THE CATHOLIC CHURCH
AND
CHILD SEXUAL ABUSE

Factors Which May Have Contributed to the Occurrence of Child
Sexual Abuse in Catholic Institutions

or

Factors Which May Have Affected the Institutional Response of
the Catholic Church to Child Sexual Abuse

Submission by Mr Phil Riordan to the Royal Commission into Institutional Responses to Child Sexual Abuse

Response to Issues Paper 11
The abuse problem by clergy and the response to abuse by Church hierarchy and the Vatican is one that will be settled only by structural reform and a new more critical theology and a new ecclesiology

(Keenan)
SUMMARY

Occurrence of CSA

The Church is substantively but not wholly responsible for the occurrence of child sexual abuse ("CSA") in Catholic institutions. The principal factor that contributed to CSA in Catholic institutions in the decades after the Second Vatican Council ("Vatican II") was an antinomian attitude of clergy to the proper application of canon law to the governance, and moral and pastoral life of the Church.

Ideas and histories embedded in the theology of ordained and unordained religious life made children, communities, law enforcement agencies and the civic polity vulnerable to considering the interests of the Church ahead of the legal rights of Australian citizens who became victims of CSA in Catholic institutions. Conciliar reforms that gave great autonomy to founders and religious congregations in a culture of clerical antinomianism caused a partial breakdown in ecclesial governance contributing to the occurrence of CSA in religious congregations.

There is a preponderance of evidence shows that from the mid-1960's successive bishops negligently failed to follow canon law. This led to a partial breakdown in the governance and ecclesial life of the Church. Clerical antinomianism concerning the proper application of canon law to the governance, moral life and pastoral life of the Church rapidly appeared in the mid-1960's as a protest against more democratic elements in the ecclesiology and theology of Vatican II.

A dualism now lies at the heart of the ecclesiology and theology of the Church. Vatican II introduced more democratic structures and envisioned the Church as the People of God while retaining hierarchical and institutional notions of the Church. Vatican II documents image the priest as both a servant and leader of the People of God as well as a figure in a morally and spiritually superior celibate caste within the hierarchy of the Church that participates in the cultic purity of the altar.

Mandatory clerical celibacy ("MCC") is an element in both images of priesthood and has been identified as a factor in the occurrence of CSA in Catholic institutions. Misuse of the secrecy of the confessional concealed CSA by allowing clerical and religious offenders to alleviate feelings of guilt while maintaining a public perception they were faithful to a MCC.

Attitudes and behaviors in society as a whole led to children being uncared for and unprotected. These were significant factors in so many children being in Catholic institutions where they were abused. Prior to the state establishing child protection agencies children abused and neglected in the community suffered further because of indifference, lack of understanding and victim-blaming.

Prioritizing business interests ahead of compliance with statutory, regulatory and contractual child protection obligations was a factor in the occurrence of child protection non-compliance in other faith-based institutions. The REDACTED illustrates the mutually interdependent relationship that exists between factors in the Church and in society as a whole that contributed to the occurrence of and response to CSA over decades in one Catholic institution.
Response to CSA

The response of the Church to CSA in Catholic institutions appears to have developed over time. By the early 1990s the Church took fright at the size of compensation claims in the United States that had bankrupted some Church authorities. The Church responded by deploying a risk management strategy that protected Church assets, preserved the religious vocations of offenders, protected the reputation of negligent bishops and provided an alternative to paying compensation to victims. The Church developed a pastoral discourse that created a perception the Church was doing the right thing.

A secretive response to complaints of CSA in Catholic institutions can be explained in part by a conflicted historical relationship between the Church and secular authorities, the principle of the universality of the Church and the value of ecclesiastical independence which is an element of the principle.

The response of the Australian Church occurred in the context of wider political tensions within the universal Church at an international level. Conservative Catholicism developed a political discourse that claims CSA did not occur in the Church before Vatican II, CSA has its origins in society, conciliar reforms allowed perpetrators of CSA into Catholic institutions and the solution is to unwind Vatican II reforms, and restore an exclusively pre-conciliar ecclesiology, and theology of priesthood and religious life.

Many candidates to the clergy since the 1980’s appear to share this view of ecclesiology, and theology of priesthood and religious life, the explanation conservative Catholicism provides for the occurrence of CSA in Catholic institutions and the solution it proffers.

A tsunami of disclosures about CSA in Catholic institutions alerted the Church to the scale of a centuries-old problem of CSA in the Church that pre-dates Vatican II by more than a millennium. The Church appears to have been more concerned with preserving the priestly or religious vocation of the offender than with acting decisively to ensure the safety and wellbeing of children and providing a fair, just and reasonable response to victims.

Attitudes and behaviours in the community contributed to the response to CSA in Catholic institutions. There were gender-based, and socially and institutionally constructed barriers to adult males who form the majority of victims in Catholic institutions disclosing their experience of CSA. Law enforcement agencies were reluctant to investigate complaints concerning historical CSA. The relationship between the Church and the civic polity created legal barriers to victims obtaining fair, just and reasonable compensation.

Faith-based institutions have reacted to child-protection non-compliance in their enterprises in ways that mirror some elements of the response of the Church. Attitudes and behaviours in the industrial relations system that appear to privilege the interests of faith-based institutions appear to mirror some of those that were displayed towards the Church.
1. CATHOLIC THEOLOGY AND DOCTRINE

1. a. Occurrence of Child Sexual Abuse

1. a. (i) Religious Life as an Ideal of Christian Perfection

Religious life, also called consecrated life, is defined as a form of life whereby individuals living alone or in community with others publicly commit to the evangelical counsels of poverty, chastity and obedience (Lucas et. al., 2008, p 34). The theology of religious life seeks to explain its meaning and its place in the life of the whole Church.

Assumptions and histories embedded in the theology of religious life contain ideas that have shaped the Church's understanding of religious life (Murphy, 2010, p 16). Uncovering these ideas may show how they contributed to the occurrence of CSA in Catholic institutions because many people accepted these ideas to be absolutely true.

Celibacy and Radical Christian Discipleship

Jesus' taught that the virgin life, i.e. celibacy, is an important element of radical Christian discipleship: Matt 10: 37-39, 16: 24-25, 19:12, 19: 29; Mark 8: 34-35, 10: 29-30; Luke 14: 25-27 (Brown et. al., 2007, p 652). Christians are understood to have come to see celibacy as a sign of an exceptional commitment to living the precepts of the gospel. In the early church virginity was associated with an ideal of renunciation with devotion to prayer and works of mercy (Chadwick, 1967, p 175).

It is widely accepted by scholars that in the ancient world there was a view in Greek and Egyptian philosophy and religion that personal purity brought a person closer to the gods and that a life-long practice of virginity made a person more receptive to the promptings of the divine world (Chitty, 1966, p 4).

The Christian writer Clement of Alexandria (d. c. 215 C.E.) drew on the writings of Greek Stoic philosophers. Jerome (d. 420 C.E.) who translated the Bible into Latin was also influenced by pagan, that is, non-Christian philosophy (Fox, 1988, p 362).

Classical texts record that some pagan cultic religious practices required a period of temporary virginity before a person could participate in worshipping the gods. The Classical practice of the priest presiding over the cultic purity of the altar appears to be a source for a later justification relied on by the Church for the administrative requirement of obligatory clerical celibacy.

A Christian idea of celibacy as an element of radical discipleship and a Classical philosophical ideal of permanent virginity as an expression of personal purity that makes a person more receptive to the divine world appear to have influenced early Christians. This influence is reflected in the words of Christian apologist Athenagoras (d. 190 C.E.) who stated, "You will find many of our people both men
and women grown old in their single state in hope thereby of a closer union with God". (From 'A Plea for Christians' in Newman, 1845, p 387).

One highly respected biblical scholar argues that in the third and fourth century C.E. Church theologians who were trained in Greek philosophy replaced Jesus' existential teachings of repentance, instant readiness and submission to God with an ideal of Christian perfection that was a product of metaphysical speculation (Vermes, 2001, p 264).

It is generally recognized by scholars that at a time when Christian ideas were competing with pagan philosophies Church theologians display Greek philosophical influences in their works in an attempt to transcend elements of truth found in pagan philosophies while reviving and giving direction to some of the fading spiritual ideals of Classical antiquity in a Christian form (Cochrane, 1940, p 360).

Setting Oneself Apart

It is widely accepted by historians that in the late third and early fourth century C.E. single people fled to the Palestinian and Egyptian deserts in what was the beginning of the monastic movement.

Some scholars argue this was inspired by a desire to escape the burdens of citizenship including taxation (Cochrane, 1940, p 268). The monastic movement may have also reflected a desire to escape a traditional Classical relationship with the gods determined by the ancient family and the city state.

Saintly and scholarly religious as well as rogues and even madmen are said to have been found in monasteries of unordained and ordained religious (Cochrane, 1940, p 339). Solitary living created problems during these early experiments with religious life.

The Greek theologian Basil of Caesarea (d. 379 C.E.) made a substantial contribution to addressing these problems by developing a theology that placed religious life on a scriptural and doctrinal basis, and by working out elements of a specifically Christian morality and principles of organization (Cochrane, 1940, p 341).

Basil's theology proffered two principles as essential for the regulation of religious life:

(i) *inner control*: to be exercised through a common faith, regular reception of holy communion and the practice of daily contemplation, self-examination and confession; and

(ii) *economic and moral interdependence*: by living in community religious could generate surplus economic production that could be used for social service, especially for the education of children and pastoral care of the sick (Cochrane, 1940, p 342).

In the fifth century C.E. Augustine of Hippo (d. 430 C.E.) posited religious life as an essential element in the emerging Christian social and political order. He proposed religious life as a model of relationships for society. People in society should imitate religious life and live under the guidance of a supe-
rior or spiritual father, develop moral and spiritual values, and practice obedience (Cochrane, 1940, p 343).

It is reasonable to conclude that by the end of the fifth century the Church had developed a theology that envisioned religious life as a celibate ideal of Christian perfection that should be pursued in community with others governed by a form of benevolent paternalism founded on Christian love which could serve as a model of social relationships for the whole of society.

In the sixth century C.E. the Church encouraged a belief that exceptional individuals could achieve this ideal. The phenomenon of the Christian holy man was widely known at this time. Holy persons made God present to people in their own age and locality. The phenomenon of the holy man played an important role in the Christianization of the Roman world (Brown, 1995, p 58).

I would suggest that the phenomenon of the Christian holy man also preserved a remnant of a cult of power the Romans had earlier found in myths like that of Hercules. Holy persons were seen as Christian heroic figures who shared in a cult of spiritual power that shifted the domain of personal struggle from the Herulean Classical external world to the Christian inner world.

