authority. For instance in 2012 the Archbishop of Buenos Aires, Cardinal Jorge Bergoglio, made plain his view that clergy who cannot maintain the vow must quit. The Cardinal further stated:

"There are priests who get back on track and others who do not. The double life is not for us. I don't like it because it means building on falsehood. Sometimes I say: if you cannot overcome it, make your decision."

30. On 13 March 2013 Cardinal Borgoglio became Pope Francis. So far as the public record tells, Francis has not changed his view on this subject from that which he stated in 2012. However, Pope Francis has publicly observed that the rule requiring mandatory celibacy is "... a matter of discipline, not of faith. It can change."

31. It seems clear that the rule requiring mandatory celibacy is often ignored. I know of three bishops who, it plausibly seems, maintained sexual relationships with other consenting adults - one heterosexual and two homosexual. One of these, for a time, was a member of the Catholic Church National Committee on Professional Standards which is specifically charged with addressing complaints of sexual abuse within the Church.

20 Richard Sipe summarises some of the research here:
http://www.awrsipe.mm/Artides/Celibacy_is_a_Problem.html

21 The rule is even more problematic because of the attitude of the Catholic Church to homosexual sexual behaviour, which is regarded as ‘objectively disordered’ and a grave sin. This has long been the doctrine of the Church and is maintained by Pope Francis in his Apostolic Exhortation of March 2016; Amoris Laetitia (The Joy of Love). This backward doctrine is retained despite the self acknowledged fact that there are many homosexual men amongst the clergy. Estimates of the proportion of clergy who are homosexual typically range from 15% to 50% and vary between countries.

22 2012 Interview reported in National Catholic Reporter https://www.acronline.org/blogs/acc-today/pope-francis-open-optional-celibacy

23 2012 Interview
32. One effect of this “double life”, which is prevalent in the Church, is the development of an institutional culture occasioned with deep-seated hypocrisy, active dishonesty and covering up. It inculcates a poisonous mix of clergy lying about the reality of their lives. The resulting web of dishonesty, focussed upon questions of illicit sexuality, leaves the leadership of the Church uniquely susceptible to blackmail and corruption at the hands of sexual deviants.

33. Where, for instance, is the reliable moral leadership of a bishop who is compromised by maintaining a mistress? When confronted with a suspected paedophile priest with knowledge of the mistress and who is prepared to out the bishop, and destroy his career, what will the bishop do? Forgo the crowning achievement of his life’s work and diligently pursue the suspected paedophile? Or cover it all up and sacrifice children to save his career? It is in the nature of things that some compromised bishops will do the former and some will do the latter. Be that as it may, it just should not be that an institution which is entrusted the care of 760,000 Australian children has such extreme moral compromises intrinsic to its very operation and its design.

34. Scandal erupts around this issue with unsurprising frequency and reaches high offices of the Church. For instance in 2005 the Bishop of Santiago del Estero, Juan Carlos Maccarone, was forced to resign following publication of a video depicting homosexual sexual activity between the bishop and a young man who reportedly sold the video for $50,000. The Bishop of Minas (Uruguay) Francisco Domingo Barbosa Da Silveira was forced from office in 2009, after being extorted by two men with whom he had sex.

35. In 2013 the most senior Catholic in Britain, Cardinal Keith O’Brien (Archbishop of St Andrews and Edinburgh) was forced out after allegations of homosexual activity spanning a period of twenty years. As if to deliberately emphasise the hypocrisy of the Church in these regards, Cardinal O’Brien opposed anti-discrimination legislation aimed at protecting homosexuals and publicly referred to homosexuality as moral degradation. The latter, at least, cannot be a view that O’Brien actually holds? Yet, in 2011\(^24\), Cardinal O’Brien stated:


The empirical evidence is clear, same-sex relationships are demonstrably harmful to the medical, emotional and spiritual well being of those involved, no compassionate society should ever enact legislation or facilitate or promote such relationships, we have failed those who struggle with same-sex attractions and wider society by our actions.”
Including: Denis McAlinden; James Fletcher; Dominic Gleeson; and Vince Ryan.
41. Of course it is possible that some paedophilic activity occurs without the connivance of other priests, whom I will refer to as "enabling clergy". However, it is unlikely that a long term serial paedophile can offend entirely unnoticed, and continue without some enabling conduct on the part of other clergy, especially in an institution such as a school (where rumour runs freely) and a hierarchical structure such as the Catholic Church. In most scenarios that I can imagine, and without going into detail about my reasoning, more than one other member of clergy would have to in some sense, and whether by action or inaction, enable the continuation of such conduct. But why? What is the motive? I can think of three explanations for why clergy in positions of authority may simply allow such behaviour to continue or actively enable it, as was the case with Brennan and Denham.

