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Sexual Abuse as the Core Transgression of Childhood Innocence: Unintended Consequences for Care Leavers

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ABSTRACT

The decision of the Gillard government to establish a royal commission in 2012 was acclaimed by care leavers. However, they were soon disillusioned: it was not the royal commission for which they had long struggled. Its terms of reference were too broad, encompassing a range of institutions never before the subject of official inquiries, yet also too narrowly focused on sexual abuse. Care leavers who suffered other forms of abuse were excluded. This paper argues that, while care leaver advocacy contributed to the decision to establish a royal commission, the agenda was a product of other pressures fuelled by state-based inquiries about cover-ups of sexual abuse of children, particularly by clergy. Sexual abuse could no longer be regarded as a sin to be handled in-house by institutions but a crime for which the state carried superordinate responsibility. The government had to intervene to address society's "ultimate collective shame". The Royal Commission into Institutional Responses to Child Sexual Abuse has made a massive contribution to our understanding of child sexual abuse and to reforms in child protection policy and practice. But its mandate created unintended consequences, and questions remain about the unmet needs of care leavers who suffered other forms of abuse.

KEYWORDS

Royal commission; child sexual abuse; care leavers; out-of-home care; clergy abuse; advocacy

Introduction

In the period from the 1920s to the 1980s, more than 500,000 Australian children were deemed to be "in need of care and protection" and were placed in out-of-home care (OOHC).¹ Many were maltreated, experienced brutality, and suffered enduring harm.² Shurlee Swain's catalogue of eighty-three Australian inquiries into institutions providing OOHC held between 1852 and 2013 shows that disclosures of abuse and neglect, and official inquiries into child maltreatment in institutions, have a long history.³

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¹The term "care" is problematic; hence, it is often used in ironic quotation marks or capitalised. See Jacqueline Z. Wilson and Frank Golding OAM, "Contested Memories: Caring about the Past—or Past Caring?," in *Apologies and the Legacy of Abuse of Children in "Care": International Perspectives*, ed. Johanna Sköld and Shurlee Swain (London: Palgrave Macmillan, 2015), 27–9.

²Senate Community Affairs References Committee, *Forgotten Australians: A Report on Australians Who Experienced Institutional or Out-of-Home Care as Children* (Canberra: Commonwealth of Australia, 2004).

³Shurlee Swain, *History of Australian Inquiries Reviewing Institutions Providing Care for Children* (Sydney: Royal Commission into Institutional Responses to Child Sexual Abuse, 2014).

Swain identified an emphatic shift in inquiries from the 1990s towards hearing evidence from victims or survivors. A chain of national inquiries—the Stolen Generations (1999), Lost Innocents (2001), and Forgotten Australians (2004)—produced more than 1,400 submissions, most of them survivor testimony.⁴ Australia is one of more than a dozen nations enmeshed in a “global chain of inquiry” in the past twenty years.⁵ Johanna Sköld confirms the trend identified by Swain:

What is new about the inquiries from the 1990s onward is that the victims themselves have been given the opportunity to tell their stories; that the stories have gained the attention of the media; and that there have been expectations that these testimonies should influence the national historical narrative.⁶

The passage of freedom of (or rights to) information laws in Australia from the 1980s, for example, led to a snowballing demand for release of hitherto inaccessible childhood records. In turn, from the late 1990s, care leavers saw the value of creating lobby groups, and their expectations and demands intensified from one inquiry to another.⁷ Indeed, survivor advocates have been instrumental in bringing some of these inquiries into being. Senator Andrew Murray, a leading member of the two Australian Senate inquiries—and later of the six royal commissioners—declared that the 2004 Forgotten Australians Senate inquiry “would never have seen the light of day” had it not been for the persistent lobbying of concerned activists.⁸ Survivor advocacy for inquiries and redress is by no means unique to Australia; it has been important in a number of countries.⁹ For example, Fred Powell and Margaret Scanlon assert that the emergence of survivor groups has been perhaps “the most impressive development within Irish civil society in relation to children’s rights”.¹⁰

This article examines care leaver testimony and survivor advocacy relative to other forces leading to the establishment of the Australian Royal Commission into Institutional Responses to Child Sexual Abuse (hereafter, Royal Commission). International comparative studies of commissions of inquiries into child abuse¹¹ show that the Australian Royal Commission is somewhat unusual in two seemingly contradictory ways: its terms of reference restricted its focus to sexual abuse while at the same time obliged it to examine a very broad range of institutional types extending far beyond OOH. The article explores the rationale for the Royal Commission’s terms of reference and examines the significance

⁴Human Rights and Equal Opportunities Commission, *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families* (Sydney: Human Rights and Equal Opportunities Commission, 1997); Senate Community Affairs References Committee, *Lost Innocents: Righting the Record. Report on Child Migration* (Canberra: Commonwealth of Australia, 2001); Senate Community Affairs References Committee, *Forgotten Australian: Report on Australians Who Experienced Institutional or Out-of-Home Care as Children* (Canberra: Commonwealth of Australia, 2004).

⁵Katie Wright, Shurlee Swain, and Johanna Sköld, *The Age of Inquiry: A Global Mapping of Institutional Abuse Inquiries* (Melbourne: La Trobe University, 2017), <http://doi.org/10.4225/22/591e1e3a36139>.

⁶Johanna Sköld, “Historical Abuse—A Contemporary Issue: Compiling Inquiries into Abuse and Neglect of Children in Out-of-Home Care Worldwide,” *Journal of Scandinavian Studies in Criminology and Crime Prevention* 14, Supp 1 (2013): 7.

⁷The term “care leavers” is widely used to refer to people who were raised in orphanages, children’s homes and foster care.

⁸Senator Andrew Murray, Opening the CLAN Office in Bankstown, Sydney, 6 March 2004.