The Christian holy man was a spiritual superman who achieved perfection through severe asceticism and an absolute identification with the divine will (Cochrane, 1940, p 123).

Children and Religious Life

A number of scholars record that despite Christianity's condemnation of pederasty in ancient Rome the early church demonstrated a persistent concern with the danger of sexual contact between men and boys (Isely, 1997, p 280; Keenan, 2011, pp 21, 23).

Ancient papyri record Macarius (d. 391 C.E.) who was an ordained priest of the monastery at Scetis in Egypt warning the brothers, "When you see a cell built near the Marsh, know that the desolation of Scetis is near: when you see trees it is at the doors: but when you see boys take up your mantles and withdraw" (Chitty, 1966, p 66).

They also record the ordained priest Isaac who became major superior of monks at nearby Nitria shortly after the death of Macarius stating, "Do not bring young boys here. Four churches in Scetis are deserted because of boys" (Ward, 1975, p 100).

General textbooks on medieval history show that in Europe from the sixth century C.E. to the late twelfth century C.E. monasticism was an aristocratic institution organized in accordance with the Rule for Monks of Benedict of Nursia (d. c. 543 C.E.). The Rule of Benedict and the Rule of Basil of Caesarea allowed for child oblates. As a result monastery schools in Europe filled with child-monks.

Studies of the economic history in the early medieval period have shown that parents from noble families gave disinherited children at between five and seven years of age to monasteries together with an endowment in land (Lawrence, 1984, pp 32, 33, 63; Isely, 1997, p 280; Lynch, 2005, p 90; Keenan,
2011, p 21). These child oblates could make religious profession of vows on reaching 15 years of age. Child oblation became a substantial source of recruitment to monasteries.

Children in monastery schools are claimed to have been seen as a potential source of trouble (Lawrence, 1984, pp 33, 100). In the earlier middle ages when CSA of a child oblate occurred it appears to have been construed as homosexuality. In such circumstances an offending monk and a victim would both be given a penance, e.g. fasting or whipping (Isely, 1997, p 281; Keenan, 2011, p 21).

Without an understanding of the dynamics of power in relationships between adults and children and in relationships between religious and children the Penitentials of the early middle ages saw child-oblates as at least partly responsible for the monk’s CSA (Keenan, 2011, p 21).

By the eleventh century C.E. during a later period of reform the recommended punishment for a cleric or a monk for the seduction of youths or young boys could be quite severe (Isely, 1997, p 280). The reforming monk Peter Damian (d. 1072 C.E.) in his Book of Gomorrah was uncompromising in a condemnation of sexual contact between monks and male students.

Peter Damian is claimed to have described the CSA of child oblates as molestation and spiritual infanticide (Isely, 1997, p 281). It this is correct then he appears to have had a better grasp of the damage and intense suffering that CSA in Catholic institutions causes victims than the modern Church.

There was a widely held belief in medieval society that constant beatings were essential for the proper education of children (Lawrence, 1984, p 33). This attitude would have probably normalized constant physical abuse of children in monastery schools and in wider society.

In the twelfth century C.E. a new theology of religious life was expressed by the Dominicans and Franciscans who travelled outside their communities teaching Church doctrine and preaching the gospel. Franciscans lived the evangelical counsel of poverty in a radical way at a time of economic and technological developments in medieval society and corruption in the Church. There were also significant reforms of the Benedictine Rule at this time.

The Fourth Lateran Council (1215 C.E.) ended child oblation. Monasteries were permitted to continue accepting children for education in monastery schools but were forbidden to make them child oblates committed to religious life. A prohibition on child oblation led to a substantial reduction in the number of monks in monasteries in the later middle ages.

Obedience in Catholicism

Another phase in the development of the theology of religious life occurred in the sixteenth century C.E. The Church developed a new theology that responded to Protestant challenges to Catholic spirituality, and to criticisms of the Church’s standards of morality and pastoral work.

A celebration of obedience as habitual conformity to the will of God lay at the heart of this new theology (Englander et. al., 1990, p 223). It also emphasized orthodox Catholic belief, rectitude, and
pastoral and missionary work. Obedience particularly to the pope became an element in a new criterion of political action (Brown, 1965, pp 6, 9).

The Church’s celebration of obedience represented a repudiation of the value of independent judgment in political and spiritual matters that is seen by the Church as a feature of Protestant thought (Hook, 1981, pp 229-230).

Passive obedience as habitual conformity to the will of God and obedience to the pope in this new theology of religious life were forms of non-violent political action and became elements in a distinctly new and emerging Roman Catholic as opposed to Protestant or secular identity.

The First Vatican Council ("Vatican I") convened from 1869 to 1870. Vatican I appears not to have directly addressed the theology of religious life as a specific issue. Rather, Vatican I reaffirmed Tridentine ecclesiology and theology that was a defining feature of the Church’s understanding of itself and its place in the world from the sixteenth century.

Documents of the Second Vatican Council ("Vatican II") indicate Vatican II sought to introduce great autonomy into religious life. A purpose of creating great autonomy by easing the formalistic application of canon law to the governance and moral life of religious life was to allow for the Holy Spirit to express divine action in the world through the charismatic character of founders and the patrimony of religious congregations.

Conclusion

This summary of the assumptions and histories embedded in the theology of religious life reveals that ideas implicit in this theology that have contributed to the occurrence of CSA in Catholic institutions include:

i. *chastity:* as a sign of radical Christian discipleship and an expression of personal purity that brings a religious closer to God;

ii. *an ideal of Christian perfection:* that is achievable by living the evangelical counsels of poverty, chastity and obedience;

iii. *setting oneself apart:* as a sign of a desire to be closer to God;

iv. *inner control:* that can be achieved through a common faith, regular holy communion and a practice of daily contemplation, self-examination and confession;

v. *education:* which plays an important role in the Church’s work of Christianizing society;

vi. *holy persons:* who embody God’s presence in particular localities and in particular periods in history;

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vii. *benevolent paternalism*: as an ideal form of ecclesial governance based upon Christian love that is a model for the whole of society;

viii. *economic and moral interdependence*: that provides religious with access to surplus economic production for social service including the education of children and pastoral care of the sick;

ix. *children*: as a source of recruitment for religious congregations and the Church, and as objects of physical and sexual abuse normalized as a moral failure children are partly responsible for;

x. *evangelical poverty*: as a repudiation of corruption in the institutional Church and of materialist values in society;

xi. *obedience*: as protection from the spiritual dangers of excessive claims to self-determination, as a form of non-violent political action directed against critics of the Church and as a sign of a uniquely Roman Catholic identity; and

xii. *charism*: as a particular way a charismatic individual expresses the precepts of the gospel and the action of the Holy Spirit who gathers a community of like-minded followers around them.

A reason these ideas are a factor that contributed to the occurrence of CSA in Catholic institutions is because they encouraged people within the Church and in society as a whole to believe ordained and unordained religious, and Catholic institutions were deserving of total and unconditional trust, and to privilege their interests above the legal rights of Australian citizens who were victims of CSA.

1. a. (ii) Antinomian Attitude of Clergy to Canon Law

Antinomianism is a theological position that places living by faith alone above obedience to human laws. It excludes the proper functioning of the moral law in the ecclesial and pastoral life of the Church (Coughlin, 2003, p 982). Antinomianism can undermine the ordered and peaceful ecclesial life of the Church and can lead to a complete collapse of canonical structures (Coughlin, 2003, pp 982-983).

Vatican II sat from 1962 to 1965. Prior to Vatican II the Church applied canon law to the ecclesial life of the Church in a very legalistic way (Coughlin, 2003, p 984). After Vatican II the application of canon law rapidly fell into disuse due to clerical antinomianism.

In the mid-1960's Catholic clergy began to display an antinomian attitude towards the proper application of canon law to the structures, governance, moral life and pastoral life of the Church. In the decades after Vatican II the proper application of canon law was replaced by innovation and experimentation (Coughlin, 2003, pp 984-985).

The antinomian attitude of Catholic clergy to canon law led to a partial breakdown of the ecclesial order within Church institutions. This, in turn, led to an emergence of an unhealthy attitude to the moral law in the life of Catholic institutions (Coughlin, 2003, pp 984-985).
Due to an antinomian attitude to the proper application of canon law clergy and particularly bishops sometimes acted in arbitrary and erratic ways concerning the governance of the Church while objective knowledge of the existence of a code of canon law created a perception the clergy was doing the right thing.

It was never an intention of Vatican II to introduce an antinomian age into the life and history of the Church during or after the council and it was not conciliar reform per se that led to a breakdown in ecclesial order.

The antinomian attitude of the clergy and particularly of the bishops towards the proper application of canon law since Vatican II was a direct cause of a partial breakdown in ecclesial order in the Church (Coughlin, 2003, pp 992-997). A partial breakdown in ecclesial order excluded the proper functioning of the moral law which I suggest was a factor that contributed to the occurrence of CSA in Catholic institutions.

In the decades after Vatican II the antinomian attitude of the clergy towards the proper application of canon law appears to have been a protest against Vatican II reforms that introduced democratic ecclesial structures into the Church and a 'servant-leader' image of priesthood.

The antinomian attitude of clergy to the proper application of canon law since Vatican II has been exacerbated by a disjunct between the vision of ecclesiology and theology adopted by the clergy, and elements of the ecclesiology and the theology that canon law enforced. This disjunct has not been resolved.

Prior to and after Vatican II until January 1983 the 1917 Code of Canon Law ("1917 Code") enforced exclusively an ecclesiology that is conservative and hierarchical, and a theology of priesthood and religious life that is backward-looking.

This Tridentine vision of Church, priesthood and religious life was a response to the Protestant Reformation. Prior to and after Vatican II the clergy shared this vision of Church, priesthood and religious life which aligns with the pre-Vatican II ecclesiology and theology of the Church.

Since Vatican II the Church's ecclesiology reflects both democratic and hierarchical images of Church, and images of priesthood and religious life are both conservative and forward-looking. There is now a dualism that lies at the heart the Church's ecclesiology and theology of priesthood.

Since the mid-1980's there has been a disjunct between the clergy's conservative, hierarchical ecclesiology and a backward-looking theology that precedes Vatican II, and the more democratic and forward-looking elements in the theology of Vatican II and those elements the 1983 Code of Canon Law ("1983 Code") enforces.

There is evidence to suggest that since the mid-1980's a majority of clergy and bishops identify exclusively with a pre-Vatican II ecclesiology and theology.
1. a. (iii) Great Autonomy of Religious Life

From the thirteenth century C.E. the Church exercised relatively strict control over the establishment, governance and moral life of religious congregations by using canon law in a formalistic way to impose restrictions on the number and type of religious congregation that could be established. By the 1950’s the Church felt this legalistic approach was impoverishing religious life (King, 1982, p 142).