42. First, it is possible the enabling clergy is a paedophile and prepared to assist others to engage in paedophilia. This is of limited explanatory force for a number of reasons. From the estimated range of 2%-6% of clergy with paedophilic tendencies not all act upon them. From the proportion who does act only some of those would countenance the rampant predation of an offender such as Denham. Finally, paedophiles are by their nature highly secretive such that knowledge of their offending behaviour is rarely available for others to use as leverage over them. The likelihood of enabling clergy being paedophiles themselves may be in the order of just 1%-2%. However when this is the case the deviant sexual motive is present and hence a precondition exists for the establishment of a paedophile ring, which may produce many victims.

43. Second, it is possible the enabling clergy is an evil person in the sense of being attended with some form of psychopathy. This is, again, of limited explanatory force for at least two reasons. Typically the proportion of psychopaths in the male community is estimated to be around 3%. Not all of this small group will have a tendency to commit sexual crimes. The likelihood of enabling clergy being sexual psychopaths may be in the order of just 1%-2% or even less.

44. There is a further reason to doubt the hypothesis that paedophilic or psychopathic clergy have driven the terrible sexual abuse outcomes we know of in the Catholic education system. For each serial offender more than one enabling clergy is required. Finding one sexual psychopath or one paedophile in a position of relevant authority, in a given diocese, is small odds. The probability of finding two or more, enabling the same serial offender, sits at the boundary of rarity and implausibility.

45. I believe the most powerful explanation lies in a factor that is much more common. And which is comparatively mundane.26

26 As Hannah Arendt notably argued, the presence of evil does not require the presence of evil men; Eichmann in Jerusalem: A Report on the Banality of Evil (1965).
46. It is more likely that enabling clergy are compromised by an intimate relationship with a consenting adult, and hence open to blackmail. If, say, 40% of all clergy are sexually active at any time or recently the rule requiring mandatory celibacy places almost half of the clergy in a position of peril. This may work out in any number of ways. For instance, an offending priest may directly threaten to out a compromised priest who, then, turns a blind eye or becomes an active enabler. Or, in the absence of any direct threat, a compromised priest may simply do nothing about an offending priest because he understands his own vulnerability and lacks moral authority to take action. Unlike the secretive ways of paedophiles consenting adult relationships among the clergy are likely to become known.

47. This form of endemic corruption within the Church, resulting from the conflict between the celibacy rule and a basic fact of human nature (sexual desire) becomes especially problematic as clergy rise higher in the ranks and are more able to exercise power; senior careers are on the line; standing in the community under threat. Given the effectively absolute power of a bishop in his diocese, the corruption of a bishop, because of an intimate relationship, can lead to a culture which supports a generation of sexual abuse across the diocese; with potentially hundreds of victims. The absolute power of the bishop in this particular regard is made emphatic by Canon 277(3), which makes the bishop both law maker and judge in such matters with the result that there is no check or balance through any relevant separation of power within the diocese and no external accountability, whatsoever.

48. Rather than potentially explain 1% or 2% of the behaviour of enabling clergy, this factor likely explains the bulk of it.

49. One further and often suggested motivation for covering up sex crimes of the clergy by other clergy deserves mention: clergy who engage in covering up are motivated by a desire to protect the reputation of the Church, or to protect Church assets from potential legal claims. No doubt this has something to do with the covering up of abuse. However, as a suggested general motive it fails on a critical point. If the driving motivation is to protect the Church the obvious and best solution is to remove the risk to the Church by stopping the abusers. In many cases that is not what happens.

D: CONSEQUENCES

50. The conflict between the celibacy rule and the immutable fact of human sexual desire, resulting in corruption of Church leadership based around questions of illicit sexuality, means that the Church cannot reliably deliver Element 1 of the National Safe Schools Framework to which I referred in paragraph 17 above. No other institution about which there is such clear evidence of intrinsic, relevant corruption would be allowed to operate schools.

51. Unless the rule requiring mandatory celibacy is abolished, the $7.5 billion in government funding paid to Catholic schools must be withdrawn and future
funding denied. How the Church brings about this change is a matter for the Church. But that it must occur is a matter for Australian governments to insist upon if public funding is to continue. With more than 760,000 Australian children entrusted to the care of the Catholic education system, the governance of the Church is a matter of public importance and a matter in which the Australian public have a right to expect probity, accountability and an absence of clear moral hazard.

52. The risk to students, arising from these governance issues is real and certain. There can be no doubt that future children will be sexually abused in Catholic schools and in circumstances that would be avoided but for the governance weakness that the celibacy rule creates. And, when it happens, victims will be counted in their dozens if not hundreds; we know this because of what we know about the offending profile of serial institutionally based offenders. Just one paedophile protected by a compromised parish priest or bishop may abuse hundreds of children. Some of those will die by suicide. Many lives will be terribly blighted. Even if this is a risk that Pope Francis and the Australian Bishops Conference are content to have on their conscience (I do not believe that it is) it is not a risk that Australian educational authorities or Australian governments can countenance.

James Miller
30 June 2016