⁹Sköld and Swain, *Apologies and the Legacy of Abuse of Children in “Care”*, Part 2.

¹⁰Fred Powell and Margaret Scanlon, *Dark Secrets of Childhood: Media, Power, Child Abuse and Public Scandals* (Bristol: Policy Press, 2015), 193.

¹¹For example, Kathleen Daly, *Redressing Institutional Abuse of Children* (London: Palgrave MacMillan, 2014); Sköld and Swain, *Apologies and the Legacy of Abuse of Children in “Care”*; Wright, Swain, and Sköld, *The Age of Inquiry*.

of the exclusion of care leavers who, while not the victims of sexual abuse, nevertheless were subjected to other forms of brutality and neglect and suffered enduring harm in OOHc.

Survivor expectations

The powerful testimony provided to the 2004 inquiry led the Australian Senate committee to conclude that an inquiry with the powers of a royal commission was warranted to examine “the extent of physical and/or sexual assault within institutions and the degree to which criminal practices were concealed by the relevant State and/or Church authorities”.¹² However, the Australian government under John Howard rejected that proposal in 2005 by quarantining moral leadership at state borders. The offences occurred under state and territory law, so any action was “therefore, a matter for state and territory governments”.¹³

Care leavers refused to give up. The peak body, CLAN (Care Leavers Australia Network)¹⁴ lobbied the Senate committee to review the progress on the *Lost Innocents* and *Forgotten Australians* reports. At that review in 2009, Senator Murray continued to support a royal commission because, “Amongst the tens of thousands of religious people who are in churches and agencies that deal with children in care, there is only a minority that are criminals, but the majority protected the minority.”¹⁵ However, the committee did not re-endorse its earlier recommendation because it doubted a royal commission would succeed in exposing and prosecuting perpetrators.¹⁶

Five months after the release of the 2009 Senate report, the Australian government (under Kevin Rudd, the former prime minister) issued a national apology to care leavers and former child migrants. The language of that apology had been crafted after consultation with advocacy groups. An audience of 800 care leavers and former child migrants in the Great Hall of Parliament House, with countless thousands watching live telecasts around the nation, heard Rudd say,

Sorry—for the physical suffering, the emotional starvation and the cold absence of love, of tenderness, of care ... We look back with shame that many of these little ones who were entrusted to institutions and foster homes instead, were abused physically, humiliated cruelly, violated sexually.¹⁷

Malcolm Turnbull, then leader of the opposition (now prime minister)—and the Parliament—wholeheartedly supported the apology. The agenda was the broad spectrum of maltreatment, with no pre-eminence given to sexual abuse.

Three more years of intensive lobbying followed¹⁸ before, on 12 November 2012, a new prime minister, Julia Gillard, announced there would be a royal commission after all. She linked it genealogically with the national apology, writing to CLAN:

¹²Senate Community Affairs References Committee, *Forgotten Australians*, 243.

¹³Senate Community Affairs References Committee, *Lost Innocents and Forgotten Australians Revisited* (Canberra: Commonwealth of Australia, 2009), 65. The government’s response was issued on 10 November 2005.

¹⁴Now Australasia to acknowledge membership in New Zealand.

¹⁵Senate Community Affairs References Committee, *Lost Innocents and Forgotten Australians Revisited*, 66.

¹⁶Senate Community Affairs References Committee, *Lost Innocents and Forgotten Australians Revisited*, 225.

¹⁷The texts of the Apology and speeches are at: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Completed_inquiries/2004-07/inst_care/national_apology/index.

¹⁸See www.clan.org.au and *The Clanicle*, CLAN’s bi-monthly newsletter.

It is fitting that I announced this Royal Commission in the same week as we remember the third anniversary of the National Apology to Forgotten Australians and Former Child Migrants on 16 November 2012 ... The Royal Commission would not be a reality with [out] the advocacy and dedication of organisations like the Care Leavers Australia Network (CLAN) who have made sure that survivors' stories have been heard.¹⁹

She and the minister for families, Jenny Macklin, also sent separate handwritten messages to CLAN: "The Royal Commission is a tribute to your efforts", wrote the PM.²⁰

In January 2013, care leavers heard Gillard say that the commission's "main focus will be to investigate systemic failures within church and state-run institutions in preventing and dealing with child abuse".²¹ She addressed care leavers directly:

Even if you felt for all of your life that no one's listened to you, that no one has taken you seriously, that no one has really cared, the Royal Commission is an opportunity for your voice to be heard.²²

Her avid listeners could be forgiven for thinking that this would be a more rigorous re-run of "their" Senate inquiries.

Expectations dashed

However, when she announced the terms of reference, Gillard revealed that "The Royal Commission ... will not deal with abuse of children which is not associated with child sexual abuse." When challenged, the prime minister explained,

Of course physical mistreatment, neglect, are very evil things. Anything that stops a child having a safe and happy childhood is an evil thing. But we've needed to make some decisions about what makes this a process that can be manageable and can be worked through in a timeframe that gives the recommendations real meaning.²³

As we shall see, this explanation may have been disingenuous.

There was a second shock for care leavers. The earlier Australian inquiries had focused on abuse and neglect in "closed" institutions, a defining characteristic of which is that they officially detach children from their families and assume legal control over their lives.²⁴ However, the Royal Commission's letters patent defined an institution in a completely different way:

any public or private body, agency, association, club, institution, organisation or other entity or group of entities of any kind ... that provides, or has at any time provided, activities, facilities, programs or services of any kind that provide the means through which adults have contact with children, including through their families; [but] ... does not include the family.²⁵

¹⁹ Julia Gillard to James Luthy, President of CLAN, 16 November 2012 (Correspondence File C12/4705).

²⁰ The messages are reproduced in the CLAN newsletter, *The Clanicle* 76 (January 2013): 3.