The theology of religious life of Vatican II makes compliance with canon law less prescriptive. The Church’s intention is to give great scope to the work of the Holy Spirit in the life of religious congregations. This reflects a less juridical and more charismatic focus in the theology of religious life in the documents of Vatican II.

The ‘Constitution on the Church’ (Lumen Gentium: n 45), and the ‘Decree on the Renewal of Religious Life’ (Perfectae Caritatis: n 2) give great autonomy to founders concerning how they express their individual charism and to religious congregations concerning how they express their patrimony (Gallagher, 1984, pp 9, 14).

A less juridical and more charismatic focus in the theology of Vatican II also changes the nature of the relationship of the local bishop with religious congregations. A local bishop has greater responsibility for approving rules of religious congregations and less responsibility for imposing rules on them (Gallagher, 1984, p 11). Great autonomy makes founders and religious congregations less accountable to a local bishop.

Great autonomy for founders and religious congregations in a climate of clerical antinomianism concerning the proper application of canon law creates great scope for CSA to occur in Catholic institutions when great autonomy is misused and canon law is ignored.

Changes by Vatican II to the theology of religious life that give great autonomy to founders and religious congregations in the context of clerical antinomianism contributed to the way the centuries-old problem of CSA manifested itself in Catholic institution in the decades since Vatican II.

Recommendations

1. The Church should include in its special religious education programs, religious education programs, sacramental programs and all other faith formation programs a ‘protective behaviours’ component that challenges an assumption that religious and clergy are a special class of adults who deserve unconditional trust simply because they are religious or clergy.

2. The Church should re-image its theology of religious life to more accurately reflect the existential teachings of the historical Jesus rather than as an unachievable ideal of Christian perfection that is a product of metaphysical speculation that has foundations in Greek philosophy, Classical belief and ancient pagan cultic practice.
3. The Australian Catholic Bishops Conference should establish and maintain a multidisciplinary non-gendered expert panel of lay people, clergy and religious with expertise in canon law, mental health and seniority in the Church who possess spiritual maturity and personal stability to assess:

(i) the claims or representations of individuals to the effect they are under the inspiration of the Holy Spirit to found a religious or lay community;

(ii) whether to recognize a person as a founder of a religious or a lay community;

(iii) whether a lay community gathered around a person should be established as a canonical structure;

(iv) what the canonical structure might be and why; and

(v) what systems, policies, practices and procedures should be put in place to ensure the governance and moral life of the religious or lay community is monitored or monitored with vigilance to ensure children are not put at-risk.

7. Local bishops and clergy should properly apply the canons of the Church to institutes of consecrated life, societies of apostolic life and associations.

8. The Church should develop systems, policies, practices and procedures to ensure great autonomy given to founders and institutes of consecrated life does not continue to put children, young people and vulnerable adults at-risk of harm.

9. A diocese of a bishop who recognizes a person as a founder of a Catholic institution and who canonically establishes a community as a canonical structure and the Vatican that approves those decisions should accept full legal and moral responsibility for providing fair, just and reasonable compensation to all children, young people and adults who have suffered injury, damage or other loss when members of the purported canonical institution abuse children, young people or vulnerable adults or when the canonical structure proves to be inauthentic.

1. b. Responses to CSA

1. b. (i) The Hermeneutic of the Cross

The Church's hermeneutic of the cross was developed in the theology of Paul of Tarsus (d. 67 C.E.), early Church fathers (1st-4th century C.E.), Anselm (d. 1109 C.E.) and Thomas Aquinas (d. 1274 C.E.). It explains the meaning of the crucifixion and resurrection of Jesus. A criticism of the Church's hermeneutic of the cross is that it links violence and the cross with salvation (Jersak et. al., 2007, p 206).

All forms of violence perpetrated against children are traumatic for the child. The experience of the annihilation of the self lies at the heart of the traumatic syndromes (Herman, J. L., 1992, p 50). The
Church has not integrated Jesus' existential experience of psychological annihilation into its hermeneutic of the cross (Riordan, 2004, p 30). As a result, the Church's hermeneutic of the cross lacks essential psychological and existential insight into the inner experience of psychological annihilation that is experienced and suffered by victims of all forms of violence.

The Church's hermeneutic of the cross substitutes the experience of psychological annihilation in Jesus' human nature for an idealized and romanticized metaphysical interpretation of Jesus' torture and execution that emphasizes a transcendental meaning and which sentimentalizes an atrocity (Riordan, 2004, p 31).

Because the Church's hermeneutic of the cross fails to acknowledge the subjectivity of Jesus' experience of atrocity in His human nature the Church is been unable to validate the inner existential experience of psychological annihilation suffered by victims of CSA in Catholic institutions (Riordan, 2004, p 30). Because of this failure the Church also lacks the categories necessary to conceptualize, validate and understand the subjective experience of trauma suffered by victims of CSA in Catholic institutions.

By theologizing about atrocity and its effects in a way that has divorced horror from its inner existential meaning the Church has silenced the subjective human experience of victims of physical, emotional, psychological, spiritual and sexual violence throughout history. This is why the Church's hermeneutic of the cross is a factor in the Church's historical and contemporary invalidating response to the subjective experience of the Church's victims (Riordan, 2004, p 30).

1. b. (ii) A Pastoral Response

The Church's response to CSA in Catholic institutions in the 1990's was a multi-faceted approach that included:

(i) developing a pastoral discourse about CSA in Catholic institutions, offenders, victims and the response of the Church that purported to be a coherent moral justification for the manner in which the Australian Church responded that created a perception the Church was doing the right thing;

(ii) conceiving, developing and implementing Towards Healing which departed substantially from established pastoral theology and praxis as an alternative to paying fair, just and reasonable compensation to victims; and

(iii) adopting an a priori interpretive approach to clergy and religious child sex offenders, victims and the Church's response based on an assumption that the beliefs, teachings and practices of the Church are absolutely and universally true in all circumstances.
Pastoral Discourse about CSA

Part of the Australian Church's response to CSA in Catholic institutions was to develop a pastoral discourse about CSA in Catholic institutions. This pastoral discourse created no opportunity for victims to express views about what they had experienced. The Church in other countries responded to CSA in Catholic institutions in a similar way (Gilligan, 2012, pp. 423-424).

The Australian Church's pastoral discourse about CSA in Catholic institutions has, among other things, substantially been to the effect that:

- victims did not want to go to the police;
- victims only wanted the Church to ensure offenders did not hurt other children;
- the Church's hands were tied concerning its mandatory reporting obligations out of respect for the wishes of victims;
- canon law was of no use in dealing with child sex offenders who are priests or religious;
- victims were too traumatized to engage with the legal system to sue the Church;
- the Church could not be sued anyway; and
- Towards Healing was a just and compassionate alternative to complaints about CSA in Catholic institutions.

The pastoral discourse of the Australian Church about CSA in Catholic institutions was woven into the Church's universal discourse about its mission to bring the good news to all and to minister to the poor and needy.

The Australian Church's pastoral discourse about CSA in Catholic institutions represents an ecclesiologically conservative, reactionary and clergy-driven concern with excluding victims in the design, delivery and evaluation of its response. The Australian Church's pastoral discourse sought to provide a coherent moral justification for the Church's response to CSA in Catholic institutions in order to legitimize that response.

When victims engaged with Towards Healing the Australian Church's pastoral discourse about CSA in Catholic institutions mediated by Towards Healing conflicted with the individual subjective experience of every victim. The subjectivity of each victim is an exception to the Australian Church's discourse about CSA in Catholic institutions.

This conflict resulted in victims feeling that their personal truths had been invalidated. Many survivor accounts attest that criticisms, disbelief, humiliation and fear were part of their experience when they told their stories to the Church (Keenan, 2011, p. 260).
By providing victims with a ‘one-size-fits-all’ standard lump sum payment in response to CSA in Catholic institutions the Australian Church through Towards Healing imposed the Church’s ‘one-size-fits-all’ pastoral discourse upon the individual subjective experience of each victim.

According to the Australian Church’s pastoral discourse victims are all the same, their experience of CSA in Catholic institutions was the same, their needs are the same and they all want the same thing. The Australian Church’s pastoral discourse about CSA in Catholic institutions did not consider the distinguishing features of each individual complainant.

What victims know is that their experience of CSA in a Catholic institution is unique and what constitutes recovery will be different for each person. This difference is a sign of the uniqueness of each victim. Different outcomes are appropriate for different people.

‘One-size-fits-all’ standard lump sum payments from Church authorities to victims of CSA in Catholic institutions mirrored the Australian Church’s ‘one-size-fits-all’ pastoral discourse about CSA in Catholic institutions. The Australian Church failed to acknowledge the individual demands and requirements for recovery of each victim.

The Australian Church’s uninformed clergy-driven assumption that people are not able to recover from CSA in Catholic institutions further defined victims. But it is not the claims of the Australian Church in its pastoral discourse about CSA in Catholic institutions but rather what is unique about each person’s story of abuse and survival that characterizes them.

Discovering one’s individual story is a pathway to recovery from CSA in a Catholic institution. It is a means by which a person can rediscover the self that was destroyed by CSA in a Catholic institution. By taking control of one’s own recovery a person becomes the subject of their own quest for truth and ceases to be an object of the Australian Church’s pastoral discourse about CSA in Catholic institutions.

(i) Towards Healing: Pastoral Theology and Praxis

Pastoral theology is a branch of the discipline of Catholic theology that explains the care and healing of souls in the context of the faith of the Church. Pastoral theology uses insights from a range of disciplines including psychology to inform the Church’s understanding of pastoral care.

The Church has provided pastoral care in many different ways in the Church’s history according to the needs of the time. The Church has sought to express the teachings of the gospel in the world so that its pastoral initiatives are seen to be credible (Lynch, 2005, p 67).

There is a fundamental and irreconcilable contradiction between a claim made in the Australian Church’s pastoral discourse that it was providing pastoral care to complainants through Towards Healing and requiring that victims sign away all their legal rights under Australian law in order to receive it.

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There is nothing in the pastoral theology and praxis of the Church or in the Church's history of providing pastoral care that would support or sanction Church authorities demanding that vulnerable people sign away all their legal rights under Australian law in order to merely receive pastoral assistance but not fair, just and reasonable compensation.

Victims of CSA in Catholic institutions were singled out and treated differently by Church authorities responsible for their abuse from all other recipients of pastoral care administered by the Church in Australia. To the extent that the Church claims Towards Healing was initially devised as a pastoral response to the needs of victims then to that extent the claim is not credible.

Even if it may be true that in many instances Church authorities could not be sued successfully there has never ever been any legal or moral impediment to Church authorities paying victims fair, just and reasonable compensation for injuries, damage and other loss caused by CSA in Catholic institutions.

CSA in Catholic institutions in the private realm served to maintain in the public sphere a perception of normality at a personal level, a perception that offending priests were faithful to obligatory celibacy and a perception that offending religious were living Christian perfection (Keenan, 2011, p 257).

Similarly, the Australian Church's unreasonable legal tactics and use of egregious terms in legal instruments against victims in private served to maintain at an organizational level the Australian Church's pastoral discourse in the public sphere that the Church was doing the right thing.

A morally duplicitous pattern of behaviour by offenders that facilitated the occurrence of CSA in Catholic institutions at an individual level was re-enacted by the Australian Church in its response to CSA in Catholic institutions at an organizational level.

(ii) Towards Healing: Instrument of Oppression

Towards Healing and Church authorities played a role in oppressing victims' subjectivities through the initial unconscionable use of legal instruments that imposed upon victims an obligation of complete confidentiality. Church authorities initially engaged in unreasonable legal tactics and misused egregious clauses in legal instruments which increased victims' fears of the Church.

Victims were forced to adapt to an arbitrary and indiscriminate application of the Towards Healing principles and procedures by Professional Standards Offices and Church authorities. The antinomian attitude of the clergy to the proper application of canon law that led to a partial breakdown in ecclesial order in Catholic institutions infected the Professional Standards Offices and their attitude to the proper application of the Towards Healing Principles and Procedures. Victims were also denied a rights to procedural fairness and appeal to an independent arbiter.

Victims experienced an arbitrary and erratic application of the Towards Healing principles and procedures as a repetition of the arbitrary and erratic behaviour of the disorganized perpetrator in what became a dynamic of arbitrary, erratic, procedurally unfair and unappealable institutional oppression.
The more Towards Healing and Church authorities behaved in this way the more easily the Church was able to dominate victims through early iterations of Towards Healing. The trauma of domination experienced by victims of CSA in Catholic institutions as children at an interpersonal level was repeated by Towards Healing and Church authorities at an organizational level when victims made complaints.

Recovery from trauma is contingent on recognizing a need of victims for safety and control (Herman, 1992, pp 155-174). But victims had to reengage with the Catholic institution responsible for their victimization. In this way Towards Healing undermined a complainant's sense of safety. Dealing with complaints in an ad hoc and arbitrary manner rather than correctly following the principles and procedures of Towards Healing undermined a victim's sense of control.

For these reasons the experience by victims of early iterations of Towards Healing as oppression was a factor in the Church response to CSA in Catholic institutions.

A Priori Interpretive Approach

The Australian Church's pastoral discourse about CSA in Catholic institutions makes CSA in Catholic institutions meaningful to the Church. Towards Healing and Church authorities also applied an a priori interpretive approach to reconstructing the details of complaints about CSA in Catholic institutions in a way that is meaningful to the Church.

The Church's approach to complaints was a priori because the starting point was a raft of assumptions based upon Church teachings, beliefs and practices about clergy and religious child sex offenders, victims and the circumstances in which CSA occurred in Catholic institutions in a belief those assumptions, teachings, beliefs and practices are absolutely and universally true.

The Church's approach to complaints was interpretive because the assumptions Church authorities and Towards Healing made about Church teachings, beliefs and practices prevented Church authorities from seeing facts in plain sight or distorted the meaning of facts that led Church authorities to draw unwarranted conclusions.

The a priori interpretive approach to complaints used by Church authorities excluded details in victims' complaints that were inconsistent with the Australian Church's meaning-based a priori interpretive reconstruction of what the Church wanted to believe about clergy and religious who are child sex offenders, about what kind of people victims are and about the circumstances in which CSA occurred.

By using an a priori interpretive approach to reconstructing complaints about CSA in Catholic institutions Church authorities drew inferences from or implied meanings into contextual details contained in complaints that were unwarranted. This a priori interpretive method enabled the Australian Church to reconstruct victims as 'undeserving' and their complaints either as untrue or, at best, lacking in merit.
Those who have never experienced prolonged terror and who do not understand the use of coercive methods of control used by perpetrators of CSA in Catholic institutions commonly presume that they would show greater courage and resilience than victims of CSA in Catholic institutions if they found themselves in similar circumstances (Herman, 1992, p 115).

Church authorities and Towards Healing confused the personality deformation caused by the trauma of CSA in Catholic institutions with victims' true selves. Church authorities and Towards Healing made a pejorative value judgement that victims are 'undeserving'. By labelling victims as 'undeserving' Church authorities recognized themselves as the opposite of the value 'undeserving' and all its correlations.

An a priori interpretive response to complaints about CSA in Catholic institutions trapped Church authorities and Towards Healing in circular and self-justifying ways of conceptualizing clergy and religious child sex offenders, victims, the circumstances in which CSA in Catholic institutions occurred and the Church's response from which they were unable to free themselves.

This is why an a priori interpretive approach to complaints by Church authorities and early iterations of Towards Healing is a factor in the Church's response to CSA in Catholic institutions.

1. b. (iii) Antinomianism and Clerical Conservatism

Ecclesiology is a branch of theology that seeks to explain the internal meaning of the Church's relationship with Jesus Christ and external aspects of Church hierarchy and priesthood. Ecclesiology is a relatively undeveloped branch of theology in the Church.

Sociological research was conducted on the Catholic clergy's vision of ecclesiology and priesthood in four studies in the United States in 1970, 1985, 1993 and 2001. These studies identified a new period of ecclesiological conservatism in Catholic clergy since the early 1980's (Hoge and Wenger, 2003, p 77).

The conservative ecclesiological and theological vision currently held by the clergy reaches back before Vatican II while maintaining a distance from forward-looking elements in Vatican II reforms. This attitude has been particularly noticeable amongst young clergy in Australia. Coinciding with a new period of ecclesiological conservatism amongst Catholic clergy is an ongoing suspicion of the role of canon law and even a complete denial of its validity (Coughlin, 2003, p 985).

The persistent antinomian attitude of the clergy to the proper application of canon law was described as "organized chaos" in the Irish Church (Keenan, 2011, p 229). There is anecdotal evidence the attitude of Australian clergy to canon law is the same as clergy in the United States and Ireland.

A purpose of introducing the 1983 Code was to correct the antinomian attitude of the clergy to the proper application of canon law (Coughlin, 2003, p 985). US and Irish studies indicate this has not been successful.
Despite ecclesiological and theological reforms of Vatican II it has proven very difficult for clergy, the bishops and even laity to move away from a conservative and hierarchical model of Church and a backward-looking theology of the priest as a figure in a morally and spiritually superior caste in the hierarchy of the Church that participates in the cultic purity of the altar (Keenan, 2011, p 267).

Reforms of Vatican II that sought to introduce a more collegial model of Church leadership with greater lay participation including by women and a more nuanced balance between the power of the papacy and local churches was largely not realized (Keenan, 2011, p 267).

As a result, there is a disjunct between forward-looking elements in the ecclesiology and theology of the Church expressed in a contemporary way in the documents of Vatican II and the lived experience of the Church which has experienced more limited changed.

1. b. (iv) Vision of Church and Priesthood

Vatican II developed an ecclesiology that re-imaged the Church and its structures at the parish, diocesan and national levels in ways that are more democratic. It also re-imaged the priesthood as a leader of a community of believers, i.e. the 'servant-leader' image. Vatican II documents express no preference either for a 'cultic' or a 'servant-leader' image of the priest (Hoge and Wenger, 2003, p 47).

The response of the Australian Church to CSA in Catholic institutions from the late 1980's corresponds with the a new period of ecclesiological conservatism in the clergy and with an ongoing antinomian attitude of clergy towards the proper application of canon law.

The Church's failure to apply the penal codes in canon law to perpetrators of CSA in Catholic institutions but rely on treatment options was a way the Church responded to CSA in Catholic institutions in the United States (Kochansky, 2004, p 309). Relying on treatment options was also a response of the Australian Church. An intention appears to have been to protect, preserve and rehabilitate the priestly and religious vocations of offenders.

Relying on treatment options rather than using the penal codes of canon law may reflect a concern of conservative backward-looking clergy with reasserting a privileged cultic vision of priesthood as a morally and spiritually superior celibate caste within the hierarchy of the Church.

Resorting to treatment options rather than the penal codes of canon law may also be evidence of a clerical antinomian attitude that clergy and religious are entitled to be treated as unaccountable under the law of the Church as well as the law of the state.

For these reasons the clergy's exclusive identification with a conservative backward-looking ecclesiology and theology of priesthood in the context of clerical antinomianism was a factor in the Church's response from the 1980's to the occurrence of CSA in Catholic institutions.
1. b. (v) Conservative Catholicism and Progressive Catholicism

The response of the Australian Church to CSA in Catholic institutions took place in the context of wider differences in the universal Church concerning its teachings and mission. These differences are a matter of emphasis rather than of belief.

Broadly speaking progressive Catholicism shares in Vatican II’s more democratic ecclesiology and forward-looking theology, is more egalitarian, and seeks to live the precepts of the gospel tangibly through social action in the context of full participation in the sacramental and ecclesial life of the Church.

Generally, conservative Catholicism identifies with backward-looking elements in the ecclesiology and theology of Vatican II. It looks to the past for images of Church and priesthood, values continuity and prioritizes a strict adherence to traditional interpretations of Catholic doctrine and practice.

Conservative Catholicism developed a unique political discourse about CSA in Catholic institutions to the effect that:

1. CSA in Catholic institutions was a "tsunami" that occurred in the decades after Vatican II that the Church was not prepared for;
2. The Church was not prepared for the "tsunami" of CSA in Catholic institutions because CSA was never a problem in Catholic institutions before Vatican II;
3. CSA is a problem that has its ultimate origin in secular society and not in the Church;
4. The reforms of Vatican II opened the Church to influences in secular society that allowed CSA into Catholic institutions; and
5. A solution to the problem of CSA in Catholic institutions is to implement effective screening processes to keep CSA in secular society out of the Church, reintroduce a backward-looking ecclesiology and theology.

While it may be correct that because of the antinomian attitude of the clergy to the proper application of canon law some Vatican II reforms had unforeseen consequences that contributed to the way the centuries-old problem of CSA in Catholic institutions manifested itself in the decades after Vatican II, it is not correct that Vatican II reforms per se are a sole cause of CSA in Catholic institutions.