²¹ Simon Cullen, "Supreme Court Judge to Head Abuse Royal Commission," *ABC News* (ABC TV, 11 January 2013). <http://www.abc.net.au/news/2013-01-11/gillard-announces-terms-of-reference-for-abuse-royal-commission/4461104>.

²² Julia Gillard, Transcript of Press Conference, Sydney, 11 January 2013. Note: this sentence was also quoted by the chair of the commission, Justice Peter McClellan, addressing the 13th Australasian Conference on Child Abuse and Neglect, Melbourne, 12 November 2013.

²³ Gillard, Transcript of Press Conference.

²⁴ Closed institutions such as orphanages and children's homes correspond to Goffman's total institutions. See Erving Goffman, *Asylums* (New York: Bantam, 1968). See also Jan Breckenridge and Gabrielle Flax, *Service and Support Needs of Specific Population Groups that have Experienced Child Sexual Abuse* (Sydney: Royal Commission into Institutional Responses to Child Sexual Abuse, 2016), 6.

²⁵ Royal Commission into Institutional Responses to Child Sexual Abuse, "Letters Patent," 11 January 2013. <https://www.childabuseroyalcommission.gov.au/about-us/terms-of-reference>.

Orphanages, foster care and other forms of residential care would be included, but so too would schools, sporting clubs, scouts, churches, and youth groups, the latter being so-called “open” institutions in which children’s participation is optional or sessional but certainly not full-time day and night. The Royal Commission would be unlike previous inquiries in a second way in that it would not deal with care leavers as a community of interests—only the subset who had been sexually abused.

Apart from the religion and education sectors, I can find little evidence of significant lobbying for a royal commission into open institutions. For example, of the 450 written submissions to the Victorian parliamentary inquiry that preceded and overlapped the Royal Commission, only a handful came from open institutions. The majority of evidence it received related to the criminal abuse of children within faith-based institutions, including OOHC settings, particularly those controlled by the Catholic Church.²⁶ A search of selected print media in the period between 2005 and 2012 confirmed that outcome, as did an even more comprehensive listing of newspaper items pertaining to child sexual abuse for the period March 1996–April 2010 compiled by prominent advocates Chrissie and Anthony Foster and submitted to the Victorian inquiry in August 2012.²⁷

Yet, the Royal Commission chose to focus its first two case studies in public hearings on the Scouts and the YMCA. It completed fifty-seven case studies but only twelve of these have focused on closed institutions.²⁸ In addition to public hearings, a major element of the Royal Commission’s work was with survivors in individual private hearings. It heard from over 8,000 abuse survivors in private sessions. Of these, only a small minority were abused in open institutions such as recreation and sports clubs. Many more reported being sexually abused in religious settings and in schools. But outnumbering all of these were the more than forty per cent who reported sexual abuse in OOHC including those run by governments as well as faith-based and secular agencies.²⁹ This evident imbalance between public case studies and private accounts of abuse, together with the media publicity given to scandals in the churches, especially Catholic entities, and prestigious private schools, led many care leavers to express a sense of disillusionment. “This is not our Royal Commission”, some said.³⁰

How do we explain these terms of reference?

Survivor advocacy organisations do not speak to government with one voice. Prime Minister Gillard was well aware of divergent views: “There’s been debate between some of the groups that represent survivors about how broad this Royal Commission should go.”³¹ The Senate report of 2004 cited three survivor advocacy groups that pushed hard for a

²⁶Family and Community Development Committee, *Inquiry into the Handling of Child Abuse by Religious and other Non-Government Organisations*, vol. 1 (Melbourne: Parliament of Victoria, 2012), chap. 1.

²⁷Family and Community Development Committee, Appendix 10 of Submission by Chrissie and Anthony Foster, 20 August 2012. A rare example found after that date was Rory Callahan, “Scouts Kept File on Paedophile Suspects,” *Age*, 27 October 2012.

²⁸Some thirty-five case studies focused on faith-based institutions (fifteen of them Catholic) and some faith-based institutions were also associated with the twelve case studies related to closed institutions.

²⁹Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report* (Sydney: Royal Commission into Institutional Responses to Child Sexual Abuse, 2017).

³⁰Personal communications at various CLAN meetings. The writer attends both CLAN monthly member meetings and committee meetings where there is a standing agenda item relating to the Royal Commission.

³¹Gillard, Transcript of Press Conference.

royal commission: CLAN, Broken Rites, and Bravehearts.³² The Royal Commission itself named these three groups plus four others that had lobbied for its creation.³³ As shown in Table 1, four of these seven groups focus on all forms of abuse and neglect in closed institutions while three focus primarily on sexual abuse in open institutions.

Space prevents a full discussion of the arguments used by advocacy groups, but, while all agreed that child abuse was a national issue requiring a national inquiry, there were significant differences about the agenda of such an inquiry. CLAN, for example, argued at the Senate that “a significant degree of criminal activity” needed to be exposed and that could be addressed only by a royal commission with the power to subpoena evidence. CLAN has consistently argued that criminal activity extended beyond sexual abuse.³⁴ By contrast, Bravehearts argued that a royal commission would set the agenda for policymakers but proposed (without citing empirical research) that it should be restricted to sexual abuse because the offences of child sexual assault are different in nature from offences of child abuse and neglect, and bundling them together was harming efforts to prevent child sexual assault.³⁵ Gillard did not defend the Royal Commission’s terms of reference as being influenced by a superior case put forward by the sexual-abuse-only lobby, but it may have been a factor, especially when that lobbying was reinforced—as we shall see—by other forces including the very public attention given to sexual abuse scandals in formal inquiries in Victoria and New South Wales.³⁶

Before 1990, it was rare for sexual abuse to be directly addressed in official reports, but since that time the issue has been singled out—even when sexual abuse was not included in the terms of reference.³⁷ Swain argues that this was due to the weight of survivor testimony about sexual abuse. Yet, the bulk of care leaver testimony was not about sexual abuse. In their submissions to the *Forgotten Australians* (2004) inquiry, care leavers reported 889 incidents of abuse, of which only twenty-one per cent were about sexual abuse. Physical abuse constituted thirty-six per cent of reported incidents, emotional abuse thirty-three per cent, and child labour exploitation and neglect made up the other ten per cent.³⁸ A recent large survey of care leavers confirms that emotional, verbal, and physical abuse were all more prevalent than sexual abuse.³⁹ Some care leavers are blunt in their comments. One put it this way: “In a place so full of brutality, sexual abuse did not rank as highly as other forms of abuse—such as mental and emotional torture ... and the strings of punishment that never seemed to end.”⁴⁰ At least one reputable research study challenges the view that child sexual abuse is more damaging than other forms of child maltreatment.⁴¹

³²Senate Community Affairs References Committee, *Forgotten Australians*, 241.

³³Royal Commission into Institutional Responses to Child Sexual Abuse, *Interim Report*, vol. 1 (Sydney: Royal Commission into Institutional Responses to Child Sexual Abuse, 2014), 27.

³⁴Senate Community Affairs References Committee, *Forgotten Australians*, 241.

³⁵Bravehearts, Submission on the terms of reference of the Royal Commission, 2012, 7–8.

³⁶In addition to the advocacy groups, the Royal Commission acknowledged other stakeholders lobbying for a royal commission.

³⁷Swain, *History of Australian Inquiries*, 4.

³⁸Senate Community Affairs References Committee, *Forgotten Australians*, 410. In the chapter dealing with child maltreatment, just seven of 110 paragraphs were devoted to sexual assault, while in the earlier 2001 report into child migration, *Lost Innocents*, of the relevant 136 paragraphs, only twenty-one dealt with sexual abuse.

³⁹Elizabeth Fernandez et al., *No Child Should Grow Up Like This: Identifying Long Term Outcomes of Forgotten Australians, Child Migrants and the Stolen Generation* (Sydney: University of NSW, 2016), chap. 4.

⁴⁰Senate Community Affairs References Committee, *Forgotten Australians*, submission 141; see also submission 311.

⁴¹David Vachon et al., “Assessment of the Harmful Psychiatric and Behavioral Effects of Different Forms of Child Maltreatment,” *JAMA Psychiatry* 72, no. 11 (October 2015): 1135–42.

Table 1. Advocacy groups calling for a royal commission.

Advocacy group and year of formation	Constituency	Types of children's institutions		Types of child abuse	
		Closed	Open	All forms	Sexual abuse
CLAN 2000 ^{a,b}	Peak advocacy and support body for older care leavers run by care leavers using media as an educational tool and an empowerment participation model with a national membership base of 1,000. Supported by political patrons.	Sole focus		Yes	
Broken Rites 1993 ^{a,b}	Research and advocacy body run by a small number of volunteers—semi-retired professionals—helping predominantly victims of Catholic clergy abuse.		Main focus		Sole focus
Bravehearts Foundation 1996 ^{a,b}	A large registered charity working through lobbying, training, research and media campaigns. Provides counselling for victims of child sexual assault.		Main focus		Sole focus
Child Migrants Trust 1987 ^b	A charity registered in Australia and the UK. Provides a service for former child migrants and their families seeking information about family, childhood and migration history and family reunion.	Main focus		Yes	
IAFCM&F 1997 ^b	Led by former Child Migrants from Britain, campaigns for justice for child migrants. Provides services and participates in official inquiries, apologies and cultural exhibitions.	Main focus		Yes	
Historic Abuse Network 2000 ^b	Advocacy network and support for care leavers in Queensland. Now affiliated with the broader group, Lotus Place.	Sole focus		Yes	
ACSA (now Blue Knot Foundation) 1995 ^b	National organisation comprising health professionals, clinicians and researchers who advocate for and support adult survivors of childhood abuse, neglect, domestic violence and other childhood trauma.		Main focus		Main focus currently, but other childhood traumas

^aCited by Senate Report 2004.

^bCited by Royal Commission 2015.

Nor do child protection statistics appear to warrant a sole focus on sexual abuse. At the time the Royal Commission was announced, emotional abuse (thirty-eight per cent) and neglect (twenty-eight per cent) were the most common primary types of substantiated maltreatment. These were followed by physical abuse (twenty per cent) and sexual abuse (thirteen per cent).⁴² Powell and Scanlon remind us, too, that while the Ryan inquiry in Ireland “encompassed physical, emotional, sexual abuse and neglect, the overarching form of abuse was physical”.⁴³ Obviously, the matter goes far beyond measures of relative prevalence, and we need to ask why sexual abuse has come to be perceived as the “core transgression of innocent childhood”.⁴⁴

It could be argued simply that sexual abuse is plainly illegal, whereas other forms of abuse are sometimes explained away as necessary strategies of control—albeit occasionally

⁴²Australian Institute of Health and Welfare, *Child Protection Australia: 2012–13*, Child Welfare Series no. 58. Cat. no. CWS 49 (Canberra, AIHW, 2014), 19.

⁴³Powell and Scanlon, *Dark Secrets of Childhood*, 142.