The scale of disclosures of CSA in Catholic institutions is unprecedented in the history of the Church. But an unprecedented scale of disclosures about CSA in Catholic institutions after Vatican II is not evidence that CSA did not occur in Catholic institutions before Vatican II.

Rather, factors that contributed to the scale of disclosures of CSA in Catholic institutions may include better levels of education in society, a greater understanding of legal rights, greater openness in society, the Church losing influence over institutions in society, the ability of the media to give a voice to the marginalized and the influence of the global human rights movement.
Conservative Catholicism intentionally or inadvertently misused CSA in Catholic institutions to further the implementation of a conservative political agenda which aimed at winding back conciliar reforms, and re-visioning a hierarchical ecclesiology and backward-looking notions of priesthood and religious life. It also seeks to place the blame for CSA in Catholic institutions on society as a whole (Robertson, 2010, p 119 at [171]).

Recommendations

1. The Church should reform those of its institutions and structures that led to the crisis of CSA in Catholic institutions because they are no longer meaningful or sustainable (Keenan, 2011, p 266).

2. The Church should develop a theology of power which seeks to understand and explain obligations associated with the exercise of authority over others as well as the oppressive forces those who experience authority are exposed to (Keenan, 2011, p 263).

3. The Church should develop a critical theology and liberal practice based upon mercy to replace the Church's current theology of priesthood based upon sacrifice (Keenan, 2011, p 265).

4. The Church should resolve the dualism that lies at the heart of the ecclesiology of Vatican II that images the Church both as the People of God and as a centralized hierarchical institution.

5. The Church should take steps to align the lived experience of the clergy's conservative, hierarchical and backward-looking vision of ecclesiology and theology with the more democratic elements of ecclesiology and more forward-looking elements of the theology of Vatican II.

6. The Church should resolve the dualism inherent in the theology of priesthood of Vatican II that contemplates both 'servant-leader' and a 'cultic' images of the priesthood.

7. The Church should re-image its hermeneutic of the cross to uncouple the link between the cross, violence and salvation.

8. The Church should re-image a new theology of the cross that integrates the existential experience of the annihilation of the self with the transcendental meaning of the paschal mystery.

9. Towards Healing in its current form should be shut down or reformed.

10. The fact-finding, pastoral, legal and compensatory elements of the Towards Healing process should be conducted separately and not be contingent upon each other.

11. Towards Healing and Church authorities should not make pastoral outcomes contingent on achieving legal outcomes.

12. A revised process to replace Towards Healing in its current form should be developed by the Church with the active involvement of victims of CSA in Catholic institutions who have previously used Towards Healing.
13. Professional Standards Offices and Church authorities must accord complainants procedural fairness by complying fully with the principles and procedures of Towards Healing or any process that may replace Towards Healing.

14. The Church should focus on changing the structural, governance and cultural failings in Catholic institutions that led to the sexual victimization of children.

2. CANON LAW

2. a. Occurrence of CSA

2. a. (i) Children and Canon Law

A persistent trend concerning CSA in Catholic institutions has been the large percentage of victims who were high school-aged males (Coughlin, 2003, p 980; Isely, 1997, pp 289-290). There are some canons of the 1917 Code that reflect values held by the Church that may have contributed to this phenomena during the enforcement period from 1917 to 1983.

Canon 88 §2. (1917 Code)
This canon states that a minor, if a boy, is considered pubescent upon completing 14 years, and if a girl, upon completing 12 years. Church theology and law encouraged a perception that a boy of 14 years of age and a girl of 12 years of age are morally responsible adults.

This canon may have made it easier for offenders to perpetrate CSA against pubescent children in Catholic institutions and to rationalize an inability of a child victim to protect themselves as informed adult consent. It may have made it easier for offenders to rationalize their abuse of children as moral failure that could be cured by confession and penance.

Canon 542 2."d" (1917 Code)
This canon permitted valid but illicit, i.e. forbidden, admission to the noviciate of children where the child's parents are constituted in grave necessity and must be helped.

The 1917 Code recognized the canonical validity of the reception of children into the noviciate as student religious where the parents of a child were in necessitous circumstances.

This canon and the theology it enacted gave great latitude to child sex offenders in Catholic institutions to select child victims from vulnerable families while normalizing predatory behaviour as an act of charity.

An extremely vulnerable child from a marginalized Catholic family could easily be groomed for CSA in a Catholic institution by an offender by making a spurious claim to the child that the offender be-
lieved the child had a vocation in the offender's congregation. A purpose of making this spurious claim would have been to induce the child into living in the offender's religious congregation in order to inflict CSA on the child.

In such circumstances it would be unwarranted for a Church authority or Towards Healing to assert after the victim complained as an adult that the victim had no grounds to make a statement to the police, or pursue a civil damages claim, or expect their ongoing counseling fees to be paid by the offender's congregation, or to use Towards Healing to resolve a complaint of CSA because the victim had a vocation as a religious.

Grooming a victim for CSA in this way is not evidence a victim of CSA in a Catholic institution was under the inspiration of the Holy Spirit to seek the perfection of charity as a religious. It is evidence the victim was under the influence of a child sex offender who was a religious who used a *modus operandi* for grooming child victims that may have been normalized by canon law.

*Canon 573 (1917 Code)*

This canon states that whoever will give a religious profession, i.e. publicly profess religious vows, must have completed 16 years of age if it concerns temporary profession and 21 years of age if it concerns perpetual vows.

The 1917 Code sanctioned children entering religious life by publicly professing vows at a time when children may be developmentally incapable of making such commitments. This canon may be a legacy provision that survived as a result of reforms to the medieval practice of child oblation.

This canon created great scope for child sex offenders in Catholic institutions to conceal the commission of their child sex crimes by inducing victims who were traumatized by the offender's CSA and emotionally vulnerable to publicly profess religious vows in an attempt by the offender to conceal the commission of the child sex offences.

It was possible for an offender to induce a victim by force, great fear or deceit into publicly professing religious vows in order to create a misapprehension in the mind of the traumatized victim that the victim was under a vow of obedience to the offender.

This would have enabled the offender to misuse the authority of an office of governance or seniority in religious life to place the victim in a state of ongoing psychological captivity without the traumatized victim understanding what was happening.

For example, the victim could have been compelled under a misapprehension of obedience to cooperate with a course of medical treatment for post-traumatic stress disorder caused by the CSA of the offender that was incorrectly diagnosed.
The victim could have been placed in a permanent state of drug-induced mental delirium facilitated by the offender in order to silence the victim, and make the victim compliant and severely cognitively impaired to prevent the victim from understanding what was happening to them.

It would have then been unwarranted for a Church authority to have asserted that when the victim lodged a complaint as an adult after escaping psychological captivity the victim had no grounds to make a statement to the police, or pursue a civil damages claim, or expect their ongoing counseling fees to be paid by the offender's congregation, or use Towards Healing to resolve a complaint of CSA on the basis that the victim was a member of a religious congregation.

An effect of canon 572.1.4° (1917 Code) is that where a major superior had used force, great fear or deceit to induce their victim to public profess religious vows the profession of religious vows would be canonically invalid. The status of a child victim in this situation would have remained that of a lay person and the child victim would never have been a member of the offender's religious congregation.

It would then have been unwarranted for a Church authority to deny the victim of CSA in a Catholic institution their legal rights or for Towards Healing to deny the victim resolution of their complaint through Towards Healing because the complainant had been a professed member of a religious congregation under vows.

It would also have been unwarranted for a Church authority or Towards Healing to reconstruct the victim's CSA and the offender's strategy to conceal child sex offences as nothing more than a case of a mutually consensual homosexual relationship between two adult members of a religious congregation for which the victim was partly responsible.

An attitude that CSA by an adult religious who was also an ordained priest, a founder and major superior of an institute of consecrated life, and a principle consultor of a Church corporate trustee perpetrated against an adolescent school boy within a monastery of the offender's religious congregation is merely mutually consensual homosexuality between two religious persisted in the Church.

Canons 88.2., 542 2° [d] and 573 (1917 Code) were not included in the 1983 Code.

3. MANDATORY CLERICAL CELIBACY

3. a. Occurrence of CSA

3. a. (i) Religious Life, Property and MCC

A Short History

MCC is an administrative requirement imposed on priests that implies two concepts: remaining single and perpetual sexual continence. Catholic priests must remain unmarried and must practice perpetual sexual abstinence (Parish, 2010, pp 2-4).
The earliest canonical legislation imposing MCC was passed at the Council of Elvira (c. 309 C.E.). The imposition by the Church of MCC as an administrative norm for diocesan priests was a process that took a further 1,300 years to achieve.

From the time of the early church to the seventh century there were many married priests in the Church. Between the seventh century and the tenth century most Catholic priests seem to have been married (Frazee, 1988, p 118; Bloch, 1965, p 345). Married Catholic priests apparently continued to be the rule rather than the exception in the Church up to the time of the Counter-Reformation in the sixteenth century (Frazee 1988, p 126).

From at least the fourth century the Church appears to have held a fear of mingling sacred and secular concerns (Southern, 1953, pp 126-127). Secular rulers granted benefices in the form of property to senior clergy claiming this gave them authority to appoint higher clergy, own Church property and a right to privileges from the Church. Rules of inheritance meant that property held by lower married clergy passed to their children and lost to the Church. MCC was considered a solution to these problems.

At the Second Lateran Council (1139 C.E.) the emergence of a powerful papacy enabled the Church to legislate universally for MCC to apply to all clergy (Wertheimer, 2006, p 391). Legislating for MCC was part of a broader effort by the papacy to impose greater ecclesiastical authority over clergy and prevent further loss of Church property (Lawrence, 1984, p 126).

There is evidence this legislative reform was criticized as imposing on all clergy an ideal of Christian perfection that was pursued by those in religious life. An apparent condemnation of clerical marriage as sexual vice by reforming ordained religious like Peter Damian lent weight to this argument (Lawrence, 1984, pp 129-130).

Opponents of MCC seemed to accept that celibacy was a higher calling. But they apparently argued that denying men the female companionship that marriage provides would drive clergy bound by obligatory celibacy to commit even worse acts than concubinage (Wertheimer, 2006, p 400).

Misogyny expressed as a disregard for women as morally inferior to men also played a role in a rejection of clerical marriage.

The drive to impose MCC was part of a millennia-long effort by the Church to re-vision the clergy as markedly different from the laity. In order to do this the Church had to separate priesthood from what came with the life of the laity - marriage and sexual activity (Wertheimer, 2006, p 384). Clerical celibacy was a symbolic rejection of relationship ties central to the identity of the life of people who were not priests (Wertheimer, 2006, p 394).

MCC was an element in the Church's attempt to reinvent the non-monastic clergy as a spiritually and morally superior caste within the hierarchy of the Church that was free of lay interference and which
presided over the cultic purity of the altar. The Church viewed sexual activity as a taint on a standard of moral and cultic purity the clergy are required to uphold by practicing MCC.

Since the seventeenth century the Church's law concerning MCC appears to have been accepted and enforced in a way that has never before been seen in the history of Christianity (Frazee, 1988, p 126). A principle of absolute obedience to the pope that was a feature of Counter-Reformation theology may have made this possible.

Since Vatican II substantial efforts were made to revision MCC as more than an administrative requirement by trying to give MCC a greater theological and spiritual meaning. Notwithstanding these efforts neither theology, scripture nor history appears to provide the Church with unambiguous grounds to support what is, in fact, an obligatory administrative union of celibacy with priesthood (Parish, 2010, p 2).

The Church's acceptance of married clergy in the Eastern Catholic Churches, i.e. Byzantine rite Churches in communion with the papacy, recognition of the canonical validity of their ordinations and acknowledgement of the integrity of their way of life seems to further undermine insistence by the Church on MCC for priests.

MCC and CSA

Non-Catholic churches, religious organizations and professional groups have recorded problems with CSA in their institutions. But none have recorded a problem with CSA in their institutions to the extent experienced by the Church where it has been a significant problem (Keenan, 2011, p 3; Isely, 1997, p 278).

Case studies of clergy child sex offenders have found that some chose children as sexual and emotional 'partners' while other offenders were opportunistic in choosing children merely to use them for sex (Keenan, 2011, p 256). These case studies found that for those offending priests who participated in the research their priestly vocation was based, in part, on a fear of breaking a commitment to MCC (Keenan, 2011, p 177).

Trying to abide by rules that were found to be impossible to live was identified as a cause of isolation and chronic loneliness amongst clergy child sex offenders (Keenan, 2011, p 177). Offending clergy developed strategies for living obligatory celibacy including avoiding relationships with women generally and particular relationships with men (Keenan, 2011, p 177).

Eleventh century reformers who supported the imposition of MCC appear to have been aware of concerns that MCC might leave the clergy in an undefined void where the celibate priest was defined by a mere absence of lay things, lay behaviours and lay family connections (Wertheimer, 2006, p 397).

The absence of sustaining intimate relationships in adulthood has been identified in the developmental trajectory of perpetrators of CSA in Catholic institutions (Keenan, 2011, p 255). Avoiding adult inti-
mate relationships as a way of protecting a vow of obligatory celibacy resulted in extreme emotional loneliness and isolation that played a role in clergy child sexual offending (Keenan, 2011, p 255).

Case studies found that when strategies used to avoid occasions for developing mature adult relationships as a way of protecting obligatory celibacy failed clergy child sex offenders engaged in an internal process of psychological and moral bargaining to justify "stealing" sex from children (Keenan, 2011, p 256).

A complex process of psychological and moral bargaining built on a rigid adherence to rules and regulations enabled clergy child sex offenders to continue performing their roles as priests while maintaining a perception that they were being faithful to the administrative requirement of obligatory celibacy (Keenan, 2011, p 256).

The solution the Church proposed to the dangers obligatory celibacy was that clergy should fill their lives with alternatives to what they have given up. These alternatives were tears of sorrow instead of participation in systemic violence, adopting the name of their church instead of having family relationships and devotion to the Virgin Mary instead of marriage (Wertheimer, 2006, pp 397-398).

The Church's solution to the dangers of obligatory celibacy appears simplistic and naive contrasting as it does with a highly developed theology and organization of religious life which has a scriptural and doctrinal basis.

A conclusion based upon these case studies and upon decades of therapeutic work with clergy child sex offenders has been that the Church's administrative requirement of MCC and by implication the Church's solution to the problems that obligatory celibacy creates in light of contemporary understandings of psycho-sexual development are a form of human cruelty that is bound to fail (Keenan, 2011, p 263).

**Recommendation**

1. Formation programs for religious life, diocesan clergy and lay movements should include a mandatory component that teaches the Church's history of its ideas of human sexuality and its abuses within Catholic institutions.

2. The Church should make clerical celibacy optional for diocesan clergy.

**4. USE OF SECRECY**

**Occurrence of CSA**

4. a. (i) Misuse of the Confessional

Case studies of child sex offenders in Catholic institutions and extensive therapeutic work with offenders has revealed that they used the confessional as a means of gaining support and respite from inner
conflict created by pretending to live a life of obligatory celibacy that was unachievable (Keenan, 2011, p 164).

Feeling unable to exercise agency in how they lived clergy child sex offenders found their lives were built on a fear of and obedience to authority. A fear of expressing psycho-sexual and emotional conflicts in an all-male and sometimes homo-erotic environment that are characteristics of clericalism in the Church was temporarily resolved by abusing children (Keenan, 2011, p 261).

Eleventh century reformers who supported the imposition of MCC were nevertheless concerned MCC might strip clergy of the active qualities of potency and virility that defined them as men and which justified their positions as faith community leaders (Wertheimer, 2006, p 397). Findings in these case studies lend some weight to these concerns.

Going to confession enabled offending clergy to use the acts of confession and penance to relieve their feelings of guilt about abusing children. Misuse of the confessional in this way facilitated offending against children. Misuse of the confessional did this by enabling perpetrators to maintain an outward appearance of normality and perfection (Keenan, 2011, pp 178, 261).

Misuse of the confessional to maintain secrecy in the Church has precedent. Peter Damian the medieval reforming religious criticized the practice by ordained monks of keeping homosexual activity a secret within monasteries and avoiding punishment by confessing to each other.

A deceptive way of living by clergy child sex offenders and those of their fellow priests who were their confessors in the context of a secret confessional system was maintained while ever secrecy by both offender and confessor continued (Keenan, 2011, p 261).

It has been concluded that confession and penance functioned to contain the individual offending of clergy child sex offender and the scale of CSA in Catholic institutions within the walls and the seal of the confessional (Keenan, 2011, p 178).

Because of long-established beliefs and practices of the Church concerning the sanctity of the confessional information about CSA in Catholic institutions disclosed by clergy child sex offenders to other priests in confession could not be passed on to alert the Church to the prevalence of the problem (Keenan, 2011, p 178).

Misuse of the confessional resulted in a male-dominated culture of institutional hypocrisy, moral duplicity and secrecy. This culture encouraged institutional denial within the Church about the occurrence of CSA in Catholic institutions and the scale of the problem (Keenan, 2011, pp 257-258).

Recommendations

1. All Australian parliaments should pass laws requiring mandatory reporting obligations concerning reportable conduct to override the secrecy of the confessional.
2. Members of religious congregations should be provided with regular training about their child protection obligations including those under Part 3A of the Ombudsman Act 1974 concerning any admissions made by a member of a religious congregation of reportable conduct.

3. The role of the dean in its exercise of pastoral responsibility for priests on behalf of the bishop should be formalized as a middle management position in the diocesan clerical structure to provide, among other things, professional supervision to deanery clergy for which the dean would be properly trained, qualified and experienced in management, pastoral care and spiritual counseling.

4. b. Responses to CSA

4. b. (i) Relationship of the Church with Secular Society

Church Political Theory

The Church appeared less concerned with secrecy in the past than in the twentieth century (Doyle, [20]). The hierarchy of the Church was guarded in its response when CSA in Catholic institutions began to be reported in the media in the United States, Ireland and Australia in the 1980’s and 1990’s (Keenan, 2011, p 23). This contrasts with the response of the Church in the eleventh and sixteenth centuries during periods of reform (Isely, 1997, pp 281-282).

An explanation for a contrast between a concern for secrecy in the twentieth century and public repudiation of CSA in Catholic institutions in the past may lie in the contemporary effect of an historically conflicted relationship between the Church and secular authorities.

In the middle ages the Church articulated a basis for its relationship with society through a theory of the exercise of power by the Church and secular rulers. The 'Theory of the Two Powers' attributed to Pope Gelasius I (d. 496 C.E.) distinguished between the spiritual power of the Church and the temporal, i.e. coercive, power of a secular ruler. The 'Theory of the Two Powers' explained that the spiritual power of the Church was pre-eminent.

When the Church acquired the papal states in the thirteenth century C.E. it developed a new theory to explain the Church's relationship with society. This theory integrated the 'Theory of the Two Powers' with a carefully defined feudal prerogative (Barracough, 1968, p 113). The new theory to explain the relationship between the Church and wider society was the 'Theory of the Two Swords'.

The 'Theory of the Two Swords' was invoked by Pope Innocent III in a letter to a bishop of Ravenna in 1198 C.E., "Ecclesiastical liberty is nowhere better served for than where the Roman Church has full power in both temporal and spiritual affairs" (Tierney, 1980, p 132). The theory claimed the Church exercised supreme authority over society as a whole.
Thomas Aquinas (d. 1274 C.E.) in the *Commentum in IV Libros Sententiarum Magistri Petri Lombardii* and John of Paris (d. 1306 C.E.) in his *De Potestate Regia et Papali* gave the 'Theory of the Two Swords' a theological foundation (Lewis, 1954, pp.566-567).

According to the 'Theory of the Two Swords' the plenitude of temporal power and spiritual power resided in the Church. The Church's feudal prerogative over the temporal affairs of wider society was to be exercised indirectly through the secular ruler.

The sitting of the First Vatican Council ('Vatican I') in 1869 to 1870 coincided with the Church's loss of the papal states. This rendered the 'Theory of the Two Swords' obsolete. According to political realities the 'Theory of the Two Swords' was formally abandoned by the Church in 1885 (Daniel-Rops, 1957, p.186).

The Church seeks to exercise influence in the modern world by wielding a remnant of a spiritual sword. This required the Church to develop a new theoretical basis for its relationship with wider society based upon moral and teaching authority.

**Asserting the Moral Authority of the Church**

The pronouncement on papal infallibility by Vatican I is an important element in the Church's new criterion for exercising influence over the Church and modern societies. The pronouncement on papal infallibility proclaims that the Church's moral and teaching authority resides supremely and infallibly in the office of the pope. This proclamation was strongly opposed by many cardinals in the Church at Vatican I.

With a loss of temporal power and faced with the new political reality of modern Europe nothing could threaten the moral and teaching authority of the Church and, hence, the Church's influence over modern societies more than a perception by modern societies of serious corruption amongst the clergy and religious.