⁴⁴Swain, *History of Australian Inquiries*, 11.

taken too far.⁴⁵ However, many regard sexual abuse as “a particularly heinous type of social deviation”,⁴⁶ in large part because of the association of childhood with pure innocence—and loss is so unambiguous.⁴⁷ As such, it is an emotionally charged subject, and media managers and consumers, governments included, have, in recent years, preferred an interest in sexual abuse over other stories of child abuse.⁴⁸ In the early 2000s, the *New York Times* published front-page stories about Catholic clergy abuse for forty-five consecutive days, and the *Boston Globe* published more than 1,000 articles on the topic.⁴⁹ Chrissie and Anthony Foster’s compilation of newspaper articles between 1996 and 2010 (mentioned earlier) listed 2,334 items of which 2,220 related to clergy child sexual assault in Australia.⁵⁰ There is now an extensive international catalogue of literature and media that includes more than fifty feature films or documentaries in the past fifteen years (including the 2015 Oscar winner, *Spotlight*).⁵¹

It may be not so much a question of why stories of abuse become media fodder so much as the practical impact of media exposure—what sticks in the mind after the stories are told.⁵² Politicians acknowledge that media stories and their takeaway messages influence their judgment as to what must be done. When asked what tipped the scales in her seemingly sudden decision to establish the Royal Commission, Prime Minister Gillard’s response was telling: “The impact for me, clearly, over the past few weeks we’ve seen revelations in the newspapers and more broadly which really go to the question of cover-up, of other adults not doing what they should have done.”⁵³

Church leaders were also sensitive to the power of the media. Cardinal Pell told the Victorian parliamentary inquiry in 2013 that there was a major problem with paedophilia within the ranks of the church in the late 1980s, but “I do not think anybody then had a recognition of the full extent that would emerge, but it was in the press.”⁵⁴ The cardinal’s claim appears implausible. The Catholic Church in Victoria had handled 142 claims of child sexual abuse in the 1970s, all in-house.⁵⁵ Furthermore, between 1993 and 2011, sixty-five Catholic priests and brothers had been convicted in Victorian courts, and a further fifty-three Catholic priests and brothers had been involved in

⁴⁵Historical Institutional Abuse (HIA) Inquiry, “Introduction,” in *Final Report* (Belfast, Northern Ireland: HIA, 2017), para. 68. <https://www.hiaenquiry.org/sites/hiaenquiry/files/media-files/Chapter%201%20-%20Introduction.pdf>.

⁴⁶Donald Palmer, Valerie Feldman, and Gemma McKibbin, *The Role of Organisational Culture in Child Sexual Abuse in Institutional Contexts* (Sydney: Royal Commission into Institutional Responses to Child Sexual Abuse, 2016), 32.

⁴⁷Shurlee Swain, “Why Sexual Abuse? Why now?,” in Sköld and Swain, *Apologies and the Legacy of Abuse in “Care”*, 83–94.

⁴⁸For example, Jenny Kitzinger, *Framing Abuse: Media Influence and Public Understanding of Sexual Violence Against Children* (London: Pluto, 2004); Ronald Niezen, *Truth and Indignation: Canada’s Truth and Reconciliation Commission on Indian Residential Schools* (Toronto: University of Toronto Press, 2013); Bob Lonnie and Nigel Parton, “Portrayals of Child Abuse Scandals in the Media in Australia and England: Impacts on Practice, Policy, and Systems,” *Child Abuse and Neglect* 38, no. 5 (2014): 822–36.

⁴⁹Karen J. Terry, “Child Sexual Abuse in the Catholic Church,” in *The Sexual Abuse of Children: Recognition and Redress*, ed. Yorick Smaal, Andy Kaladelfos, and Mark Finanne (Melbourne: Monash University Publishing, 2016), 78.

⁵⁰Family and Community Development Committee, Appendix 10 of Submission by Chrissie and Anthony Foster, 20 August 2012.

⁵¹Roel Verschuere, “International Sexual Abuse Literature List,” 2013. http://www.verschuere.at/literatuurlijst_seksueel_misbruik_4.html.

⁵²The Investigative Staff of the Boston Globe, *Betrayal: The Crisis in the Catholic Church*, updated ed. (London: Profile Books, 2016).

⁵³Gillard, Transcript of Press Conference.

⁵⁴Family and Community Development Committee, Transcript 27 May 2013, 3–4.

⁵⁵Royal Commission into Institutional Responses to Child Sexual Abuse, “Case Study 35 Opening Address by Gail Furness SC,” 24 November 2015, 4.

out-of-court settlements.⁵⁶ It has become clear that the problem church leaders sought to manage was not the crimes, but the minimisation of scandal. When Pell told the Victorian parliamentary inquiry that his predecessor, Archbishop Little, had destroyed records and moved criminal priests from parish to parish to cover up their crimes,⁵⁷ that story became the story for the media. Tom Keneally describes the church in cover-up mode as a “worldly wise corporation . . . behaving like a chemical company that has had a spill”.⁵⁸ The revelation of cover-ups of clergy child abuse was, to use Ronald Niezen’s term, “the worst-of-all-possible-scandals”.⁵⁹

Care leaver advocacy groups were not privy to the skirmishes between Cardinal Pell, his close personal friend Tony Abbott (then leader of the opposition), and the prime minister, who was forced to declare, “This is not a Royal Commission targeted at any one church.”⁶⁰ But not everyone believed her, or agreed with her.⁶¹ There is a plausible case to argue that Gillard bent over backwards *not* to appear to be witch-hunting the Catholics, and that explains why the terms of reference she handed the Royal Commission defined institutions so broadly.

However, the scale of the revelations of child sexual abuse in the Catholic Church—as subsequently confirmed by the Royal Commission⁶²—has reheated simmering questions about the relationship between the Catholic Church and the state, especially the relationship between canon law (as interpreted in Australia) and civil law. Victorian Premier Jeff Kennett’s threat of a royal commission issued to Pell in the mid-1990s was an early warning sign.⁶³ The Irish scandals had led the government there to issue more than a warning: Church authorities were instructed to take a clear message to the Vatican that, in matters of child abuse, civil law in Ireland trumps canon law—and clergy were required by law to report all cases of suspected abuse, current or historical, to state authorities.⁶⁴

The Cummings Report in Victoria (tabled in January 2012)—a somewhat neglected link in the local chain of inquiries—took up that issue. The state should no longer tolerate the church treating sexual abuse of children, in-house, as a sin or misdemeanor, Cummings asserted. “Crime is a public, not a private, matter.” It was the responsibility of the state to investigate and prosecute crime.⁶⁵ A month later, a coalition of survivors of Catholic sexual abuse and advocates—including politicians, academics, journalists, lawyers, and even clergy—met for the first time at Parliament House in Melbourne. It

⁵⁶Chrissie Foster, “The Silence of the Cloth Under Siege,” *Age*, 10 March 2012.

⁵⁷Family and Community Development Committee, Transcript 27 May 2013, 12ff.

⁵⁸Kate Evans, “Tom Keneally Explains Why He Can’t Let Go of the Damage Done by the Catholic Church,” *ABC News* (ABC TV, 3 November 2016). <http://www.abc.net.au/news/2016-11-03/tom-keneally-crimes-of-the-father/7988236>. See also Author’s Note in his latest novel, *Crimes of the Father* (Sydney: Vintage Books, 2016), ix.

⁵⁹Niezen, *Truth and Indignation*, 32.

⁶⁰Gillard, Transcript of Press Conference; Transcript of Interview with Marius Benson, *ABC News* (ABC Radio, 3 April 2013).

⁶¹See, for example, Frank Brennan, “Church-State Issues and the Royal Commission,” *Eureka Street*, 3 September 2013; and Premier Barry O’Farrell, Senator Doug Cameron, Senator Nick Xenophon, *ABC News* (ABC TV, 12 November 2012). <http://www.abc.net.au/worldtoday/content/2012/s3630575.htm>.

⁶²Catholic institutions were the focus of fifteen of the commission’s fifty-seven public hearings. By contrast, Anglican institutions were the focus of five case studies, and the Salvation Army was the focus of four. This weighting is not necessarily an indication of predetermined intention; it may be argued that the Royal Commission simply responded to the evidence laid before it. Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report*.

⁶³Family and Community Development Committee, Transcripts 27 May 2013; Josh Gordon and Catherine Armitage, “Jeff Kennett Warned Pell to Deal with Abuse,” *Sydney Morning Herald*, 28 March 2014. <http://www.smh.com.au/national/jeff-kennett-warned-pell-to-deal-with-abuse-20140327-35lrw.html#ixzz3yPF1QQer>.

⁶⁴David Marr, “The Prince: Faith, Abuse and George Pell,” *Quarterly Essay* 51 (2013): 2.

⁶⁵Philip Cummins (Chair), Dorothy Scott and Bill Scales, *Report of the Protecting Victoria’s Vulnerable Children Inquiry*, vol. 2 (Melbourne: Department of Premier and Cabinet, 2012), 356.

promptly named itself Coalition of Inquiry Now, positioning itself as a powerful new voice with a sharp focus on Catholic clergy abuse.⁶⁶ In April 2012, the Victorian parliamentary inquiry investigating the internal processes by which religious and other non-government organisations handled criminal abuse of children—not just sexual abuse⁶⁷—heard damaging evidence made public by Victoria Police: the Catholic Church processes, they alleged, impeded the prosecution of suspected sexual criminals.⁶⁸

In November 2012, in the midst of these revelations from the Victorian inquiry, Detective Chief Inspector Peter Fox publicly claimed he had been stood down from his investigation of clergy child abuse in the Hunter region of NSW and that, with the connivance of police, “the church covers up, silences victims, hinders police investigations, alerts offenders, destroys evidence and moves priests to protect the good name of the church”.⁶⁹ The NSW premier, Barry O’Farrell, immediately announced an inquiry into these allegations.⁷⁰ Within two days of O’Farrell’s announcement—with the two largest states of Australia now running ahead of the national government—the Gillard government announced the Royal Commission.

The Royal Commission may be interpreted as a political response to public outrage at “the ultimate collective shame”⁷¹—that vulnerable children had been criminally sexually abused and society had let it happen; or worse, criminals had been abetted, by some in high places. It could never be public policy to allow anyone, however exalted, to sexually abuse children and not be brought to justice. Father Frank Brennan, a public academic who previously opposed the establishment of a royal commission, expressed a widespread view that the failure of the state and civil society to intervene in his church would be “a wrongful invocation of freedom of religion in a pluralist, democratic society”.⁷² In that, he added his voice to those of journalists, academics, lawyers, and politicians in prosecuting the case for a commission of inquiry.⁷³ In many instances, these lobbyists—unlike care leaver advocates—were sharply focused on Catholic clergy abuse and had no particular interest in other forms of child abuse.⁷⁴ In hindsight, it could be said that these voices were politically more powerful than those of care leaver lobbyists.

⁶⁶The chair was Bryan Keon-Cohen, QC, who had been deeply involved in human rights issues with Indigenous Australians. The author represented CLAN in the coalition, which continued to be active in the period up to the formation of the Royal Commission.

⁶⁷For the Terms of Reference, see the *Victorian Government Gazette*, 17 April 2012.

⁶⁸Chief Commissioner Lay to the Family and Community Development Committee, 2 September 2012. http://www.parliament.vic.gov.au/images/stories/committees/fcdc/inquiries/57th/Child_Abuse_Inquiry/Submissions/Victoria_Police.pdf.

⁶⁹Malcolm Farr and Tory Shepherd, “Tony Abbott Supports Royal Commission into Child Sex Abuse,” *Australian*, 12 November 2012. <http://www.theaustralian.com.au/news/child-abuse-inquiry-needed-sooner-rather-than-later/story-e6frg6n6-1226515004476>.

⁷⁰Margaret Cunneen, *Special Commission of Inquiry into Matters Relating to the Police Investigation of Certain Child Sexual Abuse Allegations in the Catholic Diocese of Maitland–Newcastle* (Newcastle: New South Wales Government, 2014).