This has, in fact, happened. In countries affected by disclosures of CSA in Catholic institutions the Church has lost moral authority. CSA in Catholic institutions has undermined the moral authority of the Church, the moral and teaching authority of the papacy and perceptions that the ideal of Christian perfection is an achievable means of personal salvation. With a loss of moral authority the Church now increasingly relies upon celebrity in the person of the pope as a means of influencing the young to commit to the Church and as a way of maintaining influence over society as a whole.

The Church's moral and teaching authority was the new basis of the Church's relationship with societies in the modern world. It was a source of its ability to exercise influence after the Church lost its temporal power along with the papal states in the late nineteenth century.
A fear of losing its moral authority and its influence over modern societies is a factor that contributed to the Church's greater concern with secrecy about CSA in Catholic institutions in the twentieth century than in the past.

4. b. (ii) Universality of the Church

Rationale for the Principle

A further reason the Church responded to CSA in Catholic institutions secretly was because of the principle of universality. An effect of the principle is a belief that the interests of the Church transcend the limits of the law of any one temporal authority, e.g. a nation state.

The principle of the universality of the Church developed slowly. It has a scriptural basis in the story of Pentecost (Acts 2: 1-13). The Pentecost event shortly after the death and resurrection of Jesus portended a change in the activity of Jesus' movement from a ministry delivered only to the Jews to a ministry offered to all peoples everywhere.

The Pentecost story emphasizes the universality of the Christian message relied on by Paul the apostle (d. c 67) which forms a permanent scriptural basis for Christian universalism and missionary duty: "Faith alone can save, and this faith is offered to all" (Danielou, 1969, p 293).

In the Roman world some pagan religions were expressions of particular cultures. Judaism believes in the election by God of one Jewish people for an historic mission (Danielou, in Toynbee, 1969, p 293). Classical religion was the domestic religion of a family or a city-state (De Coulanges, 1873, p 391). Only Christianity claimed its message and missionary activity were universal.

Early writings on ecclesiology used symbolic language to speak of the Church's metaphysical aspects (Lerch et. al., 2003). Developing these ideas further Augustine of Hippo and Athanasius of Alexandria (373 C.E.) framed a theory of ecclesiastical independence from Roman imperial rule.

Over time the scriptural foundation for a belief in the universality of the gospel, the universality of the Christian preaching and missionary activity in early Christianity, the theory of ecclesiastical independence and an identification of the institutional Church with imperial Rome took shape in the form of the principle of the universality of the Church itself in both its metaphysical and external aspects.

The Conciliar Movement

The Conciliar Movement occurred in the late fourteenth and early fifteenth century. It was concerned with the constitution, government and reform of the Church.

It was an attempt by elements within the Church to transfer the internal locus of Church authority from the office of the papacy to the general council in a manner consistent with the earlier history of the Church (Parkes, 1970, p 293).
The Great Papal Schism (1378-1417 C.E.) which was contemporaneous with the Conciliar Movement was caused by an election of two and, for a short time, three clerics by competing political groups of cardinals who each claimed their nominee as the rightful pope.

The Great Papal Schism was resolved by the Council of Constance in 1417 C.E. as a result of conciliar action and not as a result of a decision by a pope (Parker, in Smalley, 1965, p 127).

A reason the reforms of the Conciliar Movement failed was because conciliarism was considered to offend the principle of universality. This was because some secular rulers who supported the conciliarists wished to use the movement and the Great Papal Schism as a pretext for placing local Catholic churches under their control (Parker, 1965, p 128).

Opponents of conciliarism argued the Church must not be subject to secular rulers. A basis for their argument was a reliance on the principle of the universality of the Church.

The Church links the principle of universality with its belief that the Church has a divine mission and an eternal aspect. The Church believes that its institutions transcend the limits and constraints of legal and political control by secular authorities which unlike the Church are bound by time.

The Church came to understand an effect of the principle was that the interests of the Church should be dealt with by the Church and not by the state. Consistent with the principle the Church negotiates formally or informally its relationship with each successive nation state polity.

The principle of the universality of the Church led to the emergence of a culture in the Church in which all matters that pertain to the Church's interests are dealt with within the Church.

When the Church responded to complaints about CSA in Catholic institutions secretly the Church acted in a way that was consistent with the Church's understanding of its culture and history. This was perceived by people outside the Church as being secretive and provoked anger in a society that values transparency and accountability.

The Church responded to complaints about CSA in Catholic institutions, in part, because of a historical belief that CSA in Catholic institutions is a matter that does not affect the state but only the interests of the Church.

In fact, the Church considers the modern western liberal democracies to be a transitory historical phenomenon that may pass into history and which the Church will outlive because of its divine mission. The principle of universality normalized what was perceived by the wider community to be a secretive way of responding to CSA in Catholic institutions.

When the Church responded to CSA in Catholic institutions secretly this was for the Church in part an affirmation of the legitimacy of ecclesiastical independence that is an element of the principle of universality.
5. FACTORS OPERATING IN SOCIETY AS A WHOLE

5. a. Occurrence of CSA

5. a. (i) Child Abuse and Neglect in Society

Child abuse and neglect of children in society was a factor that contributed to many children being in Catholic institutions.

Child abuse occurs in families as well as Catholic institutions (Kochansky et. al., 2004, p 300). Estimates put the number of girls who have been victims of abuse in the community at one third and the number of boys who have been subject to child abuse in the community at one sixth (Evans et. al., 2005, p 46). Narcissistic disturbance has been identified as a common feature in the abuse and neglect of children in society (Miller, 1981, pp 9-14; Miller, 1984, p 3).

There appear to be major differences between child abuse in Catholic institutions and child abuse in society as a whole (Ackerman et. al., 2012, p 254). While delays in reporting and non-disclosure of child abuse in Catholic institutions and society as a whole make it difficult to ascertain the extent of the problem studies have found that 81% of victims of child abuse in Catholic institutions were male while in society girls are more likely to be victims (Ackerman et. al., 2012, pp 254-255).

It was only in the mid-1980's that the NSW state government restructured the Department of Community Services to concentrate primarily on addressing notifications of child abuse and neglect in the community.

The effects of child abuse were not as well understood in the past as they are today. Post-traumatic stress disorder ("PTSD") which is a common effect of child abuse and neglect was only included in the Diagnostic and Statistical Manual of Mental Disorders in 1980 (Herman, 1992, p 33).

Until at least the mid-1980's there was widespread ignorance in society of the highly damaging effects of abuse and neglect on children and the extreme emotional vulnerability in which it places children. Police, medical staff at hospitals and teachers at schools routinely sent children back to abusive environments when they were in possession of sufficient information to know that children were at-risk of or suffering actual harm.

5. a. (ii) Blaming Child Victims of Abuse and Neglect

Communities engaging in victim-blaming of children who experienced abuse and neglect in the community exerted pressure for children to be placed in Catholic institutions where they were further abused.

Child abuse destroys a child's sense of their own goodness. The betrayal of trusted others who know a child is being abused and neglected, and the indolence of the unknown bystander destroys the child's
sense of the goodness of their fellow human beings and their sense of emotional connection with others.

In an absence of child protection services adults in the community would rationalize their indifference to the abuse and neglect of children they knew on the basis that they were responsible for their own children but not for other people's children. Victim-blaming was a further mechanism adults relied upon to justify doing nothing and saying nothing other than blaming the victim on the basis that this was the only choice they had.

Community pressure to place children in Catholic institutions reinforced a perception in children's minds that the community considered them to be the problem - out of sight, out of mind. When a child was a victim of an atrocity community indifference was sometimes the best a child could hope for.

Psychoanalytic theory offers some assistance in understanding why communities engage in victim-blaming when they are confronted with the damage their indifference does to the trust that must be the basis of every relationship a community has with its children. When people remain indifferent to a child who is being abused or neglected, or is a victim of a violence it is rightly experienced by the child victim as betrayal. This betrayal by others damages their relationship with the child.

As this damage becomes increasingly apparent people engage in victim-blaming as a way of explaining a change in how the child relates to an indolent adult the child realizes they can no longer trust. People engage in victim-blaming of the child because they believe the child is behaving unfairly towards them when, in fact, the child is simply trying to protect themselves.

Victim-blaming inverts the child's subjective experience of atrocity and of betrayal. When communities engage in victim-blaming they place upon the shoulders of the child responsibility for their indolence or betrayal. Victim-blaming enables formerly trusted people who have betrayed a child to avoid an internal conflict created by being conscious at one and the same time of a sense of themselves as good caring people and of a knowledge they have willingly and knowingly consented to the soul murder of a child they know well.

Victim-blaming enables a victim-blamer who has betrayed a child victim or who is indifferent to a child’s fate to displace onto the shoulders of the child victim the stigma of their response. The victim-blamer is then relieved of responsibility for consciously experiencing their own feelings about having reacted with indifference to the abuse and neglect of a child they know well. Displacement reinforces a child victim's sense of the stigma of the crimes perpetrated against them.

Displacement, social ostracization and community rejection are individual and collective psychological and behavioral mechanisms that compel a child victim of an atrocity to carry the victim-blamer's displaced feelings of being affronted by horror as well as the stigma of the perpetrators crimes and the traumatic sequelae of the atrocity.
Victim-blaming enables the indolent bystander to reconstruct an atrocity perpetrated against a child and reorganize its consequences. Victim-blamers reconstuct themselves as the wronged, the child victim as the wrongdoing and the perpetrator as irrelevant.

Victim-blaming enables the victim-blamer to reorganize the 'perpetrator - victim - indolent bystander' paradigm and preserve a sense of themselves as good caring people while betraying the child victim. Victim-blaming relocates the locus of grievance from the child victim to the indolent bystander and relocates the source of grievance from the perpetrator to the child victim.

This is a way the indolent bystander socially reconstructs an atrocity perpetrated against a child and reorganizes its consequences. Children who act out their anger and despair merely serve to convince the victim-blamer that their unwarranted pejorative value judgement about a child victim as the problem is justified.

Community attitudes and behaviours that are a cause of child abuse and neglect and which were a cause of so many children finding themselves in Catholic institutions still prevail in society today.

5. b. Responses to CSA

5. b. (i) Barriers to Adult Male Victims Disclosing CSA

Cultural, gender-based and institutional barriers to adult male victims disclosing CSA in Catholic institutions were factors that contributed to the response to CSA in Catholic institutions.

There was enormous community resistance to the idea that a boy could be a victim. When a boy was a victim of child abuse and neglect or a victim of serious violence communities treated boys as if they were substantively or materially responsible for their own victimization.

As late as the mid-1990's it was not rare for a lay Catholic to defend child sex offenders in Catholic institutions on the grounds that an adolescent boy could have protected himself, and that an adolescent boy was old enough and big enough to have gotten away from the offender if he had wanted to.