⁷¹Niezen, *Truth and Indignation*, 32.

⁷²Brennan, “Church-State Issues and the Royal Commission”.

⁷³Royal Commission into Institutional Responses to Child Sexual Abuse, *Interim Report*, vol. 1 (Sydney: Royal Commission into Institutional Responses to Child Sexual Abuse, 2015), 27.

⁷⁴Prominent organisations included Broken Rites, formed in 1993, Catholics for Renewal Inc., formed in 2011, and Coalition of Inquiry Now, formed in February 2012. The tenor of the media in 2012 can be assessed through these examples: Barney Schwartz, “Victims of Clergy Push for Inquiry,” *Age*, 9 February 2012; Hamish Fitzsimmons, “Church Abuse Victims Demand Royal Commission,” *Lateline* (ABC TV, 2 March 2012); Judy Courtin, “The Truth Deserves a Commission,” *Sydney Morning Herald*, 14 April 2012; “Unholy Silence,” *Four Corners* (ABC TV, 2 July 2012). A public forum on a royal commission was held at the Sydney Mechanics School of Arts, 27 October 2012, addressed by notable advocates focusing on Catholic clergy abuse, including Chrissie and Anthony Foster and Joanne McCarthy.

Negotiating the issues at the royal commission

The commission has consistently asserted that it would consider other forms of abuse only when they were “directly associated with” incidents of sexual abuse.⁷⁵ At every opportunity, in public hearings and in written submissions, CLAN has pleaded the case for a more inclusive definition of abuse. On the core issue of redress, CLAN told the Royal Commission:

Sexual usage is not the only form of child abuse. Abuse also occurs when a child is physically, mentally and emotionally mistreated. Abuse occurs when a child is poorly fed, poorly educated, enslaved, imprisoned, beaten and starved of comfort, care and love.⁷⁶

The New South Wales Bar Association agreed up to a point: “It would be arbitrary and, in our view, irrational to exclude physical abuse.”⁷⁷ CLAN sought to influence matters by taking a case for dealing with comprehensive abuse to the UN in Geneva in 2014—to no avail.⁷⁸

CLAN also argued that the Royal Commission should give closer attention to the meaning of the term “related matters” in its letters patent. The term is defined as “any unlawful or improper treatment of children that is, either generally or in any particular instance, connected or associated with child sexual abuse”.⁷⁹ In giving evidence on the final day of public hearings, the author (as vice president of CLAN) told the Royal Commission that sexual abuse was never an isolated event: there were always “related matters” such as physical brutality, fear, humiliation, and emotional abuse.⁸⁰ He reminded the Royal Commission that it had heard ample evidence of vicious physical cruelty and humiliation with sexual overtones. Examples abounded: a boy forced to crawl around an oval naked holding a chicken in the air while other boys stood by laughing;⁸¹ girls required to show their dirty sanitary pads before being given new ones;⁸² an absconder forced to remove her pants in front of a nun and a male staff member before being beaten with a cane on her bare bum.⁸³ All these incidents—and there are hundreds of others like them—were done in public in front of non-offending children. Children witnessed sexual abuse and lived in constant fear that their turn would come any day or night.⁸⁴ Many of the children who were forced to witness these cruel acts were already traumatised by loss of family and other degradations. In many instances, the whole ethos was sexualised with a complete lack of privacy. Children were ordered to dress and undress in front

⁷⁵See Royal Commission into Institutional Responses to Child Sexual Abuse, *Redress and Civil Litigation Report* (Sydney: Royal Commission into Institutional Responses to Child Sexual Abuse, 2015), 5–6.

⁷⁶Leonie Sheedy, CEO of CLAN, Evidence to the Royal Commission, 27 March 2015, Transcript 13781.

⁷⁷Royal Commission into Institutional Responses to Child Sexual Abuse, *Redress and Civil Litigation*, 102.

⁷⁸CLAN’s written submission. <http://www.clan.org.au/reference/united-nations>.

⁷⁹Royal Commission into Institutional Responses to Child Sexual Abuse, “Letters Patent,” <https://www.childabuseroyalcommission.gov.au/about-us/terms-of-reference>.

⁸⁰Royal Commission into Institutional Responses to Child Sexual Abuse, “Case Study 57 Transcripts,” Day 270, 31 March 2017, Day 270, 27822–27826. <https://www.childabuseroyalcommission.gov.au/case-studies/case-study-57-nature-cause-and-impact-child-sexual-abuse>.

⁸¹Royal Commission into Institutional Responses to Child Sexual Abuse, “Report of Case Study No. 5” (Sydney: Royal Commission into Institutional Responses to Child Sexual Abuse), 7.

⁸²Royal Commission into Institutional Responses to Child Sexual Abuse, “Report of Case Study No. 7” (Sydney: Royal Commission into Institutional Responses to Child Sexual Abuse), 15.

⁸³Royal Commission into Institutional Responses to Child Sexual Abuse, “Report of Case Study No. 26” (Sydney: Royal Commission into Institutional Responses to Child Sexual Abuse), 47.

⁸⁴Royal Commission into Institutional Responses to Child Sexual Abuse, “Case Study 57 Transcripts,” Day 270.

of masses of other children and staff; the doors on toilets were removed; showering was communal and poorly supervised. None of this was news to the Royal Commission: in 2014 its chair had reported that “when the institution provided residential care it is common to find sexual abuse accompanied by high levels of physical abuse and exploitation of the children’s labour, often for little if any reward”.⁸⁵ The issue turned not on whether other forms of abuse occurred, but on their temporal connection to sexual abuse, the core transgression.

CLAN also gave numerous examples where the secondary impact of abuse in closed institutions emerged only in later life. Wives and husbands of former residents were puzzled by their partners’ behaviour, many of them unable or unwilling to talk about their childhood and how it continues to affect them. A CLAN survey report in 2016 was titled *My Family Knows Only What I Want Them to Know*. One CLAN member wrote, “Talking about abuse greatly upsets me. I don’t want my family to know.” A witness told the Senate Committee (2004) that her sexual abuse left her “with a real fear of men and problems having sex, even with my husband... This barrier is still with me to this day”.⁸⁶ The wife of another survivor has belatedly come to terms with her husband sleeping with a lethal weapon under their bed now that he has told her why. And the children often suffer. There is consistent evidence of problems with parenting skills, much of it related to “an inability to demonstrate or express emotion physically or verbally”.⁸⁷ Recently, a member told CLAN that, because of her sexual abuse, “I am unable to bond, even with my own children.”⁸⁸

One of the Royal Commission’s own research reports in 2016 advised:

There is now general recognition that various types of child abuse and exposure to adversity co-occur, and therefore studies limited to a single type of abuse (such as sexual or physical abuse only) cannot capture the complex nature of maltreatment, or its nature and context.⁸⁹

While in its final report the Royal Commission reasserted the importance of recognising this complexity, the bulk of its analysis of frequency, causation, and prevention remains on sexual abuse.⁹⁰

Conclusion: implications for care leavers

The majority of care leavers were not directly sexually abused in OOH, but the Royal Commission’s strict interpretation of its terms of reference excluded those who experienced “only” cruel physical assault emotional abuse, exploitation, neglect of health and education; those who were subjected “only” to unauthorised medical trials or placement in adult mental health facilities; and those vast numbers who were stripped of personal identity and were terminally separated from their parents and siblings.

Many who were not given the opportunity to give voice to their abuse at the Royal Commission nurse the feeling that their abuse is considered subordinate or inferior.

⁸⁵The Hon Justice Peter McClellan, Address to Blue Knot National Awareness Day, Canberra, 27 October 2014.

⁸⁶Senate Community Affairs References Committee, *Forgotten Australians*, 149.

⁸⁷Senate Community Affairs References Committee, *Forgotten Australians*, 148.

⁸⁸CLAN, Survey on Redress Issues, 2014.

⁸⁹Ben Mathews et al., *Scoping Study for Research into the Prevalence of Child Abuse in Australia* (Sydney: Social Policy Research Centre, UNSW, 2016), 20. See also Fernandez, et al., *No Child Should Grow Up Like This*, 10.

⁹⁰Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report. Volume 11: Historical Residential Institutions* (Sydney: Royal Commission into Institutional Responses to Child Sexual Abuse, 2017), 64–5.

Having learned as children never to trust authority, many were re-traumatised by being sidelined and excluded by a government they thought would “do the right thing” by them, especially regarding redress. On that core issue, the Royal Commission was well aware of the impact of its position. It acknowledged, “Most previous and current redress schemes cover at least sexual and physical abuse. Some also cover emotional abuse or neglect.”⁹¹ At the time of writing, the political fate of the Royal Commission’s recommendations on a national redress scheme is still unclear—but the likelihood of a broad-based scheme seems remote.⁹²

Many care leavers who were not sexually abused have had to put their traumatic childhood lives on hold for the five years of the commission’s tenure—and some feel betrayed by the government. Others will have gained comfort from the groundbreaking work of the commission. The power of collective testimony has been demonstrated, again, to shatter the illusion that the child welfare system always acted in the best interests of the child and that all “care” givers were good and decent people. Some care leavers will be gratified to learn that the Royal Commission referred 2,575 cases to police and other relevant authorities.⁹³ They are beginning to see belated criminal prosecutions of sex offenders—some of whom abused children in other ways too.

When the commission wound up in December 2017, the six full time commissioners and hundreds of professional staff had worked for five years with a budget of more than \$500,000,000.⁹⁴ The commission has created a massive bank of knowledge about child sexual abuse through more than 8,000 individual sessions, fifty-seven public hearings, and nearly sixty research reports. The chair of the commission is right to call on others to build on this work: “As researchers, educators, policy makers, advocates, front line workers and clinicians who are committed to improving the lives of children, it is [*sic*] will be up to you [to] build on the legacy of the Commission and keep up the momentum for change.”⁹⁵

CLAN’s patron, Senator Claire Moore, is right to say, “The creation of a royal commission into sexual abuse is not the full extent of the support that people who went through institutional care need to have.”⁹⁶ The question remains: What kind of support will bring them justice?

Disclosure statement

No potential conflict of interest was reported by the author.

⁹¹Royal Commission into Institutional Responses to Child Sexual Abuse, *Redress and Civil Litigation Report*, 102.

⁹²Jacqueline Z. Wilson and Frank Golding OAM, “Was it All a Waste of Time? The Failure of the Proposal for Financial Redress by the Australian Royal Commission into the Handling of Child Sexual Abuse.” Paper presented at the International Network on Studies of Inquiries into Child Abuse, Politics of Apology and Historical Representations of Children in Out-of-Home Care, Norrköping, Sweden, 10–11 November 2016. The Australian government’s national redress scheme requires states, churches, and other responsible agencies to opt in—and, to date, only the Catholic church has made a firm commitment to do so.

⁹³Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report*.

⁹⁴Attorney-General for Australia, “Child Abuse Royal Commission Granted a Two Year Extension,” media release, 2 September 2014, www.attorneygeneral.gov.au/MediaReleases/Pages/2014/ThirdQuarter/2September2014-ChildAbuseRoyalCommissionGrantedATwoYearExtension.aspx.

⁹⁵Justice Peter McClellan, Address to Association of Children’s Welfare Agencies Conference, Sydney, 15 August 2016.

⁹⁶Senator Claire Moore, Commonwealth of Australia Parliamentary Debates, “Care Leavers Australia Network,” 8 July 2014, 4430.