In the past there was a community expectation that a boy who was a victim of child abuse and neglect or a victim of violence should stoically 'man-up' and deal with the consequences themselves. If a boy failed to do this it would be seen as weakness.

Society as a whole socializing people into a dominant masculinity that constructs emotional vulnerability as weakness was a cultural factor that contributed to the response to CSA in Catholic institutions.

The socialized male gender role in the dominant masculinity was a reason why adult male victims of CSA in Catholic institutions delayed reporting the abuse and a reason why gender was a factor that contributed to the response to CSA in Catholic institutions where most victims were boys.
There were also institutional barriers to adult male victims of CSA in Catholic institutions disclosing abuse. Until at least the mid-1990's there was a culture in some law enforcement agencies that was hostile towards men who identified as victims of CSA in the home and CSA in Catholic institutions.

Until at least the mid-1990's it was not rare for a member of a law enforcement agency to put to an adult male victim who wished to make a police statement about CSA in a Catholic institution or in the community that the complainant must be a homosexual and that the victim's motivation for making a complaint was a desire to seek revenge on a homosexual lover.

Some members of law enforcement agencies were resistant to investigating a complaint made by an adult male victim of CSA in a Catholic institution in a belief the Church's status as a charitable institution exempted Catholic institutions from investigation and that to have conducted an investigation would have constituted "a witchhunt".

This is an example of how the attitude of some members of law enforcement agencies conflated homophobia with contempt for men who identified as victims and how barriers to adult male victims disclosing CSA could be institutionally constructed.

5. b. (ii) Relationship Between the Church and the Civic Polity

An historic and enmeshed political relationship between the Church and the Australian civic polity makes a process of transition from a history of CSA in Catholic institutions and state abuses of power inherently problematic.

Royal Commissions mark a beginning to a process of truth recovery rather than a conclusion (McAlinden, 2013, pp 211, 213). Transition must involve a permanent break with past abuses of power and an end to an enmeshed relationship between the Church, law enforcement agencies and the civic polity.

A Church trustee can only be incorporated under the Roman Catholic Church Communities Lands Act 1942 (NSW) ("Act") on advice from the NSW Attorney-General. Under these statutory arrangements the Governor of NSW can exercise a discretion not to incorporate a trustee after receiving advice from the NSW Attorney-General (Lucas, 2008, p 253).

An effect of these statutory arrangements is to incorporate de facto and de jure a minister of the NSW state government who is the most senior law officer in the state of NSW and the Governor of NSW who is the most senior civil officer in the state of NSW into the organization of the Church.

These arrangements are inconsistent with a principle of state neutrality and a strong tradition in NSW of secularism in politics which are fundamental to the operation of a healthy liberal democracy (Hogan, 2001, [4]-[5]). These arrangements undermine a perception that democratic institutions and law enforcement agencies in NSW are independent of Church interference.
These statutory arrangements create a perception of a conflict of interest for law enforcement agencies in NSW. An effect of these statutory arrangements is that law enforcement agencies in NSW must investigate complaints about CSA in Church corporate trustees that have been established on advice from the NSW Attorney-General and at the discretion of the Governor of NSW. NSW law enforcement agencies are accountable directly or indirectly to the NSW Attorney-General.

Recommendations

1. There should be an end to blind reporting committees constituted by Church personnel from Towards Healing and members of law enforcement agencies.

2. All Statements of Complaint lodged with Towards Healing including details of the complainant should be provided to the relevant law enforcement agency and a decision concerning whether to investigate the complaint should be a matter decided between the complainant and the relevant law enforcement agency.

3. The commonwealth government should hold a constitutional referendum on children's rights to amend the Commonwealth Constitution and include a section on children's rights and the duty of the state to take child protection measures.

4. The commonwealth government together with all state and territory governments should enact enforceable, effective, nationally consistent child protection laws.

5. The Roman Catholic Church Communities Lands Act 1942 (NSW), procedures to incorporate Church trustees under the Act, procedures to omit Church trustees from the Act and procedures to transfer property of a Church trustee under the Act should be amended in a way that respects the principle of state neutrality, the secular tradition in politics in NSW and which avoid conflicts of interest for NSW law enforcement agencies.

6. FACTORS COMMON TO OTHER FAITH-BASED INSTITUTIONS

6. a. Occurrence of CSA

6. a. (i) Managing Organizational Risk

The safety and wellbeing of children and young people who use or are eligible to use children's support services provided by other faith-based institutions can be put at risk by:

i. a market-based approach to government tendering for funding contracts for the provision of children's support services that places pressure on faith-based institutions to provide improved services at increasingly lower cost;
ii. a social enterprise business model used by some faith-based institutions that creates scope for funding dollars paid to provide children's support services to be redirected to other parts of a faith-based institution's enterprise for business reasons;

iii. a lack of understanding within faith-based institutions at services manager and operations manager levels of funding contract terms that may require compliance with child protection obligations and regulatory child protection responsibilities when recruiting employees or when delivering programs for child support services;

iv. a lack of training in child protection of workers employed by faith-based institutions;

v. business risks created by disclosure of child protection non-compliance;

vi. a lack of whistle-blowing incentives and protections for employees aware of child protection non-compliance in faith-based institutions;

vii. a reasonable fear held by an employee of a faith-based institution of retribution if they are perceived to not prioritize the interests of a faith-based institution ahead of an obligation to disclose child protection non-compliance;

viii. a misuse of confidentiality clauses in standard employment agreements that protect legitimate business interests to silence employees who are aware of child protection non-compliance;

ix. attitudes in the Australian industrial relations system which encourage behaviours that have an effect of preventing non-compliance with child protection obligations and responsibilities coming to light; and

x. attitudes that can be encountered in an industrial tribunal that create a concern the interests of a faith-based institution are being privileged above the procedural and substantive rights of all parties merely because a faith-based institution is a charity.

Recommendations

1. Faith-based institutions should establish and maintain a single end-to-end specialist child protection compliance capability with sole responsibility for managing all child protection obligations and responsibilities, and all funding contract employment screening requirements.

2. Programs developed to provide support services directly or indirectly to children should be exempt from tendering processes for the provision of community services sector programs and employment services sector programs that are conducted in accordance with a market-based principle of best value service at minimum cost.

3. The Australian Charities and Not-for-Profits Commission or the Office of Workplace Ombudsman should have a specialist child protection unit that assists faith-based institutions to com-
ply with child protection obligations and responsibilities, and has a confidential notification and advice hotline for child protection non-compliance whistleblowers.

4. Faith-based institutions should be required to providing regular training to services managers and operations managers on child protection compliance.

5. Faith-based institutions should provide regular training to all human resources staff and employees engaged in the delivery of children’s support services on child protection compliance.

6. There should be statutory not-for-profit sector whistleblower incentives and protections enacted by the Commonwealth Parliament and, where necessary, state and territory parliaments that apply to people who disclose child protection non-compliance.

6. b. Responses to CSA

6. b. (i) Sense of Entitlement

A faith-based institution may display an attitude of entitlement both at the individual level and the organizational level when it discovers child protection non-compliance in its enterprise.

Individual Entitlement

Faith-based institutions may attract employees who believe they are making a sacrifice by working in the not-for-profit sector. This sense of personal sacrifice can be reinforced by the value-based culture of faith-based institutions.

Median salaries paid to employees of faith-based institutions are generally much lower than wages in other sectors. A Fair Work Commission Equal Remuneration Case decision handed down in 2011 which was made on the basis of gender implicitly recognized lower rates of pay for employees of faith-based institutions since these institutions were amongst those most directly affected by the decision: [2011] FWAFC 2700 at [294]. Lower wages can reinforce a sense of personal sacrifice and individual entitlement in the not-for-profit sector.

An individual belief that an employee in a faith-based institution has sacrificed opportunities for better pay and conditions elsewhere can encourage a mistaken belief that an employee of a faith-based institution is entitled to have that sacrifice taken into account so that they are treated differently under the law.

Perpetrators of CSA in Catholic institutions similarly believed that because they are priests or religious, because they are members of a Church organization and have given up secular life for a life of sacrifice in the Church they are entitled to have this taken into account and be treated as if they are unaccountable under the law.
Organizational Entitlement

A faith-based institution can act in ways consistent with a belief the institution is unaccountable under the law for non-compliance with child protection obligations and responsibilities because it has the status of a charity. Charitable status can encourage a belief the institution is entitled to be treated differently from for-profit institutions.

A sense of organizational entitlement can lead to serious, fundamental and ongoing corporate governance failures within a faith-based institution. An unwillingness to address governance failures can be justified on the basis the faith-based institution is a charity and, therefore, the rules that apply to for-profit institutions should not apply to them.

If an industrial tribunal were to deal with a dispute involving a faith-based institution in a manner that fails to accord all parties their substantive and procedural rights, and a right to a fair and just hearing it would reinforce a perception by senior managers of a faith-based institution that the enterprise is not accountable or is less accountable under the law.

Where factual circumstances during employment that lead to a dispute being referred to an industrial tribunal concern, wholly or in part, a faith-based institution’s non-compliance with child protection obligations and responsibilities privileging the interests of a faith-based institution above the substantive and procedural rights of all parties to proceedings can prevent serious child protection failures by an institution coming to light in a public hearing.

Where law enforcement agencies responded to complaints about CSA in Catholic institutions by privileging the interests of a Catholic institution above the legal rights of the complainant it reinforced a sense of entitlement in the Church and offenders, and led to CSA in Catholic institutions continuing.

6. b. (ii) Maintaining a Perception of Doing the Right Thing

A faith-based institution may maintain a perception that it is doing the right thing in order to manage or eliminate a risk of potential or actual disputes with employees or third parties.

The Church’s public justifications for the implementation of Towards Healing while Church authorities behind closed doors used unreasonable legal tactics and egregious terms in legal instruments was an element in a risk management strategy designed to achieve organizational outcomes while maintaining a perception that the Church was doing the right thing.

In employment a faith-based institution can deploy human resources management strategies that enable it to achieve desired business outcomes but which can result in non-compliance with some employer obligations.
It may release misleading internal and external communications, and deploy people management strategies that affirm employees as valued individuals in a way that is consistent with the values-based culture of the organization. These strategies encourage a perception the faith-based institution is doing the right thing.

As a result children and young people may be placed at-risk of harm while most employees, the regulator and the funding body are unaware of child protection non-compliance. These strategies may be justified by senior managers of a faith-based institution on the basis that they are being deployed to protect the business interests and reputation of the faith-based institution.

This kind of response to child protection non-compliance mirrors responses by the Church to CSA in Catholic institutions.
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